FORM SC 14D9/A

Tender offer solicitation / recommendation statements filed under Rule 14d-9 [amend]

Filing Date: **1995-05-10**
SEC Accession No. 0000950172-95-000184

SUBJECT COMPANY

GROW GROUP INC

CIK:**44171**| IRS No.: **111665588** | State of Incorp.:**NY** | Fiscal Year End: **0630**
Type: **SC 14D9/A** | Act: **34** | File No.: **005-12016** | Film No.: **95536236**
SIC: **2851** Paints, varnishes, lacquers, enamels & allied prods

Mailing Address
PAN AM BLDG 49TH FL
200 PARK AVENUE
NEW YORK NY 10166

Business Address
200 PARK AVENUE 49TH FL
PAN AM BLDG
NEW YORK NY 10166
2125994400

FILED BY

GROW GROUP INC

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SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

AMENDMENT NO. 4
TO
SCHEDULE 14D-9

SOLICITATION/RECOMMENDATION STATEMENT
PURSUANT TO SECTION 14(D)(4) OF THE
SECURITIES EXCHANGE ACT OF 1934

GROW GROUP, INC.
(Name of Subject Company)

GROW GROUP, INC.
(Name of Person(s) Filing Statement)

COMMON STOCK, PAR VALUE $0.10 PER SHARE
(Title of Class of Securities)

399820 10 9
(CUSIP Number of Class of Securities)

Lloyd Frank, Esq.
Secretary
Grow Group, Inc.
200 Park Avenue
New York, N.Y. 10166
(212) 599-4400

(Name, address and telephone number of person authorized to receive notice and communication on behalf of the person(s) filing statement).

With a Copy to:

Daniel E. Stoller, Esq.
Skadden, Arps, Slate, Meagher & Flom
919 Third Avenue
New York, N.Y. 10022
(212) 735-3000

This Amendment supplements and amends as Amendment No. 4 the Solicitation/Recommendation Statement on Schedule 14D-9, originally filed on May 4, 1995 (the "Schedule 14D-9"), by Grow Group, Inc., a New York corporation (the "Company"), relating to the tender offer by GDEN Corporation, a New York corporation (the

"Purchaser") and an indirect wholly owned subsidiary of Imperial Chemical Industries PLC, a corporation organized under the laws of England ("Parent"), initially disclosed in a Tender Offer Statement on Schedule 14D-1, dated May 4, 1995, to purchase all outstanding shares of common stock, par value $0.10 per share (the "Common Stock" or the "Shares"), of the Company at a price of $18.10 per Share, net to the seller in cash, upon the terms and subject to the conditions set forth in the Offer to Purchase, dated May 4, 1995 and the related Letter of Transmittal. Capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Schedule 14D-9.

ITEM 7. CERTAIN NEGOTIATIONS AND TRANSACTIONS BY THE SUBJECT COMPANY.

On May 10, 1995, the Company issued a press release announcing that its Board of Directors has authorized management of the Company and the Company's financial and legal advisors to engage in discussions and negotiations with, and disclose certain non-public information concerning the Company to, The Sherwin-Williams Company ("Sherwin-Williams") in connection with Sherwin-Williams' unsolicited tender offer to acquire, subject to certain conditions, all outstanding Shares at a price of $19.50 per Share. A copy of such press release is attached hereto as Exhibit 21 and is incorporated herein by reference. Discussions between representatives of the Company and representatives of Sherwin-Williams commenced on May 10, 1995. The foregoing actions were taken based on the Board's determination of its fiduciary duties under applicable law as advised by counsel and in accordance with the applicable provisions of the Merger Agreement as described in Item 3 of the Schedule 14D-9.

ITEM 8. ADDITIONAL INFORMATION TO BE FURNISHED.

CERTAIN LITIGATION.

On May 9, 1995, the Company issued a press release announcing the denial of Sherwin-Williams' application for a temporary restraining order in the New York Action. A copy of such press release is attached hereto as Exhibit 20 and is incorporated herein by reference.

On May 8, 1995, a purported class action entitled A.D. Gilhart & Co., Inc., v. Grow Group, Inc. et al., was commenced in the Supreme Court of the State of New York, New York County (the "Gilhart Action") against the Company and members of the Company's Board of Directors. The complaint in the Gilhart Action alleges, among other things, that the defendants breached their fiduciary duties owed to the Company's shareholders in connection with the proposed Merger between the Company and Parent by failing to pursue discussion with Sherwin-Williams

about a possible acquisiton of the Company by Sherwin-Williams.

The complaint in the Gilhart Action seeks, among other things, an order (i) enjoining defendants from enforcing the Company's "anti-takeover procedures"; (ii) requiring defendants to explore third party interest and accept the highest bid obtainable for the Company's Shares; and (iii) awarding the plaintiffs' costs and disbursements, including attorneys' fees.

