

1 JOHN C. MUELLER (STATE BAR #77521)
2 BAKER & HOSTETLER
3 600 Wilshire Boulevard
4 Los Angeles, California 90017-3212
5 (213) 624-2400

6 Attorneys for Defendant
7 BLUE CORAL, INC.

FILED

MAY - 3 1995

HOWARD HANSON
MARIN COUNTY CLERK

By M. L. Linton Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF MARIN

10 AS YOU SOW, a non-profit
11 corporation,

12 Plaintiff,

13 vs.

14 BLUE CORAL, INC., a corporation,
15 and DOES 1 through 1500,

16 Defendants.

) CASE NO. 162537
)
)

) STIPULATION FOR ENTRY OF
) JUDGMENT NUNC PRO TUNC AND
) JUDGMENT ON STIPULATION
)
)
)

17
18 WHEREAS, on April 6, 1995, through their respective
19 counsel of record, plaintiff As You Sow, and defendant Blue Coral,
20 Inc., filed with this Court a document entitled "Stipulation For
21 Entry Of Judgment And Judgment On Stipulation" (hereafter referred
22 to as the "Original Stipulation");

23 WHEREAS, on April 6, 1995, the Honorable Richard H.
24 Breiner, executed the Order For Judgment On Stipulation;

25 WHEREAS, due to an inadvertent error in an exhibit to the
26 Original Stipulation, the parties now desire that this Stipulation
27 For Entry Of Judgment Nunc Pro Tunc And Judgment On Entry Of


ENTERED

1 Stipulation be filed and the Order thereon entered to cure the
2 inadvertent error;

3 IT IS HEREBY STIPULATED, by and between plaintiff As You
4 Sow and defendant Blue Coral, Inc., through their respective
5 representatives, that judgment *nunc pro tunc* in the above-entitled
6 action be entered in accordance with the terms of the settlement
7 agreement between the parties, which is attached hereto as
8 Exhibit A.

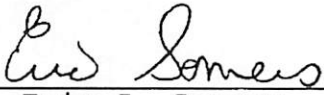
9 DATED: April 17, 1995.

JOHN C. MUELLER
BAKER & HOSTETLER

10
11 
12 John C. Mueller
13 Attorneys for Defendant
BLUE CORAL, INC.

14 DATED: April 24, 1995:


CLIFFORD A. CHANLER (SB#135534)
ERIC S. SOMERS (SB#139050).
CHANLER & ASSOCIATES
1700 Montgomery Street, Suite 110
San Francisco, CA 94111
(415) 391-1122

15
16
17 
18 Eric S. Somers
19 Attorneys for Plaintiff
20 AS YOU SOW

21 O R D E R

22 IT IS HEREBY ORDERED that judgment *nunc pro tunc* be
23 entered in accordance with the terms of the stipulation between the
24 parties.
25

26 May
27 DATED: ~~April~~ 3, 1995.

28 
Judge of the Superior Court

SETTLEMENT AGREEMENT

On March 31, 1995 in San Francisco, California, As You Sow ("AYS") and Blue Coral, Inc. ("Blue Coral") 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

Blue Coral is a corporation incorporated in the State of Delaware with its principal place of business in Ohio. Blue Coral has in the past and continues to manufacture and/or distribute automotive and household products in the State of California that contain cadmium, methylene chloride, perchloroethylene, silica, bitumens, creosotes and toluene; and

Pursuant to Health & Safety Code § 25249.8, the State of California has officially listed cadmium, methylene chloride, perchlorethylene, silica, bitumens and creosotes as chemicals known to cause cancer (see 22 C.C.R. § 12600); and

Pursuant to Health & Safety Code § 25249.8 the State of California has officially listed toluene as a chemical known to cause birth defects or other reproductive harm (see 22 C.C.R. § 12600); and

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

Some of the Products have been distributed and sold by Blue Coral for use in California since April 1, 1989; and

Blue Coral sold the McKay and Mechanics Brand product lines to Aerosol Corporation in January 1995; and

On or about September 23, 1994, AYS served Blue Coral, the Office of the California Attorney General and other California public enforcement agencies with a document entitled "60-Day Notice." The 60-Day Notice provided Blue Coral, the Attorney General and the other public enforcement agencies with notice, pursuant to California Health & Safety Code § 25249.7, that Blue Coral 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

