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FILED
ALAMEDA COUNTY

JUN 26 1995

RONALD G. OVERHOLT, Exec. Off./Clerk
By Linda Steffens

Attorneys for Plaintiff
AS YOU SOW

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 IN AND FOR THE COUNTY OF ALAMEDA

9 AS YOU SOW, a non-profit)
10 organization,)
11)
12 Plaintiff,)
13)
14 v.)
15 CHILDERS PRODUCTS COMPANY, INC.,)
and DOES 1 through 1000,)
Defendants,)

No. 750238-5

STIPULATION FOR
ENTRY OF JUDGMENT

16
17
18 IT IS HEREBY STIPULATED, by and between plaintiff As
19 You Sow and defendant Childers Products Company, Inc., through
20 their 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 Exhibit A.

24 Dated: June 7, 1995

by: Jenny Cohn
Jenny Cohn
Attorney for Plaintiff
AS YOU SOW

26
27 Dated: June 5, 1995

by: Robert C. Weems
Robert C. Weems
Attorney for Defendant
CHILDERS PRODUCTS COMPANY

JUN 28 1995

3042A 06/27/95 CV-ANS-1 182.00

SETTLEMENT AGREEMENT

On ^{June} ~~May~~ 7, 1995 in San Francisco, California, As You Sow ("AYS") and Childers Products Company, Inc. ("Childers") 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

Childers is a company that currently manufactures and distributes a variety of coating, adhesive and sealant products which contain methylene chloride and/or other chemicals listed by the State of California pursuant to Health & Safety Code §25249.8; and

On April 1, 1988, methylene chloride was officially listed by the State of California as a chemical known to cause cancer, pursuant to Health & Safety Code §25249.8; and

A list of the products families containing methylene chloride and/or other chemicals listed by the State of California pursuant to Health & Safety Code §25249.8 and which are covered by this Agreement is provided in Exhibit A (the "Products"). The Products have been manufactured by Childers. Some of the Products have been manufactured by Childers for distribution in California, and been sold in California stores since April 1, 1988; and

Childers manufactures certain other products containing Proposition 65-listed chemicals for companies which use private labels and which may distribute or sell these products in the State of California; and

AYS contends that it served Childers with a document entitled "60-Day Notice" on February 9, 1995, in which AYS alleged that Childers was in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products it sells in California expose users to methylene chloride, a chemical known to the State of California to cause cancer; and

Childers contends that it did not receive a copy of said "60-Day Notice" until March 20, 1995.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Warnings.** Beginning sixty (60) days from the effective date of this agreement, Childers agrees that it will not knowingly ship (or caused to be shipped) any products

containing carcinogens or reproductive toxins for sale in the state of California unless such products bear one of the following warning statements:

- 1.1. For products containing one 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 a chemical(s) known to the State of California to cause birth defects or other reproductive harm."

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

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

- 1.3 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 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 a warning statement and placement as set forth in Exhibit "B" constitutes a clear and reasonable warning.

2. **Letters to Private Label Customers.** Childers agrees that within thirty (30) days from the date this agreement is mutually executed, Childers shall provide the following warning materials by certified mail to its private label customers that sell the Products specifically segregated in Exhibit A as "Private Label Products":

- (a) a letter ("Customer Letter") of instruction for placement and/or distribution of the warning materials (Attached hereto as Exhibit C); and

- (b) a Notice and Acknowledgment card (Attached hereto as Exhibit D).

3. Restitution and Costs. As a restitutionary and cost measure, Childers agrees to pay a total of \$8,340. The restitutionary component of this payment, which is made pursuant to Business & Professions Code §17203, shall be made payable to AYS, which shall promptly transfer the monies to Unplug, a non-profit organization that provides communities with technical support and policy analysis regarding public schools and environmental issues, and to the AYS Proposition 65 Investigation Fund. The money transferred to the AYS Proposition 65 Investigation Fund will be used to support the research of, and investigation into, California citizens' exposure to chemicals listed pursuant to 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 Childers' attention and negotiating a settlement in the public interest. Payment of this sum shall be made upon execution of this agreement.

4. AYS Release. AYS, by this Agreement, waives all rights to institute an action against Childers, its distributors or customers, whether under Proposition 65, Business & Profession Code §§17200 et seq., or any other statute or common law claim based on Childers' failure to warn individuals about exposure to Proposition 65-listed chemicals from any of the Products identified in Exhibit A.

5. Childers Release. Childers, 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 (or as a result of) seeking enforcement of Proposition 65 against Childers.

