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FILED

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HOWARD HANSON
MARIN COUNTY CLERK
by P. Fan, Deputy

7 Attorneys for Plaintiff
8 AS YOU SOW

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE CITY AND COUNTY OF MARIN

11 AS YOU SOW, a non-profit)
12 organization,)
13)
14 Plaintiff,)
15 v.)
16 BASF CORPORATION, et al.,)
17 Defendants,)

No. 161844

STIPULATION FOR
ENTRY OF JUDGMENT

18 IT IS HEREBY STIPULATED, by and between plaintiff As
19 You Sow and defendant BASF Corporation, through their
20 respective representatives, that judgment in the above-
21 entitled action be entered in accordance with the terms of the
22 settlement agreement between the parties, which is attached
23 hereto as Attachment A.

24 Dated: October 25, 1994

25 by: Danielle R. Fugere
26 Danielle R. Fugere
27 Attorney for Plaintiff
28 AS YOU SOW

29 Dated: October 26, 1994

30 by: Richard O. Wood
31 Richard O. Wood
32 Attorney For Defendant
33 BASF CORPORATION

SETTLEMENT AGREEMENT

On October 21, 1994 in San Francisco, California, As You Sow ("AYS") and BASF Corporation ("BASF") 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

BASF manufactures and sells automotive paints and associated products in the State of California that contain chromium (hexavalent compounds), formaldehyde gas, nickel compounds, toluene and lead compounds; and

On February 27, 1987, chromium (hexavalent compounds) was officially listed by the State of California as a chemical known to cause cancer, pursuant to Health & Safety Code §25249.8; and

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

On October 1, 1989, nickel and certain nickel compounds were officially listed by the State of California as a chemical known to cause cancer, pursuant to Health & Safety Code §25249.8; and

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

On October 1, 1992, lead and lead compounds were officially listed by the State of California as a chemical known to cause cancer, pursuant to Health & Safety Code §25249.8; and

One year after each chemical's listing date, and continuing to the present, a person was required to give a clear and reasonable warning before knowingly and intentionally "exposing" an individual in California to a product containing chromium (hexavalent compounds), formaldehyde gas, nickel compounds, toluene and/or lead compounds pursuant to Health & Safety Code §§25249.6 and 25249.10(b); and

Beginning on July 29, 1994, AYS provided BASF with documents entitled "60-Day Notice" which provided BASF with notice of its alleged failure to provide warnings in violation of Health & Safety Code §25249.6; and

On October 11, 1994, AYS filed a complaint entitled As You Sow v. BASF Corporation, et al. (No. 161844) in Marin Superior Court alleging violations of Business & Professions Code and Health & Safety Code §25249.6 on behalf of individuals in California who allegedly are exposed to listed chemicals in certain BASF products; and

AYS and BASF desire to compromise, settle, and conclude all disputes, controversies, claims and causes of action of any kind which the parties hereto have, may have or claim to have against each other arising from or relating to the presence of chromium (hexavalent compounds), formaldehyde gas, nickel compounds, toluene and/or lead compounds in BASF's automotive paint products (as defined in ¶1.1 below), so that BASF has no further liability to AYS relating to or arising out of those products' alleged failure to comply with Proposition 65, whether directly or by way of indemnification to retail or other sellers of the Products; and

In settling this matter on the terms and conditions hereinafter provided, AYS acknowledges a) that BASF made a good faith, industry-leading attempt to comply with §12601(c)(1)(C) by providing conspicuous Proposition 65 warnings for Products on the BASF Material Safety Data Sheets provided to its customers in California pursuant to the federal Hazard Communication Standard and b) that BASF's initial MSDS Proposition 65 warnings were the best of those provided by the major manufacturers of automotive paint products, in that BASF provided a warning for potential harm associated with specific Proposition 65-listed chemicals.

NOW, THEREFORE, THE PARTIES in and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in and for the covenants and promises hereinafter set forth, do hereby covenant and agree as follows:

1. Definitions.

- 1.1. **"Products"** -- all BASF refinish automotive paints and associated products (paints, hardeners, etc.) that contain chromium (hexavalent compounds), formaldehyde gas, nickel compounds, toluene or lead compounds at levels that require a Proposition 65 warning. A list of Products which are covered by this settlement agreement is provided in Attachment A.
- 1.2. **"Material Safety Data Sheet" ("MSDS")** -- written or printed material containing information about a Product provided by BASF to its customers to comply with the state and federal Hazard Communication Programs, 22 C.C.R. §5194 and 29 C.F.R. Part 1910, respectively.

