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CHANLER & ASSOCIATES

415 391 1157 P.02

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 10 AS YOU SOW

FILED

FEB 15 1995

HONORABLE J. RD HANSON
 MARIN COUNTY CLERK
J. Hanson Dep

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9
 10 IN AND FOR THE CITY AND COUNTY OF MARIN

12 AS YOU SOW, a non-profit)
 13 corporation,)
 14 Plaintiff,)
 15 v.)
 16 PRO-LINE PAINT CO., et al.,)
 17 Defendants.)

No. 162033
 STIPULATION FOR ENTRY OF
 JUDGMENT AND JUDGMENT ON
STIPULATION

28
d

ENTERED

FEB-07-1995 14:51

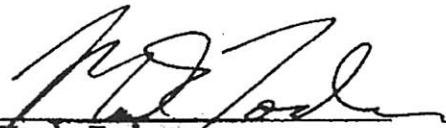
CHANLER & ASSOCIATES

415 391 1157 P.03

1
2 IT IS HEREBY STIPULATED, by and between plaintiff As
3 You Sow and defendant House of Kolor, Inc., through their
4 respective representatives, that judgment in the above-
5 entitled action be entered in accordance with the terms of the
6 settlement agreement between the parties, which is attached
7 hereto as Exhibit A.
8

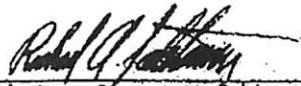
9
10 Dated: February 7, 1995

by:


Mark Todres
Attorneys for Plaintiff
AS YOU SOW

11
12
13
14 Dated: February 8, 1995

by:


Richard A. Saliterman
Attorneys for Defendant
HOUSE OF KOLOR, INC.

15
16
17
18
19
20 IT IS HEREBY ORDERED that judgment be entered in
21 accordance with the terms of the stipulation between the
22 parties.
23

24 Dated: February 14, 1995



Judge of the Superior Court

Exhibit A

SETTLEMENT AGREEMENT BETWEEN
HOUSE OF KOLOR, INC., A MINNESOTA CORPORATION,
AND
AS YOU SOW, A CALIFORNIA NON-PROFIT CORPORATION

THIS AGREEMENT is made and entered into this 30th day of January, 1995, by and between As You Sow, hereinafter sometimes referred to as "AYS", a California non-profit corporation whose registered corporate office is located at 1814 Franklin Street, Suite 710, Oakland, California 94612, and House of Kolor, Inc., a Minnesota corporation, hereinafter sometimes referred to as "House of Kolor", whose registered office is located at 2521 27th Avenue South, Minneapolis, Minnesota 55406.

WHEREAS, As You Sow, is a not-for-profit public interest foundation headquartered in California, and dedicated to promoting consumer awareness, protecting the environment and improving human health; and

WHEREAS, House of Kolor, Inc., is a Minnesota corporation which manufactures and distributes coating products for the paint, body and equipment industries; and

WHEREAS, AYS, through its legal counsel, made averments or allegations that some House of Kolor products shipped to California contain a chemical known as "toluene" and that thereby House of Kolor is potentially in violation of Health and Safety Code § 25249.6 for failing to warn purchasers of certain products that it sells in California that such products expose such users to toluene; and moreover, AYS, on September 15, 1994, provided the 60-day notice of alleged violation of the aforesaid Health and Safety Code § 25249.6 to House of Kolor; and

WHEREAS, House of Kolor steadfastly and resolutely denies that it is in violation of any code or engaged in any wrongdoing whatsoever, as alleged, and moreover, House of Kolor affirmatively alleges that it has never in its history been accused by any governmental authority or any person acting pursuant to any statute whatsoever of failure to comply with any law pertaining to the contents or the composition of its coating products; and

WHEREAS, House of Kolor does not desire to expend the legal resources and does not have the capacity to engage in protracted litigation in the State of California regarding the allegations that have been made against it, and simply desires to settle all matters while making no admissions of any nature whatsoever of any wrongdoing or impropriety in accordance with the terms of this Settlement Agreement.

NOW, THEREFORE, in exchange for One Dollar (\$1.00) and other good and valuable consideration tendered by each party hereto to

the other, and in exchange for the mutual covenants and promises herein contained, be it agreed between the parties hereto as follows:

1. House of Kolor, within 90 days of the execution of this Agreement, agrees that it shall not ship or cause to be shipped for sale in the State of California any of the products set forth in Attachment A which contain toluene as an element unless House of Kolor first complies with the procedures set forth for warning in Proposition 65 for each such product by either changing the product labels or by affixing a warning sticker that is prominently 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, and that bears the following statement:

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

The parties agree that the sample label (or sticker) attached hereto as Attachment B satisfies this requirement. The parties hereto also acknowledge that House of Kolor, by adding such label to its products or by complying any other covenant herein contained, does not in any respect admit any wrongdoing nor does it admit, among other things, that any of its products cause birth defects or other reproductive harm, or any other harm of any nature whatsoever. Moreover, House of Kolor has indicated that upon first receipt of written notice by legal counsel for AYS, on September 15, 1994, it immediately arranged for labels and otherwise took steps so as to, in good faith, avoid any doubt or any potential for any misunderstanding and to so label its products and so advise the distributors of its products in accordance with the warning.

