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**FILED**  
San Francisco County Superior Court

OCT 4 - 1996

ALAN CARLSON, Clerk  
SUPERIOR COURT

BY: [Signature]  
Deputy Clerk

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

AS YOU SOW, a non-profit corporation,  
Plaintiff  
v.  
NOXELL CORPORATION, et al.,  
Defendants.

No. 950766

STIPULATION FOR ENTRY OF JUDGMENT

AS YOU SOW, a non-profit corporation,  
Plaintiff  
v.  
ORLY INTERNATIONAL, INC., et al.,  
Defendants.

IT IS HEREBY STIPULATED, by and between plaintiff As You Sow and defendants Essie Cosmetics, Inc.; Creative Nail Design; Vital Nails, Inc./Develop 10; Jessica Cosmetics International, Inc.; Orly International, Inc.; and OPI Products, Inc., through their respective representatives, that judgment in the above-entitled action be entered in accordance

1 with the terms of the settlement agreement between the  
2 parties, which is attached hereto as Exhibit A.

3 Dated: June 20, 1994

CHANLER & ASSOCIATES

4  
5  
6 by: Clifford A  
7 Clifford A. Chanler  
8 Attorneys for Plaintiff  
9 AS YOU SOW

10 BAKER & MCKENZIE

11 Dated: June 20, 1994

12 by: C. Karia  
13 Chirag Karia  
14 Attorneys for Defendants  
15 ESSIE COSMETICS, INC.  
16 CREATIVE NAIL DESIGN  
17 VITAL NAILS, INC.  
18 JESSICA COSMETICS INT'L.  
19 ORLY INTERNATIONAL, INC.  
20 OPI PRODUCTS, INC.

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Exhibit A

SETTLEMENT AGREEMENT

On August 24, 1993, in San Francisco, California, AS YOU SOW ("AYS") and defendants ESSIE COSMETICS, INC.; CREATIVE NAIL DESIGN; VITAL NAILS, INC./DEVELOP 10; JESSICA COSMETICS INTERNATIONAL, INC.; ORLY INTERNATIONAL, INC.; OPI PRODUCTS, INC. and AMERICAN INTERNATIONAL INDUSTRIES (the "Professional Defendants") agreed to the following terms and conditions:

**WHEREAS:**

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

The defendant companies which are parties to this Settlement Agreement manufacture and/or distribute nail enamel products containing toluene, which are sold in California principally for use in professional nail care and beauty salons (the "Professional Defendants"); 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

A list of the Professional Defendants' nail enamel products containing toluene which may have been sold or used in California since January 1, 1992 is provided in Exhibit A (the "Products"); and

Since November 18, 1992, AYS has served the Professional Defendants and the appropriate public enforcement agencies with a document entitled "60-Day Notice," which provided the Professional Defendants with notice of AYS' contention that they were in violation of Health & Safety Code § 25249.6 for failing to warn individuals that the Products expose the user to toluene, a chemical known by the State of California to cause birth defects or other reproductive harm; and

On April 5, 1993, AYS filed a complaint in San Francisco Superior Court on behalf of California nail enamel users, entitled As You Sow v. Orly International, et al. (No. 950767) (the "Litigation"), alleging violations of Health & Safety Code § 25249.5 et seq. ("Proposition 65") and Business & Professions Code § 17200 et seq., naming some of the Professional Defendants (the claims asserted in the 60-Day Notices and in the foregoing litigation are hereinafter referred to as the "Proposition 65 Claims"); and

The Professional Defendants which have been named in that Litigation have filed general denials of, or have otherwise

providing a warning that is prominent and is 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 under ordinary conditions of purchase or use. The warning should be calculated to warn individuals at the point of purchase, as well as individuals who may use the products at beauty, hair or nail salons. The warning should bear the message:

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

or such other message or warning scheme as is approved by and acceptable to the Attorney General's Office, State of California. If the warning is to be placed in hair, beauty or nail salons, the warning shall be provided in a language(s) spoken by a significant portion of the employees or others likely to be exposed, so as to render the message clear.