On May 9, 1995, a purported class action entitled Kim J. Hammond and Jeffrey Dell v. Grow Group, Inc., et al. (the "Hammond Action") was commenced in the United States District Court for the Southern District of New York against the Company and certain members of the Company's Board of Directors (collectively, the "Defendants") on behalf of all persons who sold the Company's securities during the period from April 29, 1995 to May 4, 1995 and who sustained damages as a result of such sale. The complaint alleges violations of Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder for, among other things, issuing the statements contained in press releases dated April 28, 1995 and May 1, 1995 which allegedly were materially false and misleading for failing to adequately disclose all material facts concerning Sherwin-Williams' contacts with the Company regarding a proposed acquisition by Sherwin-Williams; and for falsely creating the impression that the Board of Directors had "shopped" the Company. The complaint further alleges that the above mentioned disclosures artificially affected the market price of the Company's securities.

The complaint in the Hammond Action seeks, among other things, monetary damages against the Defendants in an unspecified amount for all losses suffered by the plaintiffs as a result of the allegedly improper activity of the Defendants and costs, reasonable attorneys' fees and expert fees and disbursements.

RIGHTS PLAN.

On May 10, 1995, the Company issued a press release announcing that it has extended the distribution date of the stock purchase rights (the "Rights") associated with the Shares until May 31, 1995 or such later date as may be determined by the Company's Board of Directors. Until such date, the Rights will continue to trade together with the Shares. A copy of such press release is attached hereto as Exhibit 21 and is incorporated herein by reference.

ITEM 9. MATERIAL TO BE FILED AS EXHIBITS.

Exhibit No.

Exhibit 20 Press Release issued by the Company on May 9,

1995

Exhibit 21 Press Release issued by the Company on May 10, 1995

Exhibit 22 Class Action Complaint entitled Kim J. Hammond and Jeffrey Dell v. Grow Group, Inc. et. al., filed in the United States District Court for the Southern District of New York.

Exhibit 23 Class Action Complaint entitled A. D. Gilhart & Co. Inc. v. Grow Group, Inc. et. al., filed in the Supreme Court of the State of New York, New York County.

SIGNATURE

After reasonable inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

Dated: May 10, 1995

GROW GROUP, INC.

By /s/ Lloyd Frank
Title: Secretary

EXHIBIT INDEX

EXHIBIT NUMBER	DESCRIPTION
20	Press Release issued by the Company on May 9, 1995
21	Press Release issued by the Company on May 10, 1995
22	Class Action Complaint entitled Kim J. Hammond and Jeffrey Dell v. Grow Group, Inc. et. al., filed in the United States District Court for the Southern District of New York.
23	Class Action Complaint entitled A. D. Gilhart & Co. Inc. v. Grow Group, Inc. et. al., filed in the Supreme Court of the State of New York, New York County.

EXHIBIT 20

FOR IMMEDIATE RELEASE

NEW YORK COURT REJECTS SHERWIN-WILLIAMS APPLICATION
FOR TEMPORARY RESTRAINING ORDER

New York, New York, May 9, 1995... Grow Group, Inc. ("Grow") (NYSE: GRO) announced today that a Justice of the New York State Supreme Court, after a hearing yesterday afternoon, rejected Sherwin-Williams' application for a temporary restraining order. Sherwin-Williams had sought an order enjoining Imperial Chemical Industries PLC ("ICI") from exercising certain rights under an agreement between ICI and Corimon, a 25% shareholder of Grow. The agreement between ICI and Corimon was entered into in connection with the previously announced Merger Agreement between ICI and Grow.

A hearing on Sherwin-Williams' preliminary injunction motion in its New York State court action has been set for May 25, 1995.

EXHIBIT 21

FOR IMMEDIATE RELEASE

New York, New York, May 10, 1995... Grow Group, Inc. ("Grow") (NYSE: GRO) announced today that its Board of Directors has authorized management of Grow and Grow's financial and legal advisors to engage in discussions and negotiations with The Sherwin-Williams Company in connection with Sherwin-Williams' unsolicited tender offer to acquire, subject to certain conditions, all outstanding shares of Grow Common Stock at a price of $19.50 per share.

On May 1, 1995, Grow announced that it entered into a definitive merger agreement with Imperial Chemical Industries, PLC, an English company ("ICI"), pursuant to which ICI has offered to purchase all outstanding shares of Grow Common Stock for $18.10 per share.

In addition, Grow announced that it has extended the distribution date of its Stock Purchase Rights until May 31, 1995 or such later date as may be determined by Grow's Board of Directors. Until such date, the Stock Purchase Rights will continue to trade together with the Company's Common Stock.

Grow also stated that it believes the lawsuits filed by Sherwin-Williams and by certain shareholders as purported class actions are without merit. Russell Banks, President and Chief Executive Officer of Grow, said, "The Grow Board of Directors is acutely aware of its fiduciary responsibilities. The Board has acted at all times in the interests of the Company and its shareholders and will continue to do so."