6. Stipulated Judgment. The parties shall file a stipulated judgment to be approved pursuant to CCP §664.6 by the Alameda Superior Court in accordance with the terms of this agreement.

7. 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.

8. 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.

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

10. **Correspondence.** All correspondence to AYS shall be mailed to:

Jenny Cohn, Esq.
Chanler & Associates
1700 Montgomery Street, 3rd Floor
San Francisco, CA 94111

All correspondence to Childers shall be mailed to:

Martin Orlick, Esq.
Arter & Hadden
201 California Street, 14th Floor
San Francisco, CA 94111

11. **No Admissions.** Nothing in this Agreement shall be construed as an admission by Childers 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 Childers of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities, and duties of Childers 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:

By:

As You Sow

[Handwritten signature]

AGREED TO:

By:

Childers Products
Company, Inc.

James W. Atterholt, President

[Handwritten signature]

Dated:

6/7/95

Dated:

6-2-95

EXHIBIT A

CP-9
CP-10
CP-11
CP-12
CP-17
CP-21
CP-22
CP-23
CP-24
CP-25
CP-28
CP-29
CP-30 C Low Odor
CP-30 Low Odor
CP-30
CP-32
CP-35
CP-37 Parts A and B
CP-50 A
CP-50 AHV2
CP-50 AMV1
CP-51
CP-52
CP-54
CP-55
CP-56
CP-67
CP-70
CP-72
CP-76
CP-77
CP-79
CP-80
CP-82
CP-85
CP-88
CP-89
CP-91
CP-96
CP-97
CP-120
CP-121
CP-122
CP-125
CP-127
CP-128
CP-210
CP-211
CP-215

CP-220
CP-225
CP-230
CP-231
CP-240
CP-250
CP-260
CP-265
EncacelV
EncacelX
Muffl-Lag

Private Label Products Made for American Elgen

AE 305 WB
AE 305 NEW
AE 72 U
AE 72 NEW
AE 50 A
AE 102
AE 50 AHV2
AE 88
A 30 R
AE 89
AE 127
A 410 WB
SFA
SNA

It is also understood that all color variation of these products are part of this list.

EXHIBIT B

[Attach Exemplars of the 3 types of Warning Stickers here]

"WARNING: This product contains chemical(s) 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 cancer."

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

Actual labels must be at least 2 x 5 cm.

EXHIBIT C

[Childers Letterhead]
IMPORTANT LEGAL NOTICE

Date:
Attention: All Private Label Customers of Childers Products,
Inc.
Subject: California Proposition 65 Warnings for Products
Containing Proposition 65-Listed Chemicals

Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), California citizens must be given a clear and reasonable warning before being exposed to chemicals listed by the State of California as causing either cancer or birth defects (or other reproductive harm). Although Childers has continuously strived to comply with Proposition 65's clear and reasonable warning requirement, this requirement has recently been interpreted such that more specific warnings are necessary.

Thus, Childers has recently begun the process of revising the warning language used on its own Childers label products to better reflect the increasingly strict interpretation of Proposition 65. As one of Childers' private label customers, you must also take certain actions to ensure that purchasers or users of these products receive proper Proposition 65 warnings.

The products listed in Attachment A to this letter contain chemicals listed by the State of California as causing either cancer or birth defects (or other reproductive harm). You must attach Warning Stickers to any of the products listed on Attachment A not bearing a Proposition 65 warning which states that the product contains a chemical known to the State of California to cause birth defects or other reproductive harm (for those products that contain listed reproductive toxins only), or a Proposition 65 warning which states that the product contains a chemical known to the State of California to cause cancer (for those products that contain listed carcinogens only) or a Proposition 65 warning which states that the product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm (for those products that contain both listed carcinogens and reproductive toxins). Three examples of appropriate Proposition 65 warning labels are attached hereto as Attachment B.

Providing clear and reasonable Proposition 65 warnings for the listed products will protect you from legal action by various environmental groups or the California Attorney General, wherein monetary penalties of up to \$2,500 per violation could be sought.

Should you have any questions or comments about this matter, please do not hesitate to contact ____ [to follow] ____ at 1-9---xxx-xxxx by phone, or by mail at the above address.

EXHIBIT D
NOTICE AND ACKNOWLEDGEMENT CARD

The undersigned certifies that this customer has received the following materials relating to Proposition 65:

- (a) The Important Legal Notice letter regarding Proposition 65 Warnings for certain Childers-manufactured products sold under private labels; and
- (b) The list of Childers products requiring a warning.

The undersigned further certifies that this customer will comply with Proposition 65 warning requirements by affixing warning stickers in the manner directed.

[Name & Title]

[Retail Store Name]

[Address]