2. Cost Reimbursement. In an effort to defray AYS' costs of investigating this matter, Professional Defendants agree to reimburse AYS under the following procedure:

Professional Defendants shall have until September 14, 1993 to persuade other companies manufacturing and selling nail polish and related products containing toluene for professional use in

California to join in this Settlement, pursuant to the "Opt In" provisions set forth in Paragraph 9, below. Professional Defendants believe that there are approximately 100 companies, presently not parties to this Litigation, which manufacture and sell nail polish and related products containing toluene into California (primarily for use in salons), which have received or may receive 60-Day Notices and which are subject to being joined in this Litigation (hereinafter referred to as the "Opt In Companies"). These Opt In Companies will have an opportunity to join in this Settlement as follows:

A. AYS has divided the Opt In Companies into categories "A," "B," and "C," based on their estimated amount of nail polish and related products containing toluene sold in California. The ratio of companies in categories "A," "B," and "C" shall be 1:2:3, respectively. AYS agrees to consult in good faith with Professional Defendants prior to making such designations, and to provide the category designation for each company. AYS will require the "A" companies to contribute \$7500, the "B" companies to contribute \$5000 and the "C" companies to contribute \$2500, in order to have the benefit of "opting in" to this Settlement Agreement. Each Professional Defendant shall be designated a Category "A" company.

B. Each Professional Defendant will use its best efforts during the three-week period provided under this Agreement to persuade as many Opt In Companies as possible to take advantage of this Settlement Agreement, and will notify AYS in writing by September 16, 1993 of the total settlement reimbursement pool, together with a list of the companies who have elected to opt in.

C. If the reimbursement pool thus generated is \$250,000 or more, AYS agrees to accept this reimbursement pool in full settlement with Professional Defendants and the Opt In Companies of the Proposition 65 Claims, under the other terms and conditions of this Agreement, for and in consideration of the entire amount of the pool, subject to the following condition: If the pool exceeds \$250,000, Fifty Cents (\$.50) of every dollar generated above \$250,000 shall be retained by Professional Defendants to defray the legal expenses they have incurred and effectively borne on behalf of all defendant parties settling this matter. The other Fifty Cents (\$.50) of every dollar shall go to AYS as reasonable reimbursement of its investigation expenses.

D. If the reimbursement pool is less than \$250,000, AYS will then have a period of three (3) business days, ending September 24, 1993, to determine and advise Professional Defendants in writing whether it wishes to



accept such lesser amount in full settlement under the terms of this Settlement Agreement. In the event that AYS declines to accept the lesser amount in the reimbursement pool, and the parties fail to reach an acceptable compromise by September 24, 1993, then this Settlement Agreement shall be null and void.

3. AYS Proposition 65 Efforts. AYS represents that it has caused 60-Day Notices to be given to all companies which it has knowledge or reason to believe meet the criteria referred to in Paragraph 9 of this Agreement, and after the Effective Date of this Agreement, AYS intends that all companies as to which 60-Day Notices have run or will run will be served with complaints in the pending Superior Court Action. The parties agree that these good faith efforts of AYS are necessary in order to obtain maximum participation in the reimbursement pool referred to in Paragraph 2, above.

4. Mutual Waiver and Release. By this Agreement, and in consideration of either of the reimbursement amounts, AYS, acting on behalf of itself and the California general public, as specified in Health & Safety Code § 25249.7(d), waives all rights to institute action against, and covenants not to sue, Professional Defendants and each of Professional Defendants' officers, directors, agents, attorneys, representatives, heirs, successors and assigns, covenants not to sue all Professional

Defendants' distributors, retailers or salon users of the Products, whether under or based upon any alleged violations of Health & Safety Code § 25249.5 et seq. or Business & Professions Code § 17200 et seq., or other statute for failure to provide Proposition 65 toluene warnings for the Products, except as expressly provided for herein.

However, notwithstanding any term or provision of this Agreement, nothing herein is intended to or shall be construed to constitute a waiver or release of, or shall in any way diminish or otherwise affect AYS' right to sue or proceed against any (i) distributor or retailer for violation of Proposition 65, Business and Professions Code §§ 17200 et seq. or any other law or regulation based upon the sale or distribution of any nail polish or related products containing toluene, except for the Products; or (ii) any bulk supplier of nail enamel or any nail enamel ingredient.

5. Professional Defendants' Waiver and Release of AYS. By this Agreement, Professional Defendants (each acting on its own behalf and on behalf of its subsidiaries, affiliates, successors, assigns, officers, directors, employees, agents, attorneys and representatives) releases all claims and waives all rights to institute any form of legal action (including but not limited to any claim for damages, fines, sanctions, fees [including fees of attorneys, experts and others] or costs in the Litigation against

AYS and any of AYS' officers, directors, agents, attorneys, representatives, heirs, successors and assigns (collectively the "AYS Releasees"), based on any statute, provision of common law or any theory or issue whatsoever and for any and all actions or statements (and failures to act or state something) made by any of the AYS Releasees, in the course of seeking enforcement of Proposition 65's warning requirement for nail polish and related products containing toluene or arising out of the parties' relations in these matters or relating to the Litigation or the subject matter of this settlement. Professional Defendants further covenant not to sue any of the AYS Releasees based on any claim so released.

