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FILED

JUL 10 1995
M. Louten
HOWARD HANSON
MARIN COUNTY CLERK
By *M. Louten*, Deputy

5
6 Attorneys for Plaintiff
AS YOU SOW
7

8 SUPERIOR COURT OF CALIFORNIA
9 IN AND FOR THE COUNTY OF MARIN

10
11 AS YOU SOW, a non-profit)
corporation,)
12)
Plaintiff)
13)
v.)
14)
ADVANCED PACKAGING & PRODUCTS)
15 COMPANY, a corporation, and DOES)
1 through 1500,)
16)
Defendants.)
17)
18


Case No. 162539

STIPULATION FOR ENTRY OF
JUDGMENT AND JUDGMENT ON
STIPULATION

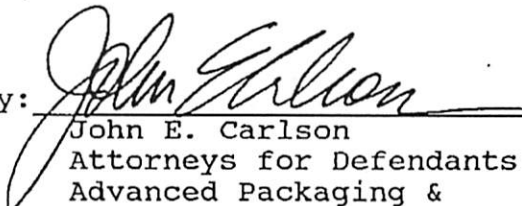
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ENTERED

1 IT IS HEREBY STIPULATED, by and between plaintiff As
2 You Sow and defendants Advanced Packaging & Products Company
3 and PJH Brands, Inc., through their respective
4 representatives, that judgment in the above-entitled action be
5 entered in accordance with the terms of the settlement
6 agreement between the parties, which is attached hereto as
7 Exhibit A.

8
9
10 Dated: June 19, 1995

by: 
Eric S. Somers
Attorneys for Plaintiff
AS YOU SOW

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13
14 Dated: June 19, 1995

by: 
John E. Carlson
Attorneys for Defendants
Advanced Packaging &
Products Company and
PJH BRANDS

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19 IT IS HEREBY ORDERED that judgment be entered in
20 accordance with the terms of the stipulation between the
21 parties.
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23
24 Dated: ~~June~~ ^{JULY} 10, 1995


Judge of the Superior Court

SETTLEMENT AGREEMENT

On June 19, 1995 in San Francisco, California, As You Sow ("AYS") and Advanced Packaging & Products Company and the related company, PJH BRANDS (collectively referred to as "APP") agreed to the following terms and conditions:

WHEREAS:

AYS is a not-for-profit public interest foundation dedicated to promoting consumer awareness, protecting the environment and improving human health; and

APP is a corporation headquartered in California that manufactures and/or distributes various products in the State of California that contain toluene, methylene chloride, selenium sulfide, cadmium and cadmium compounds, chromium (all hexavalent compounds) and lead and lead compounds and other carcinogens and reproductive toxins listed pursuant to Proposition 65; and

A list of the products that contain one or more of the carcinogens and/or reproductive toxins listed above and which are covered by this Agreement is provided in Exhibit A (the "Products"); and

The Products have been distributed and sold by APP for use in California since February 27, 1988; and

On September 23, 1994, AYS first served APP with a document entitled "60-Day Notice" which provided APP with notice that it was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products it sells in California expose users to Proposition 65-listed chemicals; and

APP represents that the Products are only sold in the consumer market and are not used for industrial purposes.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Labeling.** APP agrees that as of August 31, 1995 it shall not ship (or cause to be shipped) any of the Products for sale or use in the State of California unless each such Product contains the following warning statement on its label.

For products containing a Proposition 65 chemical listed by the State of California as known to cause birth defects or other reproductive harm:

"WARNING: This product contains a chemical known to the State of California to

cause birth defects or other reproductive harm."

For products containing two or more Proposition 65 chemicals listed by the State of California as known to cause birth defects or other reproductive harm:

"WARNING: This product contains chemicals known to the State of California to cause birth defects or other reproductive harm."

For products containing a Proposition 65 chemical listed by the State of California as known to cause cancer:

"WARNING: This product contains a chemical known to the State of California to cause cancer."

For products containing two or more Proposition 65 chemicals listed by the State of California as known to cause cancer:

"WARNING: This product contains chemicals known to the State of California to cause cancer."