EXHIBIT 22

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

KIM J. HAMMOND and JEFFREY DELL,,	:	
	:	
Plaintiffs,	:	Index No.
	:	
-against-	:	
	:	CLASS ACTION
GROW GROUP, INC., JOHN F. GLEASON,	:	COMPLAINT
RUSSELL BANKS and JOSEPH M. QUINN,	:	
	:	
Defendants.	:	JURY DEMAND

Plaintiffs, for their complaint against defendants, allege as follows upon information and belief based upon their counsel's investigation of news reports, public filings and other materials, except as to those allegations pertaining to themselves which are based upon plaintiff's personal knowledge.

JURISDICTION AND VENUE

1. This court has jurisdiction over the subject matter of this action under Section 27 of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. SECTION78aa, 28 U.S.C. SECTION1331. The claims alleged herein arise under Sections 10(b) and 20(a) of the Exchange Act, 15 U.S.C. SECTIONSECTION78g(b) and 78t(a), and Rule 10b-5 promulgated thereunder by the Securities and Exchange Commission ("SEC"), 17 C.F.R. SECTION240.10b-5.

2. Venue is proper in this District under Section 27 of the Exchange Act and 28 U.S.C. SECTION1391(b). The acts giving rise to the violations of law complained of herein occurred, at least in part, in this District. In addition, defendant Grow Group, Inc. ("Grow" or the "Company") is a corporation organized under the laws of the state of New York and maintains offices and conducts its business in this District; its financial and legal advisors also maintain offices and conduct business in the District.

3. In connection with the acts, conduct and other wrongs complained of herein, defendants, directly and indirectly, used the means and instrumentalities of interstate commerce and the United States mails, and the facilities of the national securities markets.

THE PARTIES

4. Plaintiff Kim J. Hammond sold 10,300 shares of Grow common stock on May 2, 1995 at a price of $17 7/8 per share.

5. Plaintiff Jeffrey Dell sold 15,000 shares of Grow common stock on May 2, 1994 at a price of $17 3/4 per share.

6. Defendant Grow Group is a corporation organized and existing under the laws of the State of New York with offices at 200 Park Avenue, New York, New York. Grow Group manufactures and markets trade paints and coatings, chemical automotive and industrial products, including thinners, adhesives and plastisols, high gloss urethane coatings and chemical coatings. The Company had, as of February 1, 1995, approximately 16 million shares outstanding held by approximately 4,000 shareholders of record.

7. Defendant Russell Banks ("Banks") is and was, at all relevant times, the Company's President and Chief Executive Officer.

8. Defendants John F. Gleason ("Gleason") is and was, at all relevant times, a director and Executive Vice President of Grow.

9. Defendant Joseph M. Quinn ("Quinn") is and was, at all relevant times, a director and Executive Vice President and Chief Operating officer of Grow.

CLASS ALLEGATIONS

10. Plaintiffs bring this action as a class action pursuant to Rules 23(a) and 23(b)(3) of the Federal Rules of Civil Procedure on behalf of themselves and all other persons similarly situated (the "Class") who sold Grow securities during the period from April 29, 1995 to May 4, 1995, inclusive (the "Class Period") and who sustained damages as a result of such transactions. Excluded from the Class are the defendants herein, members of the immediate families of and persons affiliated with each defendant, the legal representatives, heirs, and successors or assigns of any of the defendants.

11. There are over 16 million shares of Grow common stock publicly outstanding, roughly 2 million of which were actively traded during the Class Period. Thus, the members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members can only be determined by appropriate discovery, plaintiffs believe that Class members number in the thousands because Grow common stock was actively traded on the New York Stock Exchange, an efficient

market, during the Class Period.

12. The representative plaintiffs, claims are typical of the claims of the members of the Class. Plaintiffs and all Class members sustained damages as a result of defendants' wrongful conduct complained of herein.

13. Plaintiffs will fairly and adequately protect the interests of the Class members and have retained counsel competent and experienced in class and securities litigation.

14. A class action is superior to other available methods of the fair and efficient adjudication of this controversy. Since the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the Class members individually to seek redress for the wrongful conduct alleged.

15. Common questions of law and fact exist as to all Class members and predominate over any questions affecting solely individual Class members. Among the questions of law and fact common to the Class are:

(a) whether the federal securities laws were violated by defendants' acts as alleged herein;

(b) whether representations made to the investing public and the shareholders of Grow during the Class Period omitted and/or misrepresented material facts about the Company's efforts to sell itself to a third party;

(c) whether defendants failed to timely disclose material facts necessary in order not to mislead the investing public; and

(d) whether the members of the Class have sustained damages and, if so, what is the proper measure of such damages.

