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9 AS YOU SOW

FILED
San Francisco County Superior Court

JAN 15 1987

ALAN CARLSON, Clerk
BY: Deputy Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SAN FRANCISCO

12
13 AS YOU SOW, a non-profit)
14 corporation,)
15)
16 Plaintiff,)
17)

18 v.)

19 BAXTER HEALTHCARE CORPORATION;)
20 DADE INTERNATIONAL, INC.,)
21 BURDICK & JACKSON, INC.,)
22 ALLEGIANCE HEALTHCARE)
23 CORPORATION and DOES 4 through)
24 1500,)

25 Defendants,)
26)
27)
28)

No. 975871

STIPULATION FOR ENTRY OF
JUDGMENT AND JUDGMENT ON
STIPULATION: ORDER THEREON

1 IT IS HEREBY STIPULATED, by and among plaintiff AS
2 YOU SOW and defendants BAXTER HEALTHCARE CORPORATION, DADE
3 INTERNATIONAL, INC., BURDICK & JACKSON, INC., and ALLEGIANCE
4 HEALTHCARE CORPORATION, through their respective
5 representatives, that judgment in the above-entitled action be
6 entered in accordance with the terms of the settlement
7 agreement between the parties, which is attached hereto as
8 Exhibit A.

9 Dated: December 20th, 1996

By: Andrew L. Packard
Andrew L. Packard, Esq.
CHANLER LAW GROUP
Attorneys for Plaintiff
AS YOU SOW

13 Dated: December 19th, 1996

By: Richard O. Wood
Richard O. Wood, Esq.
BURDITT & RADZIUS
Attorneys for Defendants
BAXTER HEALTHCARE CORPORATION
and ALLEGIANCE HEALTHCARE
CORPORATION

18 Dated: December 18th, 1996

By: Louise Pearson
Louise Pearson, Esq.
DADE INTERNATIONAL, INC.
BURDICK & JACKSON, INC.

21 IT IS HEREBY ORDERED that judgment be entered in
22 accordance with the terms of the stipulation between the
23 parties.

24 1/14/97
25 Dated: December —, 1996

26 Stuart R. Pollak
Judge of the Superior Court

27 STUART R. POLLAK
28

Exhibit A

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into by and among As You Sow ("AYS"), a California non-profit corporation, Baxter Healthcare Corporation ("Baxter"), a Delaware corporation, Allegiance Healthcare Corporation ("Allegiance"), a Delaware corporation, Dade International Inc. ("Dade"), a Delaware Corporation, and Burdick & Jackson, Inc. ("B&J"), a Delaware corporation, on this 10th day of December, 1996 ("Effective Date"). (Baxter, Allegiance, Dade and B&J shall be collectively referred to herein as "Settling Defendants".)

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

WHEREAS, Baxter was a manufacturer of certain products which contained the following chemicals listed pursuant to Proposition 65, 1,4 dioxane, acrylonitrile (contained in acetonitrile), chloroform, dichloromethane, ethylene dichloride, benzene (contained in hexane), toluene, crystalline silica, carbon tetrachloride, methoxyethanol, such products being set forth on Exhibit A ("Products"), and has distributed those Products in California;

WHEREAS, in December of 1994, Baxter sold to B&J, a wholly-owned subsidiary of Dade, all of the assets of its business that manufactured the Products, but Baxter continued to distribute those Products in California as B&J's distributor;

WHEREAS, in September of 1995, Baxter sold its industrial distribution business, the primary source of distribution of B&J products, to VWR;

WHEREAS, on October 1, 1996, Baxter spun off the remainder of its U. S. distribution business, including the distribution of B&J products to biomedical customers, to Allegiance;

WHEREAS, on November 8, 1995, AYS served Baxter and all of the requisite public enforcement agencies with a "60-day Notice" letter, which provided Baxter and such public enforcement agencies with notice that Baxter was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that its Products expose users to Proposition 65-listed chemicals;

WHEREAS, on June 3, 1996, AYS served Dade and all of the requisite public enforcement agencies with a supplemental "60-day Notice" letter, which

provided Dade and such public enforcement agencies with notice that Dade was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that its Products expose users to Proposition 65-listed chemicals;

WHEREAS, on February 6, 1996, AYS filed a Complaint entitled As You Sow v. Baxter Healthcare, et al. (No. 975871) ("Action") in San Francisco County Superior Court, naming Baxter as a defendant and alleging violations of the Business & Professions Code §17200, and the Health & Safety Code §25249.6, on behalf of those individuals who allegedly were exposed to chemicals contained in Baxter Products which are listed pursuant to Proposition 65;