2. Current Production.

2.1 BASF agrees that it shall not ship (or cause to be shipped) into the State of California any of the Products manufactured after December 15, 1994, unless the Product bears a Proposition 65 label warning as provided in ¶3, or BASF affixes to the label of each Product a sticker with a clear and conspicuous Proposition 65 warning.

2.2 The sticker shall read as hereinafter provided.

2.2.1 For Products that contain as intended ingredients listed carcinogens only:

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

2.2.2 For Products that contain as intended ingredients listed reproductive toxicants:

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

2.2.3 For Products that contain as intended ingredients listed carcinogens and reproductive toxicants:

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

2.3 It is agreed that the above warning language constitutes clear and reasonable warnings that comply with Proposition 65's Warning requirements.

3. Product Labeling.

3.1 BASF shall immediately begin the process of reprinting Product labels to include a clear and conspicuous Proposition 65 warning on the label of each Product. The warning shall be printed on the label so that the warning is prominent and displayed with such conspicuousness, as compared with other words, statements, or designs, as to render it likely to be read and understood by an ordinary individual.

- 3.2 BASF shall make best efforts to ensure that all products are relabeled as quickly as possible, however, all products shall be relabeled no later than March 31, 1995.
- 3.3 The label statement shall read as hereinafter provided.
- 3.3.1 For Products that contain as intended ingredients listed carcinogens only:
- WARNING:** This product contains a chemical(s) known to the State of California to cause cancer.
- 3.3.2 For Products that contain as intended ingredients listed reproductive toxicants:
- WARNING:** This product contains a chemical(s) known to the State of California to cause birth defects or other reproductive harm.
- 3.3.3 For Products that contain as intended ingredients listed carcinogens and reproductive toxicants:
- WARNING:** This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.
- 3.4 It is agreed that the above warning language constitutes clear and reasonable warnings that comply with Proposition 65's Warning requirements. A sample label is attached as Attachment B.
4. **Warnings for Products in Commerce.**
- 4.1 In order to ensure that individuals receive Proposition 65 warnings for Products previously shipped for sale into California without warnings, BASF agrees that on or before December 31, 1994, it shall provide warning materials to jobbers and distributors in the State of California that purchase Products from BASF. The warning materials shall include sufficient warning stickers and a letter of instruction for placement of the stickers. A copy of this letter and a sample warning sticker are attached hereto as Attachment C.

4.2 The warning statement shall read as hereinafter provided.

WARNING: This product may contain nickel compounds, lead compounds, formaldehyde gas or hexavalent chromium, chemicals known to cause cancer, or toluene, a chemical known to cause birth defects or other reproductive harm.

5. **MSDS Revisions.** BASF will initiate revisions to the existing Proposition 65 warning on its current MSDS's for Products so that the warning or warnings will be consistent in wording with the on-label warning language required by §2. Final printed MSDSs incorporating the revised warnings will begin to be distributed in the normal course of business on or before December 31, 1994. An example of an acceptable MSDS is attached as Attachment D.

6. **Settlement Amount.**

6.1 **Restitution.** As a restitutionary measure, BASF agrees to contribute, within thirty days of entry of this Agreement by the Court:

6.1.1 \$5,750 to AYS' Proposition 65 Investigation Fund to support the research of, and investigation into, California citizens' exposure to chemicals listed pursuant to Proposition 65, and

6.1.2 \$1,750 to AYS, which funds AYS shall promptly transfer to Citizens for a Better Environment ("CBE") for use in providing public education and warnings concerning the presence of toxic chemicals in fish, including Proposition 65 chemicals such as selenium, dioxins, and lead.

6.1.3 These restitutionary payments are being made pursuant to Business & Professions Code §17203.

6.2 **Investigation.** In an effort to defray AYS' investigation fees and costs, expert fees and costs, reasonable attorneys' fees, and any other costs incurred as a result of investigating and bringing this matter to BASF's attention, litigating the matter, and negotiating a settlement in the public interest, BASF shall pay AYS \$36,500 within thirty days (30) after entry of this Agreement by the Court.

6.3 **Penalty.**

6.3.1 BASF further agrees to pay a civil penalty of \$70,000 pursuant to Health & Safety Code §25249.7(b) due in three installments. The first installment of \$10,000 is payable within thirty (30) days of entry of this Agreement by the Court. The second

installment of \$10,000 is due on or before December 31, 1994. The third installment of \$50,000 is due on October 15, 1995. Penalty monies shall be apportioned by AYS in accordance with Health & Safety Code §25192.

