

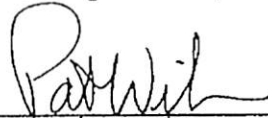
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9 Attorneys for Plaintiff
10 AS YOU SOW

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
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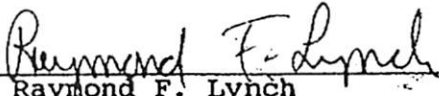
15 AS YOU SOW, a non-profit) No. 966614
16 organization,)
17 Plaintiff,)
18 v.) STIPULATION FOR
19) ENTRY OF JUDGMENT
20)
21 EASTERDAY JANITORIAL SUPPLY CO.,)
22 and DOES 1 through 1000,)
23 Defendants,)
24

25 IT IS HEREBY STIPULATED, by and between plaintiff As
26 You Sow and defendant Easterday Janitorial Supply Company,
27 through their respective representatives, that judgment in the
28 above-entitled action be entered in accordance with the terms
of the settlement agreement between the parties, which is
attached hereto.

Dated: June 8, 1995

by: 
Patrick Wilson
Attorney for Plaintiff
AS YOU SOW

Dated: June 7, 1995

by: 
Raymond F. Lynch
Attorney For Defendant
Easterday Janitorial Supply

ORIGINAL

SETTLEMENT AGREEMENT

As of May 15, 1995 in San Francisco, California, As You Sow ("AYS") and Easterday Janitorial Supply Company ("Easterday") (hereinafter the "Parties"), agreed to the following terms and conditions:

WHEREAS:

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

Easterday is a company that has previously distributed or sold cleaning products which contain chemicals listed under California's Safe Drinking Water and Toxic Enforcement Act of 1986, codified at California Health & Safety Code §25249.5 et seq., also known as "Proposition 65", including, but not limited to, toluene, methylene chloride, perchloroethylene and paradichlorobenzene; and

On January 1, 1991, toluene was officially listed by the State of California as a chemical known to cause birth defects or other reproductive harm, pursuant to Health & Safety Code §25249.6; 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

On April 1, 1988, perchloroethylene 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, 1989, paradichlorobenzene 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 which are covered by this Agreement is provided in Exhibit A (the "Products"). The Products were distributed or sold by Easterday for sale or use in California, since on or about April 1, 1988 and such distribution or sales were discontinued on or about January 15, 1995; and

On October 28, 1994, AYS served Easterday with a document entitled, 60-Day Notice, which provided Easterday with notice that it was allegedly in violation of Health & Safety Code §25249.6 for failing to warn individuals that certain products it manufactures, distributes or sells in California expose users to certain Proposition 65-listed substances including, but not limited to, methylene chloride, which is listed pursuant to Health & Safety Code §25249.8 as a carcinogen; and

On January 27, 1995, AYS served Easterday with a complaint for injunctive relief and civil penalties, entitled As You Sow v. Easterday Janitorial Supply Co. (No. 966614, in San Francisco Superior Court) (hereinafter the "Lawsuit"), alleging violations of Proposition 65's warning requirements (Health & Safety Code §25249.6) for exposures to Proposition 65-listed substances; and

On February 15, 1995, AYS served Easterday with an additional document entitled, Supplemental 60-Day Notice, which provided Easterday with notice that it was allegedly in violation of Health & Safety Code §25249.6 for failing to warn individuals that certain products it manufactures, distributes or sells in California expose users to toluene, which is listed pursuant to Health & Safety Code §25249.8 as a reproductive toxin; and

On April 5, 1995 AYS served Easterday with an additional document entitled, Supplemental 60-Day Notice, which provided Easterday with notice that it was allegedly in violation of Health & Safety Code §25249.6 for failing to warn individuals that certain products it manufactures, distributes or sells in California expose users to perchloroethylene and paradichlorobenzene both of which are listed pursuant to Health & Safety Code §25249.8 as carcinogens; and

In order to avoid costly and time-consuming litigation, AYS and Easterday have agreed to settle all claims that have been brought or that could have been brought against Easterday for alleged exposures to Proposition 65 chemicals arising from Easterday's alleged distribution or sale of the Products listed in Exhibit A, containing the Proposition 65 chemicals without Proposition 65 warnings.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. As of May 1, 1995, Easterday agrees that it shall not ship (or cause to be shipped) for sale or use in the State of California, any of the Products listed in Exhibit A that contain chemicals listed under Proposition 65 unless the Products comply with Health & Safety Code §25249.6 and 22 California Code of Regulations §12601 by providing the appropriate warning detailed below in §1 (a)-(c) of this Agreement. The warning shall be placed directly on the container of the products so that it 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. The warnings shall bear one of the appropriate following statements:

(a) For products containing a chemical(s) listed under Proposition 65 as reproductive toxins, but which contain no chemicals listed as carcinogens:

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

(b) For products containing a chemical(s) listed under Proposition 65 as carcinogens, but which contain no chemicals listed as reproductive toxins:

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

(c) For products containing a chemical(s) listed under Proposition 65 as reproductive toxins and a chemical(s) listed under Proposition 65 as carcinogens:

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



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2. Easterday also agrees that it will provide to AYS on or before May 15, 1995, the originals or copies of the following materials, provided that Easterday still possesses the materials, which were provided to Easterday by its suppliers of the Products listed in Exhibit A:

- (a) All Material Safety Data Sheets (MSDS).
- (b) All labels and labeling material.
- (c) All other health and safety warnings or warning materials including any Proposition 65 warnings.

3. Easterday agrees to pay \$12,350 to AYS upon entry of judgment in this matter, as provided in ¶7 of this Agreement. The restitutionary component of this payment, which is made pursuant to Business & Professions Code §17203, shall be distributed to the Video Project, a non-profit distributor of educational videos on environmental issues. 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 Easterday's attention, litigating and negotiating a settlement in the public interest.

4. AYS, on behalf of itself and on behalf of the People of the State of California pursuant to Health & Safety Code §25249.7 and Business & Professions Code §17203, in full consideration for the promises in this Settlement Agreement, hereby unconditionally releases and discharges Easterday, its

present and former officers, directors, employees, agents, affiliates, contractors, parent and subsidiary entities, companies and divisions, and its administrators, predecessors, successors and assigns, its distributors, customers or any third party, which sells, uses or purchases any of the Easterday Products listed in Exhibit A (hereinafter the "Easterday Releasees") from any and all claims, demands, obligations, damages, liabilities and causes of action of any kind whatsoever, known or unknown, which it has or ever has had on its own behalf or on behalf of the People of the State of California pursuant to Health & Safety Code §25249.7 and Business & Professions Code §17203, against the Easterday Releasees including, without limitation, those alleged in the Lawsuit, those under Proposition 65, Business & Profession Code §§17200 et seq., or any other statute or common law claim, based on any failure to provide clear and reasonable warning or any other kind of warning of any kind whatsoever to individuals about exposures to toluene, methylene chloride, perchloroethylene or paradichlorobenzene from any of the Easterday Products listed in Exhibit A.

5. Easterday, by this Agreement, waives all rights to institute any form of legal action against AYS, its members, officers, directors, attorneys, representatives and other agents (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, and as a result of seeking enforcement of Proposition 65 and Business & Profession Code §§17200 et seq. against Easterday.

6. Each of the Parties specifically waive all rights, if any, each of them have under the provisions of California Civil Code §1542, which provides: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

7. The Parties shall file a stipulated Judgment to be approved pursuant to CCP §664.6 with the Superior Court in accordance with the terms set forth in this Settlement Agreement.

8. In the event that any provision of this Agreement is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

9. This document may be executed in counterparts with each copy considered an original.

10. 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. Venue

over any action concerning this Settlement Agreement shall be in the Superior Court of the County San Francisco.

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

12. All correspondence to AYS shall be mailed to:

Clifford A. Chanler, Esq.
Chanler & Associates
1700 Montgomery Street, Suite 110
San Francisco, CA 94111

All correspondence to Easterday shall be mailed to:

Raymond F. Lynch, Esq.
Landles, Ripley & Diamond
Hills Plaza
350 Steuart Street
San Francisco, CA 94105-1250

13. Nothing in this Settlement Agreement shall be construed as an admission by Easterday of any fact, finding, conclusion, allegation of fact or law, claim, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Easterday of any fact, finding, conclusion, allegation of fact or law, claim, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligation, responsibilities, and duties of Easterday under this Settlement Agreement.

14. 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 Settlement Agreement shall be binding upon each of the Parties and each of their assigns, devisees, representatives, transferees, successors, beneficiaries, employees and agents and shall inure to the benefit of the Parties and their successors and assigns.

16. The Parties hereby stipulate and agree that the recitals hereto constitute an integral part of this Settlement Agreement.

AGREED TO:

BY:

penayo
AS YOU SOW

Dated:

5/18/95

AGREED TO:

By:

A. Ste
Easterday Janitorial
Supply Company

Dated: _____

EXHIBIT A

1. SHEILA SHINE METAL POLISH
2. BOWL, TABLET AND WALL URINAL DEODORANTS
3. CORRO PEN PENETRATING OIL
4. 3M HEAVY DUTY CARPET STAIN REMOVER
5. BIG E AEROSOL DUST MOP TREATMENT
6. CENSOR VANDALS MARK REMOVER