SUBSTANTIVE ALLEGATIONS

16. In late January 1995, defendant Grow issued a press release stating that the Grow board of directors had unanimously authorized Grow's financial advisor, Wertheim Schroder & Co., Inc., ("Wertheim") to assist the Company in considering and reviewing alternatives to enhance shareholder value.

17. On April 28, 1995, defendants issued a press release which stated that Grow:

> . . . has entered into negotiations with a third party concerning an acquisition of Grow. The third party, which has substantially completed its due diligence review, has proposed to acquire 100% of Grow's common stock and has indicated a willingness to pay Grow's public stockholders $18.10 per share in cash. Any such transaction would be subject to negotiation and execution of a definitive agreement and approval of Grow's Board of Directors.

18. On the morning of May 1, 1995, defendants issued a press release, stating that Grow:

> has entered into a definitive merger agreement pursuant to which Imperial Chemical Industries, PLC, an English Company ("ICI"), would offer to purchase all the outstanding shares of Grow for $18.10 per share.
>
> * * *
>
> Grow also stated that Corimon, a Venezuelan corporation which owns approximately 25% of Grow's shares, had entered into a separate Option Agreement with ICI in which Corimon agreed to sell its Grow shares to ICI at a price of $17.50 per share.
>
> * * *
>
> The Board of Directors of Grow unanimously approved the transaction based upon, among other things, an opinion as to the fairness of the offer and the merger from Wertheim Schroder & Co., Incorporated.
>
> * * *
>
> In announcing the execution of the Merger Agreement, Russell Banks, President and Chief Executive Officer of Grow, said, 'We are extremely pleased to be able to propose to shareholders what we believe represents an attractive opportunity . . . .'

19. The foregoing statements were materially false and misleading and/or omitted to state material facts necessary to make the statements made, in the light of the circumstances under

which they were made, not misleading, in at least the following respects:

(a) defendants failed to disclose that as early as March 17, 1995, The Sherwin-Williams Company ("SherwinWilliams") had offered to enter into a confidentiality agreement with Grow in order to permit Sherwin-Williams to enter into a definitive agreement for 100% of Grow, and Sherwin-Williams had sent Grow a fully executed confidentiality agreement on March 31, 1995 which agreement was never executed by Grow;

(b) defendants failed to disclose that, on April 17, 1995, defendant Banks informed Sherwin-Williams that it was to be excluded from any bidding process for Grow;

(c) defendants failed to disclose that since April 17, 1995 and despite its exclusion from any bidding process, Sherwin-Williams' financial advisors had been in contact with Grow's financial advisor and had expressed Sherwin-Williams' continued serious interest in pursuing a transaction with Grow;

(d) defendants failed to disclose that on the evening of April 28, 1995, Sherwin-Williams sent a letter to defendant Banks, with copies to each of the other individual defendants, to all of Grow's directors and to Grow's financial and legal advisors. The April 28th letter stated that SherwinWilliams was still seriously interested in a transaction with Grow, that financing an all-cash transaction would not represent "any impediment" given Sherwin-Williams' financial strength, that Sherwin-Williams was "extremely confident that the antitrust laws would not impede [its] ability to consummate a transaction," and that Sherwin-Williams had retained the investment banking firm of Lazard Freres & Co. and the law firm of Rogers & Wells to provide Sherwin-Williams financial and legal counsel in connection with an acquisition by Grow. The April 28th letter further stated that Sherwin-Williams was prepared to "enter into immediate discussions with you and your directors, management and advisors about a transaction" with Sherwin-Williams. A copy of the April 28th letter is annexed hereto as Exhibit A; and

(e) Defendant Banks' statement that the board was "extremely pleased to be able to propose what we believe represents an attractive opportunity" was materially false and misleading in that it created the false impression that the Company had been fully "shopped" by defendants, with the assistance of Wertheim, and that defendants had obtained the best available transaction for the Company and its public shareholders.

20. By means of the aforesaid misrepresentations and

omissions (and failure to correct same), set forth above, and/or with reckless disregard of the facts, defendants unlawfully and artificially affected the market price of Grow securities. In ignorance of the false and misleading nature of the representations discussed above, plaintiffs and the members of the Class relied, to their detriment, on the integrity of the market and/or the above-cited representations of the defendants.

21. By reason of the foregoing, defendants violated and/or aided and abetted violations of Section 10(b) of the Exchange Act and Rule l0b-5 promulgated thereunder in that they: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material fact or omitted to state material facts necessary in order to make the statements set forth in paragraph 18 hereof, in light of the circumstances under which they were made, not misleading; and (c) engaged in acts, practices and/or a course of business which would and did operate as a fraud and deceit upon the plaintiffs and other owners of Grow securities who sold their securities during the Class Period.