6. Stipulation for Entry of Judgment. AYS and Professional Defendants agree that, on September 27, 1993, AYS shall file a Stipulation for Entry of Judgment in the form attached hereto as Exhibit B-1 (to be approved pursuant to Cal.Code of Civil Procedure § 664.6) and lodge a proposed Judgment in the form attached hereto as Exhibit B-2 with the San Francisco Superior Court in accordance with the terms set forth in this Agreement. AYS agrees to provide a copy of the endorsed, filed judgment to Deputy Attorney General Edward G. Weil and to Bruce Jackson, who shall provide a copy to each Professional Defendant.

7. Waiver of Penalties. AYS agrees that, in consideration of the mutual covenants and agreements contained herein, no fines or other sanctions shall be sought or imposed upon the Professional Defendants for their prior distribution and/or sale of the Products without a Proposition 65 warning. AYS will obtain from the Deputy Attorney General's Office, State of California, a letter stating that he considers this settlement, including, specifically, the warnings proposed hereunder, a satisfactory resolution of the Proposition 65 Claims asserted by AYS and that his office will not institute action or seek enforcement, penalties, injunctions or restitution against any of the settling defendants based on the Proposition 65 Claims.

8. Enforcement. If any of the parties to the Agreement fails to comply with any provisions of this Agreement, including, but not limited to, the reformulation commitments or warning set forth in paragraph 1, any other party to this Agreement shall be entitled to bring a motion before the Superior Court of the City and County of San Francisco, which shall retain jurisdiction over these cases for purposes of enforcing this Agreement, for an order enforcing the terms of the Agreement. In such event, any offending party shall be subject to orders of the court to remedy such breach, including penalties, restitution, reasonable attorney's fees, injunctive relief and any and all other applicable sanctions, causes of actions, claims, demands and

remedies as the court shall direct, notwithstanding any other provisions of this Agreement.

9. Additional Parties. This Agreement is executed with the understanding that additional parties not yet named in the Litigation have sold nail polish and related products containing toluene in the State of California (primarily for use in salons) since January 1, 1992, and that those parties (having been provided the requisite 60-Day Notice) are subject either to separate suit by AYS or to being brought into the Litigation as defendants sued under the fictitious names of Does 1 through 50. Any person or entity that employs ten (10) or more persons (except parties in the Litigation as of the execution date), or which reasonably believes that at some time since January 1, 1992, it has employed ten (10) or more persons, and which sold nail polish and related products containing toluene in the State of California since January 1, 1992, may become a defendant in the Litigation and shall have an opportunity to become a party to this Agreement (hereinafter the "Opt-In Companies") by undertaking the following:

(a) Executing an "Opt In" stipulation in which it agrees:

(i) that it is an entity employing ten (10) or more persons, or reasonably believes that at some time

since January 1, 1992, it employed ten (10) or more persons, and that it sold nail polish and related products containing toluene in the State of California during some period of time since January 1, 1992;

(ii) that it is deemed to have accepted service of a summons and complaint by AYS as a Doe Defendant; and

(iii) that it has read and agrees to be bound by all terms and conditions of this Agreement, and to provide a list of the Products as an Amendment to Exhibit A. A copy of the "Opt In" stipulation and Judgment as it shall be provided to such persons and entities by the Professional Defendants is attached hereto as Exhibit C.

(b) Thereafter, mailing the original signed "Opt In" stipulation and a check made out to "The American Beauty Association" in their respective "Opt In" amount, as specified in paragraph 2 of this Agreement, to: Paul Dykstra, Executive Director, Nail Manufacturers Council, 401 N. Michigan Avenue, Suite 2200, Chicago, Illinois 60611.

(c) It is expressly understood and agreed that the rights and obligations of the Opt In companies under this

Settlement Agreement shall be expressly contingent upon the fulfillment of the reimbursement conditions specified in Paragraph 2 of this Settlement Agreement.

(d) It is expressly understood and agreed that, upon the Effective Date of this Agreement, the Opt In Companies and AYS shall be bound by all the provisions of this Agreement as if the Opt In Companies were each a Professional Defendant.