For products containing both a Proposition 65 chemical listed by the State of California as known to cause cancer and a Proposition 65 chemical listed by the State of California as known to cause birth defects or other reproductive harm:

"WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm."

This warning statement shall be displayed in a conspicuous fashion as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual. The parties agree that the sample label attached hereto as Exhibit B satisfies this requirement.

2. **Warnings For Products in Commerce.** APP agrees that within thirty (30) days from the date this Agreement is executed, it shall provide warning materials by certified mail to APP's customers that APP knows or has reason to believe sell or distribute the Products in California in an effort to ensure that users receive Proposition 65 warnings for Products that have not been labelled in accordance with paragraph 1. Such warning materials shall include a reasonably sufficient number of warning stickers (considering the size of each particular customer and

the amount of Products each customer has purchased), a letter of instruction for the placement of the stickers, and a Notice and Acknowledgment postcard. A sample of these materials is attached hereto as Exhibit C.

3. Restitution and Costs. APP agrees to pay \$17,000 to AYS upon execution of this Agreement. The restitutionary component of this payment, which is made pursuant to Business & Professions Code §17203, shall be forwarded by AYS to the Rainforest Action Network. The Rainforest Action Network works to find sustainable alternatives to cutting virgin forests, improving environmental practices of multinational companies who extract resources from forests (including oil and mining operations that pollute rivers and land with toxic wastes), and expanding the capacity of indigenous peoples living in rain forests to defend their lands and lifestyles. The cost component of this payment will be used by AYS to help defray its investigation fees and costs, expert fees, reasonable attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to APP's attention, litigating and negotiating a settlement in the public interest.

4. Penalty. Pursuant to Health & Safety Code §25249.7(b), APP shall pay, upon execution of this agreement, a civil penalty of \$5,000. Penalty monies shall be apportioned by AYS in accordance with Health & Safety Code §25192.

5. AYS Release. AYS, by this Agreement, waives all rights to institute action against APP, its distributors or customers, whether under Proposition 65, Business & Profession Code §§17200 et seq., or any other statute or common law claim based on APP's failure to warn about exposure to Proposition 65 listed chemicals contained in any of the Products manufactured on or prior to the date of this Agreement. AYS acknowledges that compliance with the terms of this Agreement with respect to the Products shall constitute compliance with Proposition 65 by APP.

6. APP Release. APP, by this Agreement, waives all rights to institute any form of legal action against AYS, its members, officers, directors, attorneys and representatives (the "AYS Releasees") based on any statute or provision of common law and for all actions or statements made by the AYS Releasees in the course of seeking enforcement of Proposition 65 or Business & Profession Code §§17200 et seq. against APP.

7. Stipulated Judgement. The parties shall file a stipulated judgment to be approved pursuant to CCP §664.6 by the Marin County Superior Court in accordance with the terms of this Agreement.

8. 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.

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

10. Notices. All correspondence to AYS shall be mailed to:

Eric S. Somers, Esq.
Chanler & Associates
1700 Montgomery Street
Suite 110
San Francisco, CA 94111

All correspondence to APP shall be mailed to:

John E. Carlson, Esq.
Brobeck Phleger & Harrison
Spear Street Tower
One Market Street
San Francisco, CA 94105

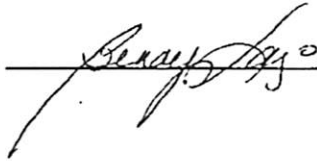
11. No Admissions. Nothing in this Agreement shall be construed as an admission by APP of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by APP of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligation, responsibilities, and duties of APP under this Agreement.

12. 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.

AGREED TO:

AS YOU SOW



Benay Lazo
Printed Name

Director
Title

AGREED TO:

ADVANCED PACKAGING & PRODUCTS
COMPANY

Michael Goldstein
Printed Name

President
Title

PJH BRANDS

Printed Name

Title

have read, understood and agree to all of the terms and conditions of this Agreement.

