

SETTLEMENT AGREEMENT

On August 26, 1993 in San Francisco, California, As You Sow ("AYS"), and Noxell Corporation and Max Factor & Company ("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

Defendants are companies that distribute nail enamel products containing toluene which are sold in California; 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 § 25249.8; and

A list of 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 defendants and the appropriate public enforcement agencies with a document entitled "60-Day Notice" which provided 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 sued defendants in San Francisco Superior Court on behalf of California nail enamel users, in an action entitled As You Sow v. Revlon, et al. (No. 950766) (the "Case"), alleging violations of Health & Safety Code § 25249.5 et seq. ("Proposition 65") and Business & Professions Code § 17200 et seq.; and

Defendants have filed general denials of all claims asserted in the Case and have alleged that certain toluene exposure studies establish that the Products are statutorily exempted from the warning requirement of Proposition 65; and

Defendants believe, based on the available scientific evidence, that the Products are safe for the average consumer's home use and that the defendants' labeling of the Products distributed in California since January 1, 1991 has complied with all applicable laws, including Proposition 65.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Product Reformulation Commitment.

a. Defendants agree to promptly commence arrangements for the reformulation and production of the Products so as to eliminate the presence of toluene as an intended ingredient, and beginning April 30, 1994 (the "April 30, 1994 Shipping Deadline"), not to ship (or cause to be shipped) any nail enamel products into the State of California which contain toluene as an intended ingredient, subject to the following provisos:

(1) If AYS resolves its dispute with another defendant in the Case (whether on the basis of a scientific study

or otherwise) in a manner which provides that certain nail enamel or nail care products containing a certain percentage of toluene (the "Settlement Percentage") may be sold in California without a Proposition 65 warning, or if any determination is made by or under the authority of the State of California or by any court in California that a specified level of toluene in nail enamel and nail care products is exempt from the Proposition 65 warning requirement (the "Official Percentage"), then defendants shall be entitled to distribute nail enamel and nail care products in California (including the Products) that contain toluene at or below the Settlement Percentage or the Official Percentage, whichever is higher.

(2) If AYS resolves its dispute with another defendant in the Case in a manner which provides that certain nail enamel or nail care products containing toluene as an intended ingredient may be shipped (or caused to be shipped) into California through a date later than April 30, 1994 (the "Most Favored Nation Shipping Deadline"), then the April 30, 1994 Shipping Deadline hereunder shall be vacated and replaced herein by the Most Favored Nation Shipping Deadline.

2. Mutual Waiver and Release.

a. AYS, acting on behalf of itself and the California general public as specified in Health & Safety Code § 25249.7(d), covenants not to sue and waives all rights to institute further action against or claim attorney's fees and costs from defendants, defendants' parent companies, corporate affiliates and subsidiaries, the past, present and future

retailers and distributors of the Products, and each of their officers, directors, affiliates, employees, servants, administrators, accountants, investigators, agents, attorneys, representatives, successors and assigns on any theory whatsoever for failure to provide Proposition 65 toluene warnings for the Products (collectively, the "Defendant Releasees"). AYS hereby represents to defendants that AYS will not attempt to enforce any contract, agreement or understanding with respect to the Products between AYS and any retailer or distributor of the Products, and AYS accordingly acknowledges that distributors and retailers are free to distribute and sell any of the Products distributed by defendants in conformity with this Agreement, including toluene-containing Products shipped by defendants prior to the April 30, 1994 Shipping Deadline or the Most Favored Nation Shipping Deadline, whichever is later. AYS specifically covenants not to sue or take any action against the retailers and distributors of the Products for distribution or sale of toluene-containing Products shipped by defendants in conformity with this Agreement, including toluene-containing Products shipped by defendants prior to the April 30, 1994 Shipping Deadline or the Most Favored Nation Shipping Deadline, whichever is later. AYS further agrees to give written notification of the existence, terms and conditions of this Agreement to each of the retailers and distributors of the Products whom AYS has provided notice of its intent to sue for alleged violations of Proposition 65.