22. Had plaintiffs and the members of the class known that Grow had received repeated serious indications of interest from Sherwin-Williams culminating in the April 28th letter, they would not have sold their securities during the Class Period. Following the belated disclosure of the April 28th letter on May 4, 1995, the price of Grow common stock traded above ICI's $18.10 offering price. Thus, on May 5, 1995, Grow common stock closed at $19 1/2 per share. On May 8, 1995, the second trading day following the disclosure of the April 28th letter, SherwinWilliams commenced a tender offer for all shares of Grow at a price of $19.50 per share cash. On May 8, 1995, Grow common stock traded as high as $20 3/8 per share.

23. Defendants, by virtue of their offices and directorships, were at the time of the wrongs alleged herein, controlling persons of Grow within the meaning of Section 20(a) of the Exchange Act. Defendants had the power and influence which they exercised to cause Grow to engage in the conduct and practices complained of herein. Their position within the Company made them privy to, and provided them with, actual knowledge of the material facts concealed from plaintiffs and the Class.

24. By reason of the conduct described herein, defendants are liable to plaintiffs and the other members of the Class for the substantial damages which they suffered in connection with their sales of Grow securities.

WHEREFORE, plaintiffs demand judgment against defendants, as follows:

A. Certifying this action as a class action, certifying plaintiffs as class representatives thereof, and plaintiffs' counsel as class counsel;

B. Declaring and determining that defendants violated the federal securities laws by reason of the deceptive conduct and misstatements and omissions as alleged herein;

C. Awarding money damages against the defendants, jointly and severally, and in favor of plaintiffs and the other members of the Class for all losses and injuries suffered as a result of the acts and transactions complained of herein, together with prejudgment interest on all of the aforesaid damages which the Court shall award from the date of said wrongs to the date of judgment herein at a rate the Court shall fix;

D. Awarding plaintiffs the costs of this action, including reasonable attorneys' fees and expert fees and disbursement; and

E. Granting such other and further relief as this Court may deem just and proper.

JURY DEMAND

Plaintiffs demand trial by jury.

Dated: May 9, 1995

ABBEY & ELLIS

By: _____
Judith L. Spanier (JS-5065)
212 East 39th Street
New York, New York 10016
(212) 889-3700

EXHIBIT A

April 28, 1995

Mr. Russell Banks
President and Chief Executive Officer
Grow Group, Inc.
200 Park Avenue
New York, New York 10166

Dear Mr. Banks:

We at The Sherwin-Williams Company were troubled to learn from the press release you issued today that you are in the process of negotiating a sale of your company to another party. Our concern arises from the fact that, despite Sherwin-Williams' repeated indications of serious interest in a transaction with Grow Group, you apparently have decided to negotiate a definitive agreement with another bidder without giving us access to the information that would allow us to present our best possible proposal.

On March 17, 1995 we offered to enter into a confidentiality agreement with Grow Group. After repeated delays on Grow Group's part to finalize such agreement, we forwarded an executed copy of that agreement to Lloyd Franks on March 31, 1995. However, that agreement was never executed by Grow Group. On April 17, 1995, you informed us that Sherwin-Williams was to be excluded from the bidding process. Consequently, by letter dated April 17, 1995, we had no alternative but to revoke our offer to enter into the confidentiality agreement with Grow Group. Since that time and despite your actions, our financial advisors have been in contact with Wertheim Schroder and have expressed our continued interest in pursuing a transaction with Grow Group.

Given our financial strength, financing will not represent any impediment to the consummation of a transaction on an all-cash basis. In addition, based upon our preliminary analysis, we are extremely confident that the antitrust laws would not impede our ability to consummate a transaction with Grow Group. This matter has been discussed at length with the members of our senior management and with our Board of Directors. We have also retained Lazard Freres & Co. and Rogers & Wells to provide financial and legal counsel regarding this matter.

We urge you not to enter into or to agree to any merger or other significant transaction or agreement, or to take any additional defensive measures (including "no shop", break-up fee or similar arrangements) or other actions, that would adversely affect the ability of your stockholders to receive the maximum value for their shares.

We wish to obtain immediate access to the information which you have refused to furnish to us. We are also prepared to enter into immediate discussions with you and your directors, management and advisors about a transaction with Sherwin-Williams. In Mr. Breen's absence, you may contact me over the weekend either at my home at (216) 247-4936 or at my office (216) 566-2102. If you are unable to contact me, you can contact Larry J. Pitorak, Senior Vice President--Finance, Treasurer and Chief Financial Officer, at (216) 729-3840 or (216) 566-2573.

We hope that you and your Board of Directors will give this matter prompt and serious consideration.

Sincerely,

/s/ Conway G. Ivy

EXHIBIT 23

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

A.D. GELHART & CO., INC., ON BEHALF OF ITSELF AND ALL OTHERS SIMILARLY SITUATED,	
PLAINTIFF,	INDEX NO. 95/111517
-AGAINST -	CLASS ACTION COMPLAINT
GROW GROUP, INC., RUSSELL BANKS, JOSEPH M. QUINN, JOHN F. GLEASON, PETER L. KEANE, PHILIPPE ERARD, TOLLY PLESSER, ROBERT J. MILANO, ARTHUR W. BROSLAT, LLOYD FRANK, ANGUS N. MACDONALD, WILLIAM H. TURNER, AND HAROLD G. BITTLE,	
DEFENDANTS.	