WHEREAS, on August 23, 1996, AYS amended its Complaint to name Dade as a defendant in the Action; and

WHEREAS, on October 24, 1996, AYS amended its Complaint to name B&J as defendant in the Action; and

WHEREAS, on November 22, 1996 AYS amended its Complaint to name Allegiance as a defendant in the Action.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Product Labeling.** The Settling Defendants agree that as of April 1, 1997, they shall not ship or cause to be shipped any of the Products for sale or use in into the State of California unless each such Product contains the appropriate warning on its label, as follows:
 - 1.1. For Products containing a 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."
 - 1.2. For Products containing a 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."
 - 1.3. For Products containing any combination of chemicals listed by the State of California as known to cause cancer and 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."

The warning statement shall be 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.

2. **Warnings For Products in Commerce.** The Settling Defendants agree that within thirty (30) days from the Effective Date, they shall provide warning materials by certified mail to the customers that the Settling Defendants know or have reason to believe sell or distribute the Products into California, in an effort to ensure that users receive Proposition 65 warnings for Products that have not been labeled in accordance with Paragraph 1, above. Such warning materials shall include a reasonably sufficient number of warning materials 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 of Acknowledgment postcard. A sample of these materials is attached hereto as Exhibit B.

3. **Material Safety Data Sheet Revisions.** The Settling Defendants agree to revise each Material Safety Data Sheet ("MSDS") which they prepare for use in the State of California pertaining to each of the Products which they manufacture, sell or distribute to include the applicable warning language set forth in Paragraph 1 of this Agreement. Final MSDS's incorporating the revised warning language will begin to be distributed in the normal course of business on or before January 1, 1997.

4. **Restitution.** Settling Defendants agree to pay \$20,000 to AYS within five (5) days of Settling Defendants' receipt of notice of entry of the Stipulated Judgment. This payment, which is made pursuant to Business & Professions Code §17203, shall be forwarded by AYS to California non-profit groups working to reduce expenses to toxic chemicals and to increase consumer worker and community awareness of the health hazards posed by toxic chemicals.

5. **Penalty.** Pursuant to Health & Safety Code §25249.7(b), the Settling Defendants shall pay, within five (5) days of Settling Defendants' receipt of notice of entry of the Stipulated Judgment, a civil penalty of \$12,000. Penalty monies shall be apportioned by AYS in accordance with Health & Safety Code §25192, with 75% of these funds remitted to the State of California.

6. **Reimbursement of Fees and Costs.** The Settling Defendants agree to reimburse AYS for its fees and costs incurred as a result of investigating,

bringing this matter to the Settling Defendants' attention, litigating and negotiating a settlement in the public interest. Within five (5) days of receipt of notice of entry of the Stipulated Judgment, the Settling Defendants shall pay AYS \$28,250 plus the possibility of a multiplier.

7. **AYS Release.** AYS, its successors, predecessors, assignees, officers, directors, attorneys and representatives ("the AYS Releasers"), acting on behalf of themselves and the California general public, by this Agreement, hereby release and forever waive all rights to institute any form of legal or equitable action against the Settling Defendants and their distributors under Proposition 65, or Business & Profession Code §17200 et seq., based on, arising out of, or relating to their alleged failure to warn about exposure to the Proposition 65-listed chemicals specified herein and contained in any of the Products manufactured on or prior to the Effective Date of this Agreement.

The AYS Releasers, on behalf of themselves only, hereby release and forever waive all rights to institute any form of legal or equitable action against Settling Defendants, their distributors or customers, whether under Proposition 65, Business & Profession Code §17200 et seq., or any other law (including common law claims), known and unknown, based on, arising out of, or relating to Settling Defendants' alleged failure to warn about exposure to the Proposition 65-listed chemicals specified herein and contained in any of the Products manufactured on or prior to the Effective Date of this Agreement.

8. **Settling Defendants Release.** The Settling Defendants, by this Agreement, waive all rights to institute any form of legal action against AYS, its members, officers, directors, attorneys and representatives (the "AYS Releasees") 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 the Settling Defendants, up to the date of this Agreement.

9. **Change in Law.** In the event that any law, rule, regulation or final decision of any legislative, judicial or executive body becomes effective or is entered that renders the warning requirement of Paragraphs 1, 2 and 3 of the Agreement unnecessary, unlawful, or inappropriate to comply with other applicable laws, the Settling Defendants are released from its obligations under those paragraphs; provided, however, that the Settling Defendants shall continue to provide any warnings that continue to be required under the applicable laws, rules and regulations. Notwithstanding the terms of this paragraph, AYS shall not be required under any circumstances to refund any amounts paid pursuant to Paragraphs 4, 5 and 6.