10. Future Study. It is agreed that if at any time in the future a study is conducted under a protocol agreed to by the Attorney General's Office, State of California, and which the Attorney General's Office agrees establishes that exposure to toluene from use of nail enamel products in salons does not require a Proposition 65 warning at some percentage content of toluene, Professional Defendants and any Opt In Companies shall have the right to sell in California, without a Proposition 65 warning, any nail enamel products containing a percentage of toluene that is at or below the level specified by the study as requiring a Proposition 65 warning. In such event, no other provisions of this Agreement shall be affected.

11. Copies of Agreement. It is the intent of AYS and Professional Defendants that potential Opt In companies will be advised of this Agreement. Within three (3) days of the

Execution Date of this Agreement, Professional Defendants will provide all potential Opt In Companies with copies of the Agreement and other materials necessary to enable them to become parties to the Agreement.

12. Execution in Counterparts. This Agreement may be executed in one or more counterparts which, taken together, shall be deemed to constitute one and the same document.

13. No Admission. The parties to this Agreement agree that nothing in this Agreement shall be construed as an admission by any party 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 any party of any fact, finding, conclusion, issue of law or violation of law. This paragraph, however, shall not diminish or otherwise affect the obligations, responsibilities and duties of the parties under this Agreement.

14. Attorney General. The signature of the representative of the Office of the Attorney General evidences only the view of that office that no further action is warranted by the Attorney General concerning the violations alleged against Professional Defendants, and that any other litigation against Professional Defendants involving the issues settled herein would be improper.



15. Invalidity. 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.

16. Disputes. 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.

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

18. Payments. Payments to AYS shall be made payable to "As You Sow" and shall be mailed to:

Attn: Clifford A. Chanler, Esq.  
Chanler & Associates  
1700 Montgomery Street, 3rd Floor  
San Francisco, CA 94111

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

20. No Benefits to Certain Non-Parties. Nothing contained in this Agreement shall inure to the benefit of any person or

entity named in the Litigation as of the execution date of this Agreement except for Professional Defendants.

21. Effective Date of Agreement. The terms and conditions of this Agreement are expressly contingent upon the fulfillment of the reimbursement conditions set forth in Paragraph 2. If those conditions are met, the Effective Date of this Agreement is September 27, 1993.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.

By: \_\_\_\_\_  
VITAL NAILS, INC./DEVELOP 10

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
OPI PRODUCTS, INC.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
ESSIE COSMETICS, INC.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
CREATIVE NAIL DESIGN

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
JESSICA COSMETICS INTERNATIONAL, INC.

Dated: \_\_\_\_\_

Post-it brand

Fax Transmittal Memo 7672



No. of Pages

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Orig. Date 8/24/93 Time

To Bruce Jackson

From

KIM MCCOY

Company

Company

Location

Location

Dest. Charge

Fax #

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Telephone #

Comments

Original Disposition:

Destroy

Return

Call for pickup

AUG 24 '93 09:05AM BAKER MCKEN

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entity named in the Litigation as of the execution date of this Agreement except for Professional Defendants.

21. Effective Date of Agreement. The terms and conditions of this Agreement are expressly contingent upon the fulfillment of the reimbursement conditions set forth in Paragraph 2. If those conditions are met, the Effective Date of this Agreement is September 27, 1993.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.

By: Terry Calhoun  
VITAL NAILS, INC./DEVELOP 10

Dated: 8/24/93

By: \_\_\_\_\_  
OPI PRODUCTS, INC.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
ESSIE COSMETICS, INC.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
CREATIVE NAIL DESIGN

entity named in the Litigation as of the execution date of this Agreement except for Professional Defendants.

21. Effective Date of Agreement. The terms and conditions of this Agreement are expressly contingent upon the fulfillment of the reimbursement conditions set forth in Paragraph 2. If those conditions are met, the Effective Date of this Agreement is September 27, 1993.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.

By: \_\_\_\_\_  
VITAL NAILS, INC./DEVELOP 10

Dated: \_\_\_\_\_

By: \_\_\_\_\_ *President*  
GPI PRODUCTS, INC.

Dated: 8/24/93

By: \_\_\_\_\_  
ESSIE COSMETICS, INC.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
CREATIVE NAIL DESIGN

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
JESSICA COSMETICS INTERNATIONAL, INC.

Dated: \_\_\_\_\_

entity named in the Litigation as of the execution date of this Agreement except for Professional Defendants.

21. Effective Date of Agreement. The terms and conditions of this Agreement are expressly contingent upon the fulfillment of the reimbursement conditions set forth in Paragraph 2. If those conditions are met, the Effective Date of this Agreement is September 27, 1993.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.

By: \_\_\_\_\_  
VITAL NAILS, INC./DEVELOP 10

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
OPI PRODUCTS, INC.