Plaintiff, individually and on behalf of all others similarly situated, by its undersigned attorneys, for its complaint, alleges based upon personal knowledge as to itself and its own acts, and upon information and belief as to all other matters, based upon, inter alia, the investigation made by and through its attorneys, which investigation included, among other things, a review of public documents, published reports and news articles:

NATURE OF THE ACTION

1. Plaintiff A.D. Gilhart & Co., Inc. brings this class action on behalf of itself and the public stockholders of Grow Group, Inc. ("Grow Group" or the "Company") against defendants herein for failing to insure that the shareholders of the Company receive maximum value for their shares of the common stock of the Company.

2. The Company is supporting a tender offer (the "Tender Offer") by GDEN Corporation, a New York corporation and a wholly owned subsidiary of Imperial Chemical Industries PLC, a company organized under the laws of England ("ICI"), to purchase

all of the outstanding common stock of the Company, for the grossly inadequate price of $18.10 per share. Moreover, defendants, through the use of a shareholder rights plan or "poison pill" and a lock-up and bust up fee granted to ICI, have effectively impeded competing bids for the Company's shares and removed the possibility of the Company's shareholders receiving the best possible valuation of their shares. Plaintiff seeks to recover damages from the Director Defendants, as defined below, for breach of fiduciary duty to maximize shareholder value in connection with the Tender Offer.

3. The Company and the Director Defendants owe to the Company's stockholders the highest fiduciary obligations of fidelity, trust, loyalty and due care and to act in furtherance of the best interests of the Company and its stockholders. In an effort to entrench themselves in their positions with the Company, and to earn potential profits of in excess of $6.5 million, by forcing potential acquirors to pay for their cooperation, the Director Defendants are using fiduciary positions of control over the Company to aid ICI in their Tender Offer. The actions taken or intended to be taken by defendants to aid the proposed takeover of the Company constitute self dealing, deception, unfair dealing, overreaching and a breach of their fiduciary duty to maximize shareholder value.

THE PARTIES

4. Plaintiff A.D. Gilhart & Co., Inc. owns shares of the Company's common stock and has held such stock up to and including the time of the announced Tender Offer.

5. Defendant Company is a corporation organized and existing under the laws of the State of New York since 1950, with its principal executive offices located at 200 Park Avenue, New York, New York 10166. The Company and its subsidiaries purport to formulate and produce a complete line of architectural coatings, including paints, and a diverse line of chemical products for the automotive industry and maritime and industrial users.

6. As of April 29, 1995, the Company had approximately 16,420,411 shares of common stock outstanding, which shares are traded on the New York Stock Exchange.

7. The below named defendants (the "Director Defendants") constitute the entire Board of Directors of the Company as of September, 1994:

(a) Defendant Russell Banks, has been President and Chief Executive Officer of the Company since 1962 and a director since 1960. If the Tender Offer is completed, defendant Banks will reap a windfall of $2.1

million pursuant to an employment agreement; $400,000 pursuant to a consulting agreement; $115,000 pursuant to a stock option agreement; and up to $620,000 pursuant to a supplemental retirement and death benefit agreement.

(b) Defendant Philippe Erard, has been a director of the Company since 1992. Defendant Erard is also Chairman of Corimon C.A.S.A.C.A., a Venezuelan industrial corporation ("Corimon") which has agreed to sell its 25% stake of the Company's common stock to ICI for $70.5 million. Defendant Erard is acting in the best interests of Corimon, not the other public shareholders of the Company. If the Tender Offer is completed, defendant Erard will personally reap a $62,900 windfall pursuant to a stock option agreement.

(c) Defendant Arthur W. Broslat, has been a director of the Company since 1992. Defendant Broslat is also an Executive Vice President and the Chief Financial Officer of Corimon. If the Tender Offer is completed, defendant Broslat will reap a $61,000 windfall pursuant to a stock option agreement.

(d) Defendant Joseph M. Quinn is an Executive Vice President, Chief Operating Officer and director of the Company. If the Tender Offer is completed, defendant Quinn will reap of windfall of $1.03 million pursuant to the terms of an employment agreement; $350,000 pursuant to a stock option agreement; and up to $377,285 pursuant to a supplemental retirement and death benefit agreement.

(e) Defendant John F. Gleason, is an Executive Vice President and director of the Company. Defendant Gleason became a director of the Company in 1976. If the Tender Offer is completed, defendant Gleason will reap a $15,000 windfall pursuant to a stock option agreement; and up to $347,665 pursuant to a supplemental retirement and death benefit agreement.