10. **Supplier Information.** Baxter and Allegiance agree to provide to AYS on or before December 31, 1996 the following information for Products manufac-

tured by companies other than the Settling Defendants that Baxter and/or Allegiance distributed in the State of California since January 1, 1994:

- 10.1 The name of the Manufacturer and the name of all Products manufactured by that Manufacturer;
- 10.2 All sales data in dollars for all Products, and
- 10.3 All versions of the MSDS (for each such Product) which Baxter or Allegiance have in their possession, including all current versions.

11. **Warranties and Representations.** The parties make the following representations and warranties:

The Settling Defendants represent and warrant as follows:

- 11.1 Each of the Products contains one or more substances known to the State of California to cause cancer or birth defects or other reproductive toxicity, and that the Settling Defendants have no analytical, risk assessment, or other data indicating that an exposure to any or all Products poses "no significant risk" or will have "no observable effect," as each such standard is applicable and as each is defined under Health & Safety Code §25249.10(c).
- 11.2 In the event that Settling Defendants obtains analytical, risk assessment, or other data that shows that an exposure to any or all Products listed in Exhibit A poses "no significant risk" or will have "no observable effect," as each such standard is applicable and as each is defined under Health & Safety Code §25249.10(c), Settling Defendants shall provide AYS with ninety (90) days prior written notice of its intent to limit or eliminate the warning provisions under Paragraph 1 and shall provide AYS with all such supporting data. Within thirty (30) days of receipt of Settling Defendant's exposure data, AYS shall provide Settling Defendants with written notice of its desire to challenge the data (in the event that AYS chooses to make such a challenge), and AYS and Settling Defendants shall negotiate in good faith to attempt to reach a settlement. In the event that no settlement is reached within thirty (30) days of mailing by AYS of such notice of challenge, AYS and Settling Defendants agree to submit such challenge to the Court for determination, pursuant to the Court's continuing jurisdiction of this matter under C.C.P. §664.6 and Paragraph 11 of this Agreement. The prevailing party shall be entitled to reasonable attorneys' fees and costs associated with such a determination. If AYS does not challenge

Settling Defendants notice or the Court determines that no warning is required for a particular Product or Products, Settling Defendant's shall no longer be required to provide the warnings described in Paragraph 1 of this Agreement for those Products.

- 11.3 Baxter understands that the sales data provided to counsel for AYS by Baxter in the letter from Baxter's and Allegiance's counsel, Richard O. Wood, dated September 3, 1996 was a material factor upon which AYS has relied to determine the amount of penalties and restitution in Paragraphs 4 and 5 of this Agreement. The sales data provided in the above-referenced letter is true and accurate. Baxter acknowledges that, in the event AYS finds that the sales data is materially inaccurate, all other parts of this Agreement notwithstanding, AYS will have the right to rescind this Agreement and reinstitute an enforcement action against the Settling Defendants. In such case, all applicable statutes of limitation shall be deemed tolled for the period between February 6, 1996 (the date AYS filed the instant action) and the date AYS notifies Baxter that it is rescinding this Agreement pursuant to this subpart.
12. **Stipulated Judgment.** The parties shall file a stipulated judgment to be approved pursuant to C.C.P. §664.6 by the San Francisco County Superior Court in accordance with the terms of this Agreement.
13. **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.
14. **Attorneys' Fees.** In the event that a dispute arises with respect to any provision(s) of this Agreement, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.
15. **Governing Law.** The terms of this Agreement shall be governed by the laws of the State of California.
16. **Notices.** All correspondence to AYS shall be mailed to:

Lisa Wiggins, Esq.
General Counsel
As You Sow
2018 Ninth Street, #4
Berkeley, CA 94710

All correspondence to Baxter or Allegiance shall be mailed to:

Richard O. Wood, Esq.
Burditt & Radzlus
333 West Wacker Drive, Suite 2600
Chicago, IL 60606-1218

All correspondence to Dade shall be mailed to:

Louise S. Pearson, Esq.
Dade International Inc.
1717 Deerfield Road
P.O. Box 778
Deerfield, IL 60015-0778

All correspondence to B&J shall be mailed to:

Burdick & Jackson, Inc.
1953 South Harvey
Muskegon, MI 49442
Attn: General Manager

17. **No Admissions.** Nothing in this Agreement shall be construed as an admission by Baxter 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 Baxter of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect the obligation, responsibilities, and duties of Baxter under this Agreement.

18. **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.