2. House of Kolor agrees within 90 days of the execution of this Agreement, House of Kolor shall provide the following warning materials to its California distributors (it being understood that House of Kolor works through a distribution network tier and, for the most part, does not sell its product on a retail level); and it being further understood that House of Kolor asserts that its products are applied by professional paint sprayers wearing masks and who otherwise manage to ensure their safety and protection, in an effort to ensure that consumers receive Proposition 65 warnings for products that have already been shipped for sale in California:

a. A letter of instruction for placement and/or distribution of the warning materials;

b. A notice of acknowledgement postcard; and

c. Warning stickers printed in black ink on a white background measuring at least 5 cm. x 2 cm., displaying the following statement:

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

A copy of the instruction letter to distributors is attached hereto as Attachment C. A copy of the Notice and Acknowledgement postcard is attached hereto as Attachment D.

3. House of Kolor, without being deemed to make any admissions against its interests, and without acknowledging wrongdoing, agrees to contribute \$2,300 to AYS, which funds shall be divided between the Silicon Valley Toxics Coalition and the West County Toxics Coalition. The Silicon Valley Toxics Coalition is involved in numerous projects to educate the public about the environmental hazards of Silicon Valley industries, workplace exposure to toxic chemicals and corporate compliance with environmental laws. The West County Toxics Coalition is a multi-racial, multi-ethnic membership organization that provides environmental education to low income residents of Contra Costa County. This payment, which is made pursuant to Business and Professions Code §17203, is due on May 1, 1995.

4. In an effort to defray AYS' investigation fees and costs, expert fees and costs, reasonable attorneys' fees, and any other costs incurred as a result of investigating and bringing this matter to House of Kolor's attention and negotiating a settlement. House of Kolor shall pay AYS the sum of \$6,700.00. Payment shall be made in two installments. The amount of \$3,500.00 shall be paid pursuant to the first installment upon the entry and filing of a stipulated judgment to be approved pursuant to CCP § 664.6 with the Marin County Superior Court, State of California, in accordance with the terms of this Agreement. The second installment of the remainder shall be due on March 15, 1995 or 60 days after the entry and filing of the stipulated judgment, whichever date is later.

5. AYS, in consideration of the House of Kolor commitments and payments set forth herein, on its own behalf, its attorneys, employees, successors, assigns, predecessors, subrogees, principals, agents, consultants and insurers, does hereby release and forever discharge House of Kolor and those retailers and distributors of Products, as well as each of their successors, assigns, predecessors, stockholders, officers, directors, subrogees, subsidiaries, trustees, corporate parents, affiliates, board members, agents, attorneys, employees and consultants of and from any and all claims, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, obligations, liabilities and accounts of whatsoever kind, nature or description, direct or indirect, at law or in equity, in contract or tort or otherwise arising out of or relating, directly or indirectly, to the Products' compliance with Proposition 65, or arising from or relating to any facts or legal theories involving the Products' compliance with Proposition 65; it being the specific intent and purpose of the parties hereto that this settlement agreement and

release shall extend to any and all persons, corporations, associations, or other entities and to any and all matters aforesaid whether now known or unknown, which exist or might be claimed to exist at, or prior to the date hereof; and AYS, its attorneys, employees, successors, assigns, predecessors, subrogees, principals, agents, consultants and insurers, and each of them, expressly waive, release and relinquish any and all claims or rights to assert that any such matter, cause or thing of any kind or nature whatsoever has been, through oversight or error or intentionally or unintentionally, omitted with respect to the Products' compliance with Proposition 65.

House of Kolor, in consideration of the terms set forth herein, on its own behalf, its attorneys, employees, successors, assigns, predecessors, subrogees, principals, agents, consultants and insurers, does hereby release and forever discharge AYS, as well as each of their successors, assigns, predecessors, stockholders, officers, directors, subrogees, subsidiaries, trustees, corporate parents, affiliates, board members, agents, attorneys, employees and consultants of and from any and all claims, demands, actions, causes of action, duties, debts, sums of money, suits, reckonings, contracts, controversies, agreements, promises, damages, responsibilities, obligations, liabilities and accounts of whatsoever kinds, nature or descriptio, direct or indirect, at law or in equity, in contract or tort or otherwise arising out of or relating, directly or indirectly, to the Products' compliance with Proposition 65, or arising from or relating to any facts or legal theories involving the Products' compliance with Proposition 65; it being the specific intent and purpose of the parties hereto that this settlement agreement and release shall extend to any and all persons, corporations, associations, or other entities and to any and all of the matters claimed to exist at or prior to the date hereof; and House of Kolor, its attorneys, employees, successors, assigns, predecessors, subrogees, principals, agents, consultant and insurers, and each of them, expressly waive, release and relinquish any and all claims or rights to assert that any such matter, cause or thing of any kind or nature whatsoever has been, through oversight or error or intentionally or unintentionally, omitted with respect to the Products' compliance with Proposition 65.