(f) Defendant Peter L. Keane has been a director of the Company since 1969. If the Tender Offer is completed, defendant Keane will reap a windfall of $20,000 for 10 years under a director fee continuation plan.

(g) Defendant Harold G. Bittle, became a director of the Company in 1993. Defendant Bittle also has served as a consultant to Corimon from 1951 to 1989. If the Tender Offer is completed, defendant Bittle will reap a $41,000 windfall pursuant to a stock option

agreement.

(h) Defendant Robert J. Milano, has been a director since 1983. If the Tender Offer is completed, defendant Milano will reap a windfall of $20,000 a year for life under a director fee continuation plan.

(i) Defendant Tully Plesser became a director of the Company in 1993. If the Tender Offer is completed, defendant Plesser will reap a $41,000 windfall pursuant to a stock option agreement.

(j) Defendant Lloyd Frank is Secretary and a director the Company. If the Tender Offer is completed, defendant Frank will reap a windfall of $20,000 for 10 years under a fee director fee continuation plan; $72,000 pursuant to a stock option agreement; and up to $248,332 pursuant to a supplemental retirement and death benefit agreement.

(k) Defendant Angus N. MacDonald has been a director of the Company since 1984. If the Tender Offer is completed, defendant MacDonald will reap a windfall of $20,000 for 10 years under a fee director fee continuation plan.

(l) Defendant William H. Turner has been a director of the Company since June 1994.

8. The Director Defendants as a group stand to personally reap a windfall of in excess of $6.5 million if the Tender Offer is consummated.

9. By reason of their relationships and offices, the Director Defendants are in a fiduciary relationship with the plaintiff and the other public shareholders of the Company and owe to them the highest obligations of good faith, loyalty and fair dealing. They are sued herein because they have breached these fiduciary duties.

CLASS ACTION ALLEGATIONS

10. Plaintiff brings this action on its own behalf and as a class action pursuant to CPLR SECTION 901, seeking declaratory, injunctive and other relief, on behalf of all current common stockholders of the Company (the "Class') (excluded from the Class are defendants herein and any person, firm, trust, corporation or other entity related to or affiliated with defendants) who are or will be deprived of their equity interest in the Company at an unfair price under the proposed Tender Offer of the Company's public stockholders through the wrongful acts described herein.

11. This action is properly maintainable as a class action pursuant to Rule 901 of the New York Civil Practice Law and Rules for the following reasons:

a. The Class of stockholders for whose benefit this action is brought is so numerous that joinder of all Class members is impracticable. There are approximately 16,420,411 shares of the Company's common stock outstanding, held by approximately 4,000 shareholders of record and thousands more beneficial owners, all widely dispersed. Furthermore, as the damages suffered by individual Class members may be small, the expense and burden of individual litigation makes it virtually impossible for the Class members on an individual basis to address wrongs done to them.

b. There are questions of law and fact which are common to members of the Class and which predominate over any questions affecting only individual members, including whether the defendants have breached their fiduciary duties to plaintiff and the Class by reason of:

(1) their efforts to entrench themselves in office and prevent the Company's public shareholders from maximizing the value of their holdings;

(2) engaging in unlawful plans and schemes to thwart valid offers and proposals to acquire the Company at terms more favorable to the Company's shareholders;

(3) approving and causing the Company to adopt and retain various provisions designed solely to discourage competing tender offers, including a poison pill and lockup fee, without regard to the best interests of the Company's shareholders; and

(4) damaging shareholders by preventing them from the financial benefits of a tender offer for their shares at terms more beneficial than those offered by ICI.

c. The claims of plaintiff are typical of the claims of the other members of the Class and Plaintiff has no interests that are adverse or antagonistic to the interest of the Class.

d. Plaintiff is a member of the Class, has

sustained and will sustain damages as a result of the misconduct alleged herein, and is committed to prosecuting this action and has retained competent counsel experienced in litigation of this nature. Accordingly, plaintiff is an adequate representative of the Class and will fairly and adequately protect the interests of the Class.

e. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for the party opposing the Class.

f. A class action is superior to the other available methods for adjudication of this controversy. There will be no difficulty in the management of this case as a class action.

FACTUAL BACKGROUND

12. On May 1, 1995, Imperial Chemical Industries announced that it had agreed to buy Grow Group for $290 million; that it had reached an agreement with the Company's biggest shareholder, Corimon, to sell its 25 percent stake for $17.50 per share; and that the Company's directors had agreed to a tender offer for the rest of the Company's shares at $18.10 each.

13. The Board of Directors of the Company, in the Company's Form 14D-9 filed with the Securities and Exchange Commission on May 4, 1995, stated that they had unanimously determined that the offer and merger are fair and in the best interest of the Company's shareholders, and recommended that the shareholders accept the offer and tender their shares.