6.3.2 The second installment of the civil penalty will be waived upon written certification to AYS that BASF has invested an additional \$10,000 in employee and jobber training regarding techniques for reducing and eliminating exposure in California to Proposition 65-listed chemicals. Certification must be received by AYS no later than December 15, 1994.

6.3.3 The third installment of the civil penalty may be reduced by one dollar for every three dollars expended by BASF to reformulate Products to reduce or eliminate Proposition 65 chemicals and volatile organic compounds as ingredients. BASF shall certify in writing to AYS that it has performed such project(s) by submitting a report specifying the project(s) undertaken by BASF, the chemicals involved, the amount of money expended and the results achieved. AYS must receive such report no later than October 15, 1995.

7. **No Admission.** The parties agree to abide by the terms of this agreement; however, nothing in the settlement will be construed as an admission by BASF 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 BASF of any fact, finding, conclusion, issue of law, or violation of law and it is understood and agreed that this Settlement Agreement and Release is a compromise of disputed claims.
8. **Unenforceability.** In the event that any of the provisions of the Agreement is 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 will be governed by the laws of the State of California.
10. **AYS Release.** AYS, in consideration of the BASF commitments and payments set forth herein, on its own behalf, its attorneys, employees, successors, assigns, predecessors, subrogees, principals, agents, consultants and insurers, does hereby release and forever discharge BASF and those retailers and distributors of Products, as well as each of their successors, assigns, predecessors, stockholders, officers, directors, subrogees, subsidiaries, trustees, corporate parents, affiliates, board members, agents, attorneys, employees and consultants of and from any and all claims,

demands, actions, causes of action, duties, debts, sums of money, suits, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, obligations, liabilities and accounts of whatsoever kind, nature or description, direct or indirect, at law or in equity, in contract or tort or otherwise arising out of or relating, directly or indirectly, to the Products' compliance with Proposition 65, or arising from or relating to any facts or legal theories involving the Products' compliance with Proposition 65; it being the specific intent and purpose of the parties hereto that this settlement agreement and release shall extend to any and all persons, corporations, associations, or other entities and to any and all of the matters aforesaid, whether now known or unknown, which exist or might be claimed to exist at, prior to, or after the date hereof; and AYS, its attorneys, employees, successors, assigns, predecessors, subrogees, principals, agents, consultants and insurers, and each of them, expressly waive, release and relinquish any and all claims or rights to assert that any such matter, cause or thing of any kind or nature whatsoever has been, through oversight or error or intentionally or unintentionally, omitted with respect to the Products' compliance with Proposition 65.

11. **BASF Release.** BASF, in consideration of the terms set forth herein, on its own behalf, its attorneys, employees, successors, assigns, predecessors, subrogees, principals, agents, consultants and insurers, does hereby release and forever discharge AYS, as well as each of their successors, assigns, predecessors, stockholders, officers, directors, subrogees, subsidiaries, trustees, corporate parents, affiliates, board members, agents, attorneys, employees and consultants of and from any and all claims, demands, actions, causes of action, duties, debts, sums of money, suits, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, obligations, liabilities and accounts of whatsoever kind, nature or description, direct or indirect, at law or in equity, in contract or tort or otherwise arising out of or relating, directly or indirectly, to the Products' compliance with Proposition 65, or arising from or relating to any facts or legal theories involving the Products' compliance with Proposition 65; it being the specific intent and purpose of the parties hereto that this settlement agreement and release shall extend to any and all persons, corporations, associations, or other entities and to any and all of the matters aforesaid, whether now known or unknown, which exist or might be claimed to exist at, prior to, or after the date hereof; and BASF, its attorneys, employees, successors, assigns, predecessors, subrogees, principals, agents, consultants and insurers, and each of them, expressly waive, release and relinquish any and all claims or rights to assert that any such matter, cause or thing of any kind or nature whatsoever has been, through oversight or error or intentionally or unintentionally, omitted with respect to the Products' compliance with Proposition 65.

- 12. **Attachments.** BASF agrees to provide any attachments that were not ready in final form at the time this settlement was signed within two weeks of the date of execution of this settlement.
- 13. **Authority to Execute.** 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.
- 14. **Facsimiles.** Signed copies of this agreement, transmitted by facsimile transmission to counsel for AYS at (415) 391-1157 or counsel for BASF at (312) 781-6630 shall be deemed to be executed and effective as of the date of transmission.

AGREED TO:

By: *Senay*
 As You Saw

Dated: 10/27/94

AGREED TO:

By: *R. E. ...*
 BASF Corporation

Dated: 10/26/94

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