Since no enforcement action had been instituted by the California Attorney General or any other public enforcement agency, on December 19, 1994, pursuant to Health and Safety Code § 25249.7, AYS filed a complaint entitled As You Sow v. Blue Coral, Inc., et al. (No. 162537) in the Marin County Superior Court, alleging violations of Health & Safety Code § 25249.6 and Business & Professions Code § 17200. The complaint was instituted in the public interest on behalf of AYS, the people of California and all individuals in California who allegedly are exposed to Proposition 65 chemicals in certain Blue Coral products.

AYS and Blue Coral wish to compromise, settle and satisfy all claims, demands and disputes between them related to any of the Products manufactured prior to the date of this Agreement, which in any way relate to or involve the referenced lawsuit, and to bind themselves to the covenants of this Agreement.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Labeling.** Blue Coral agrees that as of March 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 listed carcinogens only:

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

For Products containing listed reproductive toxins only:

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

For Products containing both listed carcinogens and reproductive toxins:

"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 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. The parties agree that the sample label attached hereto as Exhibit B satisfies this requirement.

2. **Warnings For Products in Commerce.** Blue Coral agrees that within thirty (30) days from the date this Agreement is executed, it shall provide warning materials by certified mail, return receipt requested to the customers that Blue Coral 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 and a letter of instruction for the placement of the stickers. A sample of these materials is attached hereto as Exhibit C.

3. **Restitution and Costs.** Blue Coral agrees to pay \$35,000 to AYS within five (5) days of notification by AYS of entry of the judgment on stipulation. The restitutionary component of this payment, which is made pursuant to Business & Professions Code § 17203, shall be divided between Unplug and the Natural Resources Defense Council. Unplug is a grassroots nonprofit organization of students, teachers and parents providing noncommercial publications to schools and community groups that emphasize environmental issues. The Natural Resources Defense Council specializes in the enforcement of all environmental laws, including Proposition 65. 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 Blue Coral's attention, litigating and negotiating a settlement in the public interest.

4. **Penalty.** Blue Coral further agrees to pay a civil penalty of \$20,000 pursuant to Health & Safety Code § 25249.7(b). Such penalty monies shall be apportioned by AYS in accordance with Health & Safety Code § 25192, with \$15,000 of this amount being transferred by AYS to the California Attorney General's Office. Blue Coral's payment shall be made within five (5) days of notification by AYS of entry of the judgment on stipulation.

5. **AYS Release.** In entering the Agreement AYS acknowledges that the terms hereof are made on behalf of and in the best interests of all of the people of the State of California. AYS for itself and its officers, agents, directors, stockholders, owners, employees, attorneys, insurers, successors, assigns, any affiliated or subsidiary foundation or corporation,

heirs, executors and administrators, and each of them, shall and hereby does release, forever discharge and waive all rights to institute any action against Blue Coral, its past, present and future officers, agents, directors, stockholders, owners, employees, attorneys, insurers, successors, assigns, affiliated and subsidiary corporations, heirs, executors, and administrators, its distributors, jobbers, warehouse distributors, mass merchandisers, specialty retailers, and retailers which sell or have sold any of the Products listed in Exhibit A hereto, and each of them, from any and all manner of actions, suits, liens, losses, debts, dues, damages, claims, judgments, bonds, executions, and demands of every nature, kind and description whatsoever, whether known or unknown, which AYS ever had, now has or hereafter can, shall or may have arising out of any manner or thing occurring at any time prior to the date of this Agreement including but not limited to actions under Proposition 65, Business & Professions Code §§ 17200 et seq., or any other statute or common law claim based on Blue Coral's failure to warn consumers about exposure to the Proposition 65 listed chemicals referenced in the second "Whereas" clause of this Agreement that are contained in any of the Products.