14. The merger agreement calls for ICI to make a cash Tender Offer for all outstanding shares of the Company for $18.10 per share. The Tender Offer will be followed as soon as possible by a second-step cash merger in which each share of the Company's common stock not acquired in the merger would be converted into the right to receive $18.10 in cash.

15. Corimon, the Company's largest shareholder which is represented by three of its officers on the Company's Board of Directors, has entered into a separate agreement with ICI to sell its 25% stake of the outstanding common stock of the Company to ICI for $70.5 million.

16. On May 4, 1995, it was publicly reported for the first time that the Company had received a credible and serious

expression of interest from Sherwin-Williams Company ("Sherwin-Williams") to acquire the Company. It was reported that the Company, on April 28, 1995, received a letter from Sherwin-Williams stating that they were interested in pursuing a transaction to purchase the Company, but that the Company had notified Sherwin-Williams on April 17, 1995 that Sherwin-Williams would be excluded from bidding on the Company.

SUBSTANTIVE ALLEGATIONS

17. The Director Defendants, by virtue of the acts and conduct alleged herein, are carrying out a preconceived plan and scheme to entrench themselves in office and to thwart legitimate offers to acquire the Company on terms more beneficial than those offered by ICI and supported by defendants, regardless of the benefit to the Company's public shareholders. In so doing, the Director Defendants are acting in total disregard of their fiduciary duties to Plaintiff and the other members of the Class.

18. The Director Defendants have entered into the merger agreement without properly exploring other offers and rejecting possible offers out of hand. By failing to properly expose the Company for sale, the Director Defendants remain uninformed of the true value of the Company and unaware if another suitor is in a better position to put forth an offer which would serve to maximize shareholder value.

19. The Director Defendants have acted without regard to their fiduciary duties to the shareholders by rejecting Sherwin-Williams, a serious and reportedly very financially able suitor, without informing themselves about Sherwin-Williams' intentions.

20. If the poison pill and lockup fee granted to ICI designed to discourage a competing takeover attempt are permitted to survive, the Company's shareholders who wish to avail themselves of bona fide other offers to purchase their shares for fair value would be deprived of the ability to do so.

21. By adopting and retaining the poison pill and other procedures, the Director Defendants, without shareholder approval, caused a fundamental shift of power from the shareholders to themselves. These actions permit the Company's directors to act as the primary negotiators of -- and, in effect, to preclude -- any and all other offers to acquire the Company that do not provide unfair and unreasonable compensation for the directors or permit them to stay in power over the Company.

22. By assuming power to consider or reject potential takeovers of the Company, the Director Defendants had also assumed a heightened fiduciary obligation to consider all third-party bids

in good faith, without regard to personal interests but with regard only to the interests of the public shareholders, and to negotiate in good faith with bidders on behalf of the public shareholders. Moreover, to fulfill their fiduciary obligations, the Director Defendants cannot merely accept a third-party offer that satisfies their interests, but must pursue third party interest in acquiring the Company so as to maximize the value to the shareholders.

23. In order to entrench themselves in office and to continue receiving their compensation, fees and emoluments of office, the Director Defendants have not acted in good faith toward plaintiff and the Class; have breached and are breaching their fiduciary duties to plaintiff and the Class; and have willfully participated in unfair dealing toward plaintiff and the Class.

24. As a result of the actions of the Director Defendants, plaintiff and their members of the Class have been and will be damaged in that they are the victims of unfair dealing and are not receiving the fair value of their interests in the Company.

25. Unless enjoined by this Court, the Director Defendants will continue to breach their fiduciary duties owed to plaintiff and the Class, and succeed in their plan to entrench themselves in their corporate offices, all to the irreparable harm of the plaintiff and the Class.

26. The plaintiff and the Class have no adequate remedy at law.

WHEREFORE, plaintiff, on behalf of itself and the Class, prays for judgment and relief as follows:

A. Declaring that this action is properly maintainable as a Class action and certifying the plaintiff as the representative of the Class;

B. Declaring that the Director Defendants have committed a gross abuse of trust and have breached their fiduciary duties to plaintiff and the Class;

C. Preliminarily and permanently enjoining defendants and their counsel, agents, employees and all persons acting under, in concert with, or for them, from enforcing the challenged anti-takeover procedures or otherwise violating their fiduciary duties to plaintiff and the Class;

D. Requiring defendants to fulfill their fiduciary duties to maximize shareholder values by exploring third party interest

and accepting the highest offer obtainable for the public shareholders or by permitting the shareholders to make that decision free from any coercion;

E. Awarding plaintiff and the Class compensatory damages, together with appropriate prejudgment interest at the maximum rate allowable by law;

F. Awarding plaintiff and the Class their costs and expenses for the litigation including reasonable attorneys' fees and other disbursements; and

G. Granting such other and further relief as this Court deems to be just and proper.

Dated: May 8, 1995

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