Dated: \_\_\_\_\_

By: *John W. [Signature]*  
ESSIE COSMETICS, INC.

Dated: 8/24/93

By: \_\_\_\_\_  
CREATIVE NAIL DESIGN

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
JESSICA COSMETICS INTERNATIONAL, INC.

Dated: \_\_\_\_\_

AUG 24 '93 11:50AM BAKER MCKENZIE

entity named in the Litigation as of the execution date of this Agreement except for Professional Defendants.

21. Effective Date of Agreement. The terms and conditions of this Agreement are expressly contingent upon the fulfillment of the reimbursement conditions set forth in Paragraph 2. If those conditions are met, the Effective Date of this Agreement is September 27, 1993.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.

By: VITAL NAILS, INC./DEVELOP 10

Dated: \_\_\_\_\_

By: OPI PRODUCTS, INC.

Dated: \_\_\_\_\_

By: ESSIE COSMETICS, INC.

Dated: \_\_\_\_\_

By: *[Signature]* CEO & General Counsel  
CREATIVE NAIL DESIGN

Dated: August 24, 1993

By: JESSICA COSMETICS INTERNATIONAL, INC.

Dated: \_\_\_\_\_

entity named in the Litigation as of the execution date of this Agreement except for Professional Defendants.

21. Effective Date of Agreement. The terms and conditions of this Agreement are expressly contingent upon the fulfillment of the reimbursement conditions set forth in Paragraph 2. If those conditions are met, the Effective Date of this Agreement is September 27, 1993.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates set forth below.

By: \_\_\_\_\_  
VITAL NAILS, INC./DEVELOP 10

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
OPI PRODUCTS, INC.

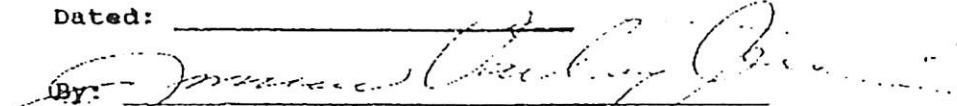
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By: \_\_\_\_\_  
ESSIE COSMETICS, INC.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
CREATIVE NAIL DESIGN

Dated: \_\_\_\_\_

By:  \_\_\_\_\_  
JESSICA COSMETICS INTERNATIONAL, INC.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
ORLY INTERNATIONAL, INC.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
AMERICAN INTERNATIONAL INDUSTRIES

Dated: \_\_\_\_\_

By: *Senay Dincel*  
AS YOU SOW

Dated: *12/6/93*

By: \_\_\_\_\_  
OFFICE OF THE ATTORNEY GENERAL,  
STATE OF CALIFORNIA

Dated: \_\_\_\_\_



SENT BY: S. F. OFFICE : 12-7-93 : 5:21PM :

BAKER MCKENZIE-

# 2 / 2  
8/24/93

By: Merion L. Clifford  
ORLY INTERNATIONAL, INC.

Dated: 8/24/93

By: AMERICAN INTERNATIONAL INDUSTRIES

Dated: \_\_\_\_\_

By: AS YOU SOW

Dated: \_\_\_\_\_

By: OFFICE OF THE ATTORNEY GENERAL,  
STATE OF CALIFORNIA

Dated: \_\_\_\_\_

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**FILED**  
San Francisco County Superior Court

OCT 4 - 1996

ALAN CARLSON, Clerk  
SUPERIOR COURT

BY: *[Signature]*  
Deputy Clerk

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

AS YOU SOW, a non-profit corporation,  
Plaintiff  
v.  
NOXELL CORPORATION, et al.,  
Defendants.  

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AS YOU SOW, a non-profit corporation,  
Plaintiff  
v.  
ORLY INTERNATIONAL, INC., et al.,  
Defendants.

No. 950766

JUDGMENT ON STIPULATION  
FOR ENTRY OF JUDGMENT

In the above-entitled action, plaintiff As You Sow and defendants Essie Cosmetics, Inc.; Creative Nail Design; Vital Nails, Inc./Develop 10; Jessica Cosmetics International, Inc.; Orly International, Inc.; and OPI Products, Inc., having stipulated through their respective representatives, that

1 judgment be entered pursuant to the terms of the settlement  
2 agreement entered into by the parties on August 24, 1993, said  
3 stipulation being attached hereto,

4 IT IS HEREBY ORDERED that judgment be entered in  
5 accordance with the terms of the stipulation between the  
6 parties.

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Dated: JUN 23 1994

  
Judge of the Superior Court  
**OLLIE MARIE-VICTOIRE**