6. **Blue Coral Release.** Blue Coral for itself and its officers, agents, directors, stockholders, owners, employees, attorneys, insurers, successors, assigns, affiliated and subsidiary corporations, heirs, executors, and administrators, and each of them shall and hereby does release and forever discharge AYS, its past, present and future officers, agents, directors, stockholders, owners, employees, attorneys, insurers, successors, assigns, affiliated and subsidiary corporations, heirs, executors and administrators, and each of them, ("AYS Releasees") from any and all manner of actions, suits, liens, losses, debts, dues, damages, claims, judgments, bonds, executions, and demands of every nature, kind, description whatsoever, whether known or unknown, which Blue Coral ever had, now has or hereafter can, shall or may have arising out of any manner or thing occurring at any time prior to the date of this Agreement including but not limited to any action 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 against Blue Coral.

7. **MSDS.** On or before May 31, 1995, Blue Coral will provide to AYS a copy of each and every Material Safety Data Sheet ("MSDS") in its custody and control for each of the Products listed on Exhibit A. Together with the MSDSs per the immediately preceding

sentence, Blue Coral will provide a declaration under penalty of perjury from an employee of Blue Coral whose responsibility includes maintaining MSDSs that the MSDSs so provided constitute a complete set of all the MSDSs maintained by Blue Coral or any of its subsidiary or affiliated corporations with respect to the Products listed on Exhibit A.

8. **Stipulated Judgment.** 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.

9. **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.

10. **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.

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

12. **Notices.** All correspondence to AYS shall be mailed to:

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

All correspondence to Blue Coral shall be mailed to:

John C. Mueller
Baker & Hostetler
600 Wilshire Blvd., 12th Floor
Los Angeles, CA 90017-3212

13. **No Admissions.** Nothing in this Agreement shall be construed as an admission by Blue Coral 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 Blue Coral 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 Blue Coral under this Agreement.

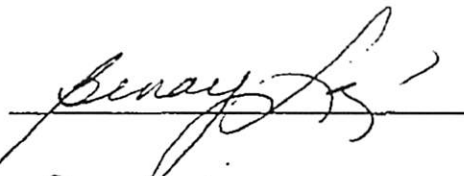
14. **Authorization.** The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Agreement.

15. This Agreement may be executed and delivered in counterparts, each of which shall be an original, but such counterparts together shall constitute but one and the same Agreement.

16. The parties agree to execute any further documents necessary to effectuate this Agreement.

AGREED TO:

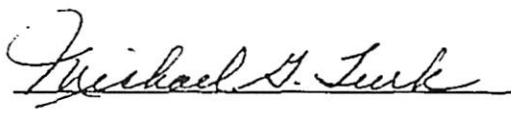
AS YOU SOW


Benay Lazo
Printed Name

Director
Title

AGREED TO:

BLUE CORAL, INC.


MICHAEL G. TURK
Printed Name

SR. V.P. & CFO
Title

| STOCK NO. | DESCRIPTION |
|-----------|--|
| 924 | UNDER KOTE |
| 1110 | TIRE BLACK READY TO USE |
| 1110M | TIRE BLACK |
| 1111 | TIRE BLACK |
| 1111-5 | TIRE BLACK |
| 1140MB | PRO EARTH TIRE INFLATOR |
| 1142 | MCKAY FIX FLAT |
| 1142MB | PRO EARTH TIRE INFLATOR H.D. |
| 1142MB-2P | PRO EARTH TIRE INFLATOR 2-PACK |
| 2013 | MCKAY FUEL INJECTOR AIR INTAKE CLEANER |
| 2400 | SPRAY UNDERCOAT |
| 16569 | KUBOTA ENGINE DEGREASER |
| R2300 | RUBBERIZED UNDERCOAT |
| R2300-2P | RUBBERIZED UNDERCOAT 2 PACK |
| RUC16 | RUBBERIZED UNDERCOAT |
| TS92 | TIRE SHINE |
| TS92K | TIRE SHINE (KMART) |
| TS92-6 | TIRE SHINE 6 PACK |
| TS99 | SUPER SILICONE TIRE SHINE |
| 00917 | 17 OZ. BRAKE DUST BUSTER |
| 241M | CARBURETOR PARTS CLEANER W/CLEANER |
| 242 | PARTS DIP |
| 242M | CARBURETOR PARTS CLEANER |
| 243 | PARTS DIP |
| 243M | CARBURETOR PARTS CLEANER |
| 244 | PARTS DIP |
| 244M | CARBURETOR PARTS CLEANER |
| 246 | PARTS DIP |