b. 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 (including the Defendant Releasees) 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 enamel containing toluene except for the Products; or (ii) any bulk supplier of nail enamel or any nail enamel ingredient, other than the Defendant Releasees.

c. By this Agreement, defendants (each acting on its own behalf and on behalf of its parent companies, subsidiaries, affiliates, successors, assigns, officers, directors, employees, accountants, investigators, agents, attorneys and representatives) release all claims and waive 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 Case) against AYS and any of AYS' officers, directors, agents, attorneys, accountants, investigators, representatives, heirs, successors and assigns (collectively the "AYS Releasees") based on any statute, provision of common law or any theory or issue whatsoever for any and all actions or statements (and failures to act or state something) made by any of the AYS Releasees up to the date of the making of this Agreement, whether in the course of seeking enforcement of Proposition 65's warning requirement for nail enamel containing toluene or arising out of the parties' relations in these matters or relating to the Case or the subject

matter of this Agreement. Defendants further covenant not to sue any of the AYS Releasees based on any claim so released.

d. AYS and defendants hereby acknowledge that they are aware that they may hereafter discover facts in addition to or different from those which they now know or believe to be true with respect to the subject matter of this Agreement, and that they may have sustained or may yet sustain damages, costs or expenses that are presently unknown and that relate to the claims that are the subject of this Agreement, but that they intend to fully, finally and forever settle any and all disputes and differences, asserted and unasserted, known and unknown, suspected and unsuspected, which now exist, may exist, or have existed, with respect to the subject matter of this Agreement. In light of the foregoing, AYS and defendants waive any and all rights which it may have under any state or federal statute or common law principle that would otherwise limit the effect of this Agreement to claims known or suspected at the date of this Agreement, and AYS and defendants specifically waives the provisions and the benefits of the provisions of California Civil Code Section 1542, as follows:

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.

3. Stipulation For Entry of Judgment. Upon the execution of this Agreement, AYS and defendants shall jointly sign and file in the Case a Stipulation for Entry of Judgment in the form attached hereto as Exhibit B.

4. Reimbursement of Costs; Waiver of Penalties.

a. AYS agrees that, in consideration of the mutual covenants and agreements contained herein, no fines or other sanctions shall be imposed now or hereafter upon defendants, their corporate parents, subsidiaries and affiliates, or the retailers and distributors of the Products for their distribution and/or sale of the Products without a Proposition 65 warning, including their distribution and/or sale of the Products without a Proposition 65 warning pursuant to the terms of paragraph 1 of this Agreement.

b. Defendants agree that, in consideration of the mutual covenants and agreements contained herein, defendants shall reimburse AYS its costs and expenses in the Case in the amount of \$37,500, which shall be deemed to include defendants' reasonable share of AYS' reasonable attorney's fees, expert fees and costs incurred in the Case. Such reimbursement shall be made contemporaneously with the execution of this Agreement.

5. Enforcement. If any of the parties to the Agreement fails to comply with any provision of this Agreement including, but not limited to, the reformulation commitment set forth in paragraph 1.a, 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 the Case for purposes of enforcing this Agreement, for an order enforcing the terms of the Agreement and ordering all other remedies available under the law. In such event, any offending party shall be subject to orders of the court to remedy such a

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 the Agreement.

6. The parties hereto 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.

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

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

As You Sow
c/o Clifford A. Chanler
Chanler & Associates
1700 Montgomery Street, Third Floor
San Francisco, CA 94111

11. The undersigned represent that they are authorized to execute this Agreement on behalf of their respective parties and have read, understood and agreed to all of the terms and conditions of this Agreement.

AGREED TO:

As You Now

BY: *Benjamin S. ...*

Date: August 31, 1993

ITS: Executive Director

AGREED TO:

Max Factor & Co.

