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8 AS YOU SOW

FILED
San Francisco County Superior Court

DEC 2 1998

ALAN CARLSON, Clerk
BY: Alan Carlson Deputy Clerk

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO

12 AS YOU SOW, a non-profit corporation,) Case No. 995877
13)
14 Plaintiff,)

15 vs.)

16 BLUE CROSS BEAUTY PRODUCTS, INC.,)
17 and DOES 1 to 200, inclusive,)

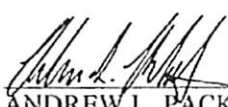
18 Defendant,)
19)

**STIPULATION FOR ENTRY OF
JUDGMENT AND ORDER FOR
JUDGMENT ON STIPULATION**

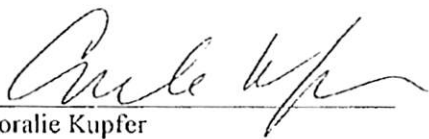
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1 **IT IS HEREBY STIPULATED** by and between plaintiff AS YOU SOW and defendant
2 BLUE CROSS BEAUTY PRODUCTS, INC., through their respective attorneys, that judgment
3 in the above-entitled action be entered in accordance with the terms of the Settlement Agreement
4 between the parties, which is attached hereto as Exhibit A.
5

6 Dated: November 3, 1998 LAW OFFICES OF ANDREW L. PACKARD

7
8 
9 _____
10 ANDREW L. PACKARD
11 Attorneys for Plaintiff
12 AS YOU SOW

13 Dated: Nov 19, 1998 RODI, POLLOCK, PETTKER, GALBRAITH & CAHILL

14 
15 _____
16 Coralie Kupfer
17 Attorneys for Defendant
18 BLUE CROSS BEAUTY PRODUCTS, INC.

19 **IT IS HEREBY ORDERED** that judgment be entered in accordance with the terms of
20 the stipulation between the parties.

21 Dated: 11/24, 1998 
22 _____
23 JUDGE OF THE SAN FRANCISCO SUPERIOR COURT

24 Case# 995877
25 as you sow
26 vs
 Blue Cross Beauty Products

EXHIBIT A

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into between As You Sow ("AYS") and Blue Cross Beauty Products, Inc. ("BLUE CROSS") as of November 23, 1998. ("Effective Date").

WHEREAS:

A. AYS is an Internal Revenue Code §501(c)(3) non-profit foundation dedicated to, among other causes, the protection of the environment, the promotion of human health, and the improvement of worker and consumer rights. AYS is based in San Francisco, California and incorporated under the laws of the State of California.

B. BLUE CROSS is a California corporation that packages, distributes and sells in California and elsewhere certain nail enamel products containing chemicals listed pursuant to Title 22, California Code of Regulations, §12000 et seq., (hereafter referred to as the "Products");

C. The names of each of the Product lines covered under this Agreement are set forth in Exhibit "A", attached hereto;

D. On January 1, 1988, the chemical formaldehyde officially was listed by the State of California as a chemical known to cause cancer pursuant to California Health and Safety Code §25249.8;

E. On January 1, 1991, the chemical toluene officially was listed by the State of California as a chemical known to cause birth defects and other reproductive harm pursuant to California Health and Safety Code §25249.8;

F. On April 7, 1998, AYS served BLUE CROSS and each of the appropriate public enforcement agencies with a document entitled "Notice of Violation of Health & Safety Code §25249.6 et seq." that provided BLUE CROSS and the public enforcement agencies with notice that AYS contends that BLUE CROSS was in violation of California's Health and Safety Code §25249.6 et seq. ("Proposition 65") for failing to warn the purchasers and individuals using the Products that the use of the Products exposes them to certain chemical known to the State of California to cause cancer, and birth defects or other reproductive harm;

G. On June 18, 1998, AYS filed a complaint (the "Complaint") against BLUE CROSS entitled As You Sow v. Blue Cross Beauty Products, Inc., et al., Case Number 995877 (the "Action"), in San Francisco Superior Court, alleging violations of Proposition 65 and California Business and Professions Code §17200 et seq.;