EXHIBIT A

| STOCK NO. | DESCRIPTION |
|-----------|---|
| 276 | BRAKE & CLUTCH CLEANER |
| 276MB | AEROSOL BRAKE CLEANER |
| 277 | DISC BRAKE PAD SILENCER |
| 277MB | BRAKE CLEANER |
| 278 | BRAKE CLEANER |
| 278MB | BRAKE CLEANER |
| 300M | OIL ABSORBENT (6 LB) |
| 301M | OIL ABSORBENT (10 LB) |
| 302 | DRY CLENE |
| 475A | TAR & BUG REMOVER |
| 603 | BELT GRIP |
| 605 | GRAPHITE SPRAY |
| 605-2P | GRAPHITE SPRAY 2 PACK |
| 606 | SILICONE SPRAY |
| 607 | SILICONE |
| 909 | IGNITION KOTE |
| 910 | IGNITION SPRAY DRY |
| 924 | UNDER KOTE |
| 125 | MCKAY BATTERY BOOSTER |
| 200 | BATTERY TERMINAL CLEANER |
| 205 | MCKAY CARBURETOR CLEANER BOOSTER (1 GAL) |
| 206 | MCKAY HI SPEED CARBURETOR CLEANER (1 GAL) |
| 207 | CARBURETOR CLEANER (2 1/2 GAL) |
| 208 | CARBURETOR CLEANER (5 GAL) |
| 213 | CARBURETOR SPRAY CLEANER |
| 213-1 | 1 GALLON CARBURETOR & CHOKE CLEANER |
| 213-5 | 5 GALLON CARBURETOR & CHOKE CLEANER |
| 213MB | AEROSOL CARBURETOR CLEANER |

EXHIBIT A

| STOCK NO. | DESCRIPTION |
|-----------|--------------------------|
| 216 | CARBURETOR CLEANER |
| 216M | CARBURETOR CLEANER |
| 216MB | CARBURETOR CLEANER |
| 231 | ENGINE DEGREASER |
| 231MB | ENGINE DEGREASER |
| 232M | MOTOR BATH |
| 233 | MOTOR SHINE |
| 233-2P | MOTOR SHINE 2 PACK |
| 233-MB | AEROSOL ENGINE DEGREASER |
| 239 | MCKAY PARTS DIP W/BASKET |
| 240 | PARTS DIP |
| 240M | CARBURETOR PARTS CLEANER |
| 241 | PARTS DIP W/BASKET |

EXHIBIT A

The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) requires Blue Coral, Inc., and sellers of its products to comply with the warning requirements of Proposition 65. Civil penalties may be imposed for failure to comply with Proposition 65. As an environmentally responsible company, Blue Coral advises you that the following is required for compliance.

The Blue Coral, Inc. products that are listed in attachment "A" to this letter contain chemicals known to the State of California to cause cancer and/or birth defects or other reproductive harm. Pursuant to Proposition 65 and by court order, 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.

All products currently manufactured by Blue Coral, Inc., are in compliance with Proposition 65. Blue Coral has been labelling certain products with Proposition 65 warnings for several years. However, you may have in your possession some Blue Coral, Inc. products which do not contain a proper Proposition 65 warning label. You must take certain actions to ensure that purchasers of the products that do not contain the proper warnings under Proposition 65 receive such warnings.

If you find that you have products listed in attachment "A" that do not have Proposition 65 warning statements, then you will be in compliance with Proposition 65 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.

- ___ Proposition 65 cancer warning stickers
- ___ Proposition 65 birth defects warning stickers
- ___ Proposition 65 combined (cancer and birth defects) warning stickers

You should affix a warning sticker to the container, cap, label, or package of each listed product that 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. Attachment "A" lists the type of products and the type of sticker that may be required.

Should you have any questions or concerns about this matter, please do not hesitate to contact:

Herb Schreiber
Technical Service Manager
Blue Coral, Inc.
5300 Harvard Avenue
Cleveland, Ohio 44105
Phone: (216) 641-5490; or (800) 545-0982
Fax: (216) 641-8617

In addition, we will be glad to supply additional warning stickers if requested.

Sincerely,

Joel Adelman
President Consumer Products Division

Enclosures

EXHIBIT C