6. The parties hereto agree to fully cooperate with one another to ensure the confidentiality of the negotiations and basis for the terms and provisions of this Agreement, and agree that such shall not be published or circulated to any person, party, private or public entity or governmental authority, except as required by express provisions of law, and except as expressly contemplated herein (i.e. this agreement itself shall be of public record).

7. In the event that a dispute arises with respect to any provisions of this Agreement, the prevailing party shall be entitled to recover their costs and reasonable attorneys' fees.

8. While various statutes in issue are referred to in this

Agreement, California statutes as pertain in California and as they pertain to certain statutes, shall be applied. The remaining terms and conditions of this Agreement shall be determined in accordance with choice of law rules, and they shall not be deemed to be any consent or admission of jurisdiction or venue by House of Kolor pertaining to any matter herein set forth, except as provided for the stipulated entry of judgment in preceding paragraph 4.

9. All notice and correspondence between the parties shall be directed as follows:

To AYS: Mark Todres, Esq.
 Chanler & Associates
 1700 Montgomery Street, Suite 315
 San Francisco, California 94111
 (415) 391-1122

To House of
Kolor, Inc.: Mr. Jon Kosmoski and Ms. Pat Kosmoski
 House of Kolor, Inc.
 2521 27th Avenue South
 Minneapolis, Minnesota 55406
 (612) 729-1044

and

Richard A. Saliterman, Esq.
Saliterman & Siefferman
1000 Northstar East
608 Second Avenue South
Minneapolis, Minnesota 55402
(612) 339-1400

10. Nothing in this Agreement shall be construed as an admission by House of Kolor of any fact, finding, issue of law, or violation of law, regardless of whether it may sound to be such, nor shall such compliance with this Agreement constitute or be construed as an admission by House of Kolor of any fact, finding, conclusion, issue of law, or violation of law, rule, or regulation in California or in any other jurisdiction throughout the world. However, this paragraph shall not diminish or otherwise affect the obligation, responsibilities, and duties of House of Kolor which it has voluntarily undertaken by signing this Agreement.

11. 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: *Senay*
As You Saw

Dated: *1/30/95*

AGREED TO:

By: *Jan R. Kosmoski* - Res.
House of Kolor, Inc.

Dated: *1-16-95*

c:\ras\kosmoski\stlmt-ag.hok 01/13/95 3:20pm - dg

ATTACHMENT A

[list of the Products]

1. Urethane base coats.
2. Urethane reducers.

AK

ATTACHMENT B

[sample label and/or sticker]

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

JPR

ATTACHMENT C

[House of Kolor Letterhead]

IMPORTANT LEGAL NOTICE

Date:

Attention: Sellers of House of Kolor Products

Subject: Court Ordered California Proposition 65 Warnings
for Products Containing Toluene

This letter is to advise you that the House of Kolor products listed in Attachment A to this letter can expose users of those products to TOLUENE, a chemical known to the State of California to cause birth defects or other reproductive harm. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") and by Court Order, the purchasers of the products listed on Attachment A must be given clear and reasonable warning of toluene's reproductive harm.

Although House of Kolor has now begun reformulating the Products to remove toluene and/or labelling the listed products with proper warnings, some of the listed products entered the chain of distribution prior to House of Kolor's reformulation and/or label change. In order to provide the required warnings for such products, you must take certain actions to ensure that purchasers of those 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) Five-hundred (500) 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 contains toluene but 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 potentially subject you to legal action by various environmental groups or the California Attorney General, 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. If, within 15 days of this mailing, we do not receive the return postcard with your signature indicating that you have received the enclosed materials and are prepared to provide the required Proposition 65 warning, we will stop supplying you with any of the products on the enclosed list until such time as you will agree in writing to provide the required warning.

Should you have any questions or concerns about this matter, please do not hesitate to contact Jon or Pat Kosmoski by telephone at (612) 729-1044, or by mail at the above address. In addition, we will be glad to supply additional warning stickers if requested.

Sincerely,

[Title]

ATTACHMENT D

RETURN POSTCARD FROM RETAILERS

* * * *

The undersigned certifies that this distributor has received (a) the Important Legal Notice letter regarding Proposition 65 warning requirements, (b) the list of House of Kolor products requiring a warning, and (c) 500 warning stickers. The undersigned further certifies that this distributor will comply with Proposition 65 warning requirements by affixing the warning stickers provided to us in the manner directed.

[Name & Title]

[Retailer Name]

[Address]

Please send me _____ additional stickers.