H. BLUE CROSS denies that it has violated Proposition 65 or the Business & Professions Code as alleged in the Complaint or at all, and nothing in this Agreement shall be construed as an admission of any liability for any actions undertaken by BLUE CROSS;

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I. The Action was brought by AYS in the public interest at least sixty (60) days after AYS provided notice of the alleged Proposition 65 violation to BLUE CROSS and the appropriate public enforcement agencies, including the Offices of the California Attorney General, and none of the public enforcement agencies had commenced and begun diligently prosecuting an action against BLUE CROSS for such alleged violations;

NOW, THEREFORE, in consideration of the promises, covenants and agreements herein contained and for other consideration, the sufficiency and adequacy of which is hereby acknowledged by the parties:

1. **Product Reformulation.** Beginning immediately, BLUE CROSS agrees that it will not ship (or cause to be shipped) for sale or use in California any of the Products unless each such unit of the Product has first been reformulated to remove the chemicals toluene and formaldehyde from the Product.

2. **Product Warnings.** BLUE CROSS further agrees that, in the future, any other products that it ships (or causes to be shipped) to the State of California shall bear clear and reasonable warnings, within the meaning of Proposition 65 as follows:

- A. For those Products containing a chemical or chemicals known to the State of California to cause cancer:

WARNING: This product contains chemical(s) known to the State of California to cause cancer.

- B. For those Products containing a chemical or chemicals known to the State of California to cause birth defects or other reproductive harm:

WARNING: This product contains chemical(s) known to the State of California to cause birth defects or other reproductive harm.

- C. For those Products containing a chemical or chemicals known to the State of California to cause cancer AND also containing a chemical or chemical known to cause birth defects or other reproductive harm:

WARNING: This product contains chemical(s) known to the State of California to cause cancer and birth defects or other reproductive harm.

The warning statement shall be prominent and displayed on the unit packaging of each product with such conspicuousness, as compared with other words, statements, or designs so as to render it likely to be read and understood by an ordinary individual purchasing or using the product.

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3. **Civil Penalties.** In recognition of the commitments undertaken by BLUE CROSS in this Agreement, AYS agrees to waive the assessment of civil penalties available pursuant to Health & Safety Code §25249.7(b).

4. **Restitution.** BLUE CROSS agrees to make a restitutionary payment in the amount of \$25,000 to AYS, which AYS shall forward to (a) California non-profit groups, and (b) the AYS Environmental Enforcement Fund to reduce exposures to toxic chemicals, and to increase consumer, worker and community awareness of the health hazards posed by toxic chemicals.

5. **Reimbursement of Fees and Costs.** BLUE CROSS agrees to pay AYS for its reasonable investigative, expert, and legal fees and costs incurred as a result of investigating, bringing this matter to BLUE CROSS' attention, and negotiating a settlement in the public interest. The amount of these fees and costs is \$15,000.

6. **Schedule of Payments.** The payments set forth in paragraphs 4 and 5 above total \$40,000. BLUE CROSS agrees pay this amount to AYS before the close of business on November 23, 1998. Upon BLUE CROSS' satisfaction of all of the commitments set forth in this paragraph, AYS agrees to provide BLUE CROSS with an acknowledgment of partial satisfaction of judgment pursuant to California Code of Civil Procedure §724.120.

7. **AYS Release.** AYS by this Agreement, waives all rights to institute any form of legal action against BLUE CROSS, its officers, directors, attorneys and representatives under Proposition 65 or Business & Professions Code §§17200 *et seq.* based on BLUE CROSS' alleged failure to warn about exposure to toluene or formaldehyde contained in any of the Products manufactured on or before the Effective Date of this Agreement.

8. **BLUE CROSS Release.** BLUE CROSS, by this Agreement, waives all rights to institute any form of legal action against AYS, its officers, directors, attorneys and representatives (the "AYS Releasees") for all actions or statements made or undertaken by the AYS Releasees in the course of seeking enforcement of Proposition 65 or Business & Profession Code §§17200 *et seq.* against BLUE CROSS.