AGREED TO:

AS YOU SOW

Benay Lazo
Printed Name

Director
Title

AGREED TO:

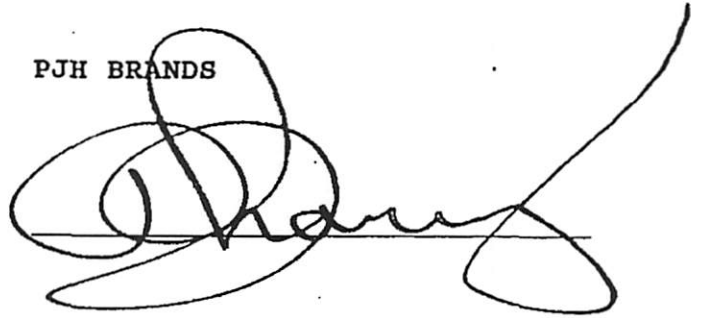
ADVANCED PACKAGING & PRODUCTS
COMPANY

Michael T. Goldstein

Michael Goldstein
Printed Name

President
Title

PJH BRANDS



P.J. Harvey
Printed Name

President
Title

Exhibit A

EXHIBIT A

Advanced Packaging & Products Company's Products that are the Subject of the Instant Lawsuit and the subject of this settlement.

1. "Nu-Cast Iron Manifold Coating."
2. "Nu-Cast Cast Iron Manifold Coating."
3. "Nu-Cast Cast Iron Engine Finish."
4. "Spray Epoxy Enamel."
5. "Epoxy Plus with Rust Inhibitor."
6. "Wrinkle Finish."
7. "Flame Proof-Coating."
8. "Gasket Remover."
9. "Professional Carburetor and Choke Cleaner."

Exhibit B

Exhibit C

EXHIBIT C

[APP Letterhead]

IMPORTANT LEGAL NOTICE

Date:

Attention: Customers of Advanced Packaging & Products Company

Subject: California Proposition 65 Warnings

This letter is to advise you that the Advanced Packaging & Products Company ("APP") products listed in Attachment A to this letter may potentially expose users of those products to chemicals known to the State of California to cause cancer and/or birth defects or other reproductive harm. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), the purchasers and/or users of the products listed on Attachment A must be given clear and reasonable warning that a particular product contains a carcinogen, a reproductive toxin or both.

Although APP has begun labelling the listed products with proper warnings, you may have in your possession certain products that were manufactured and distributed before the new labeling was implemented. Until those products have been sold, you must take certain actions to ensure that purchasers of the products receive Proposition 65 warnings.

You will be in compliance with Proposition 65 for the products listed on Attachment A if you affix the enclosed warning stickers to the products in the manner described below. The following materials will enable you to provide warnings in compliance with the law:

- (1) One hundred (100) Warning Stickers; and
- (2) A return postcard indicating that you have received the enclosed materials and will comply with the warning requirements of Proposition 65 for the listed products.

You should affix a warning sticker to the container, cap, label or package of each listed product which does not have a Proposition 65 warning on its label. The sticker must be affixed so that it is conspicuous and likely to be read and understood by an ordinary individual under customary conditions of purchase.

Failure to provide a Proposition 65 warning for the listed products may subject you to legal action by the California Attorney General or various environmental groups, wherein monetary penalties of up to \$2,500 per violation could be sought.

You should return the enclosed postcard affirming your compliance with Proposition 65's warning requirements for the listed products.

Should you have any questions or concerns about this matter, please do not hesitate to contact _____ at 1-800-XXX-XXXX by phone, or by mail at the above address. In addition, we will be glad to supply additional warning stickers if requested.

Sincerely,

Title

RETURN POSTCARD FROM CUSTOMERS

* * * *

The undersigned certifies that this customer of Advanced Packaging & Products Company has received (a) the Important Legal Notice letter regarding Proposition 65 warning requirements, (b) the list of Advanced Packaging & Products Company products requiring a warning, and (c) 100 warning stickers. The undersigned further certifies that this retailer will comply with Proposition 65 warning requirements by affixing the warning stickers provided to them in the manner directed.

[Name & Title]

[Company]

[Address]

Please send me _____ additional stickers.