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

AGREED TO:

As You Sow

Allegiance Healthcare Corporation

By: _____

By: _____

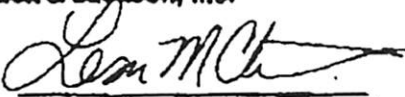
Printed Name

Printed Name

Burdick & Jackson, Inc.

Baxter Healthcare Corporation

WHP By:



By: _____

Lesla M. Chittenden

Printed Name

Printed Name

Dade International Inc.

By: _____

Printed Name

B & R CHARTER 411339111378835L8278 7 2 2

11. 29/1/0

04/09/2000 - 11:00

837:2

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

AGREED TO:

As You Sow

Allegiance Healthcare Corporation

By: _____

Printed Name

By: _____

Printed Name

Burdick & Jackson, Inc.

Baxter Healthcare Corporation

By: _____

Printed Name

By:  
J. PATRICK FITZSIMMONS,
Asst. Printed Name Secretary

Dade International Inc.

By: _____

Printed Name

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

AGREED TO:**As You Sow****Allegiance Healthcare Corporation**

By: _____

By: _____


Printed Name_____
Printed Name**Burdick & Jackson, Inc.****Baxter Healthcare Corporation**

By: _____

By: _____

Printed Name_____
Printed Name**Dade International Inc.**

By: _____



Louise S. Pearson
Printed Name

Exhibit A

EXHIBIT A

Products Containing Chemicals Known to the State of California to Cause Cancer

ACETONITRILE (Containing Acrylonitrile)
ACETONITRILE UV (Containing Acrylonitrile)
ACETONITRILE - LOW WATER (Containing Acrylonitrile)
ACETRONITRILE (Containing Acrylonitrile)
ACETRONITRILE (NON-SPECTRO) (Containing Acrylonitrile)
PP ACETRONITRILE (Containing Acrylonitrile)
CARBON TETRACHLORIDE
CHLOROFORM (WITH PRESERVATIVE)
CHLOROFORM (WITHOUT PRESERVATIVE)
CHLOROFORM CAP GC
CHLOROFORM PP
CHLOROFORM CP
PP CHLOROFORM
CHROMPURE ACETONITRILE (Containing Acrylonitrile)
CHROMPURE HEXANE (Containing Benzene)
O-DICHLOROBENZENE (Containing P-Dichlorobenzene)
1,4-DIOXANE
ETHYLENE DICHLORIDE
HEXANE (Containing Benzene)
GC2 HEXANE (Containing Benzene)
PP HEXANE (Containing Benzene)
HEXANE THM (Containing Benzene)
HEXANE UV (Containing Benzene)

HEXANE NS (Containing Benzene)
METHYLENE CHLORIDE
METHYLENE CHLORIDE CAP
METHYLENE CHLORIDE MS
METHYLENE CHLORIDE PP
METHYLENE CHLORIDE CP
TOLUENE (Containing Benzene)
TOLUENE MS (Containing Benzene)
TOLUENE PP (Containing Benzene)
TOLUENE DT (Containing Benzene)
SILICA (Containing Crystalline)
SILICA INERT SPE COLUMN (Containing Crystalline)
SILICA COLUMN (Containing Crystalline)
SILICA CARTRIDGE (Containing Crystalline)

Products Containing Chemicals Known to the State of California to
Cause Birth Defects or Other Reproductive Harm

TOLUENE
TOLUENE MS
TOLUENE PP
TOLUENE DT
2-METHOXYETHANOL

SENT BY:

[illegible]

Exhibit B

EXHIBIT B

{Baxter, Allegiance or B&J Letterhead}

IMPORTANT LEGAL NOTICE

Date:

Attention: Customers of (Baxter Healthcare Corporation, Allegiance Healthcare Corporation, Dade International Inc., or Burdick & Jackson, Inc.)

Subject: California Proposition 65 Warnings

This letter is to advise you that the (Baxter Healthcare Corporation, Allegiance Healthcare Corporation, Dade International Inc., or Burdick & Jackson, Inc.) products listed in Attachments A to this letter 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 purchaser 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 (defendant's name) has begun labeling 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 be 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-_____ 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 [Baxter Healthcare Corporation, Allegiance Healthcare Corporation, Dade International, Inc., or Burdick & Jackson, Inc.] has received (a) the Important Legal Notice letter regarding Proposition 65 warning requirements, (b) the list of (Baxter Healthcare Corporation, Dade International, Inc., or Burdick & Jackson, Inc.) products requiring a warning, and (c) 100 warning stickers. The undersigned further certifies that this distributor or retailer will comply with Proposition 65 warning requirements by affixing the warning stickers provided to them in the manner directed.

[Name and Title]

[Company]

[Address]

Please send me _____ additional stickers.