9. **Stipulated Judgment.** Within five (5) days of the Effective Date of this Agreement, the parties shall file a stipulated judgment to be approved pursuant to California Code of Civil Procedure §664.6 by the San Francisco Superior Court in accordance with the terms of this agreement.

10. **Severability.** In the event that any of the provisions of this Agreement are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

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11. Enforcement. In the event that a dispute arises with respect to any of the provisions of this Agreement, this Agreement may be enforced pursuant to Code of Civil Procedure §664.6 or any other valid provision of law. The prevailing party in any such dispute shall be awarded reasonable fees and costs incurred.

12. Governing Law. The terms of this Agreement shall be governed by the laws of the State of California.

13. Transfer Or Assignment of Claims. Each of the parties hereto represents and warrants that it has not transferred or assigned any of the claims, demands or causes of action released herein and will not institute legal proceedings based upon, arising out of, or relating to any claim, demand or cause of action released herein against any of the parties hereto.

14. Notices. All correspondence and notices required to be provided under this Agreement shall be in writing and shall be sent by first class registered or certified mail addressed as follows:

If to AYS:

Attn: Lawrence E. Fahn, Executive Director
As You Sow
540 Pacific Avenue
San Francisco, CA 94133

With a copy to:

The Law Offices of Andrew L. Packard
Post Office Box 170142
San Francisco, CA 94117

If to BLUE CROSS:

Mark Friedman, President
Blue Cross Beauty Products, Inc.
12251 Montague Street
Pacoima, CA 91331

With a copy to:

Coralie Kupfer, Esq.
Rodi, Pollock, a law corporation
801 South Grand Avenue, Suite 400
Los Angeles, CA 90017

15. Integration & Modification. This Agreement, together with the Exhibits hereto which are specifically incorporated herein by this reference, constitutes the entire agreement between the parties relating to the rights and obligations herein granted and assumed. This Agreement

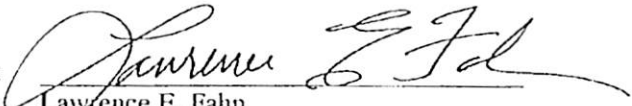
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may be modified only upon the written agreement of the parties. To the extent any such modification is made to this agreement that also requires modification of the Stipulated Judgment provided for herein, the parties shall cooperate in modifying the Stipulated Judgment submitted to the Court.

16. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

17. **Authorization.** The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Agreement.

DATED: 10/27/98

BY: 
Lawrence E. Fahn
Executive Director
As You Sow

DATED: 11/18/98

BY: 
Mark Friedman
President
Blue Cross Beauty Products, Inc.

EXHIBIT A

Products Covered Under This Agreement:

Ace	French Manicure	Pastel French
Added Extras	Fun Drops	Manicure
Adoro	GG	Personi
Alien	Glamour	Phantom Frights
All That Glitters	Gum Drops	Pop Rocks
Aziel	G-1	Preciousa
Beauty Magic	G-2	Premier Color
Beauty Treats	Heaven	Princessa
Beverly Hills	Hollywood Colors	Punky Colors
Big Boy	Jams	Purple Majesty
Bon Beauty	Jean Nacris	Rev Salon
Boogie Nails	Jellies	Ridge Filler
Brownies	Kaleidoscope	Royal
Cabaret	Koniel	Sahara
Cameo	Liquid Lava	Seal Cote
Caribbean	Liquid Metals	SH-SH Shockers
Carnival Colors	Lucky Devil	Snowcones
Citrus	Manic Panic	Starry
City Lites	Mardi Gras	Stop
Classic	Marino	Streamers
Classics	Maxi	Swatches
Coloriage	Meteorites	Temptress
Cotton Candy	Misty	Touch Up
Couleurs	Moody Blues	Veracos
Deadly	Moonglows	Virgin
Diamond Shield	Nail Conditioner	Vogue
Elements	Nail Dry	Warp Speed
Erica Jill	Nail Hardener	Wellgreen
Ethnique	Nail Swatches	Yello-away
Evonne	Nail	Yello-out
Fang & Fang	Novia	Zefal
Fireworks	Ornaments	
Foliage	Parfait	