BY: *Carroll A. Bodie*
Carroll A. Bodie

Date: August 27, 1993

ITS: Vice President

Noxall Corporation

BY: *Carroll A. Bodie*
Carroll A. Bodie

Date: August 27, 1993

ITS: Vice President

EXHIBIT A

COVER GIRL

Nailslicks/Sheerslicks
Nail Polish
(0.4 fl. oz.)

NIS Code

Adobe Rose	41765
Amethyst	16148
	12352
Apricot Velvet	64957
	85020
Atomic Rose	41830
Beach Blush	55112
Bermuda Pink	41806
	41640
Bronzed Peach	41822
	41666
Burnished Copper	41508
	41608
	41765
Cabernet	07811
	09471
Calypso Coral	07279
	17279
	15649
	18649
Cantaloupe	41773
Caribbean Coral	04039
	04309
	05117
	05175
Champagne Blush	05117
	03864
Chantilly	05068
	03799
Cherry Brandy	07821
	09481
Chili Pepper	05191
Chocolate Milkshake	55112
	55089
Cinnamon Rose	09491
	07831
Classic Red	04896
	05183
Clear Ice	03913
	06187
	05167
Congo Coral	41765
	41608
Country Rose	04317
	11338

Nailslicks/Sheerslicks
Nail Polish
(0.4 fl. oz.)

NIS Code

Cranberry Cream	03905
	05159
Crushed Cranberry	07851
	09511
Deep Sea Coral	05109
	03848
Desert Mirage	17245
	18615
Fabulous Fuchsia	03880
	05133
Firehouse Red	16156
	12360
French Lilac	16122
	12336
Golden Garnet	64999
Goldrush Red	41575
	41731
Hibiscus	41749
	41583
Honey Glaze	41773
Honey Plum Glow	17237
	18937
	18607
Iceberry	17253
	15623
	18623
Ice Blue Pink	65038
Iced Cantalope	41616
	41773
Iced Cappucino	18631
Iced Cherry	41781
Iced Mocha	05216
	04929
Iced Rosewood	05076
	03814
	05078
In the Buff	12336
	16122
In the Nude	12352
	16148
It's Your Mauve	18631
Make Mine Cappuccino	41640
	41806
Mardi Gras Pink	41591
	41757
Mauvelicious	55071
	56194
	55104
Mega Mango	41773

Nailslicks/Sheerslicks
Nail Polish
(0.4 fl. oz.)

NIS Code

Ming Rose	55104
	55071
Misty Mauve	06305
	06789
	06769
Orient Expresso	41781
Pacific Pink	12378
	16164
Passion Plum	04929
	05216
Peach Chiffon	41781
	41624
Peach Plum	41632
	41789
	41799
Pearliest Pink	05208
	04911
Peek-a-Boo Pink	03848
	06109
	05109
Perfectly Pumpkin	41822
Persian Rose	18631
	17261
Pink Cashmere	03830
	05082
	05092
Pink Snow	41814
Poisonberry	65004
	64931
Poppy	18649
	17279
Porcelain Pink	18607
	17237
Pretty in Pink	64981
	65054
Pure Peony	64949
	05012
	65012
Rambling Rose	06321
	08777
	06777
Raspberry Ice	55097
Ravishing Russet	65046
Red Brick	07841
	09501
Red to Remember	15156
	16158
	16156

Nailslicks/Sheerslicks
Nail Polish
(0.4 fl. oz.)

NIS Code

Regal Ruby	03799
	05098
	05068
Remarkable Red	41749
Rich Garnet	07801
	09461
Rose Gold	41682
	41648
	41848
Rose Quartz	41690
	41865
	41856
Santa Fe Rose	16164
Satin Gold Coral	41814
Satin Mauve	17287
	18657
Sheer Ivory	64923
	64999
Sheer Opal	55063
	55097
Sheer Pearls	41591
	41757
Sheer Petal	64965
	65038
Sheer Sandalwood	41715
Sheer Tulip	64973
	65046
Sheerly Pink	65020
Shimmering Shell	41715
	41559
Shrimp Silk	03872
	05125
Sienna Clay	64923
	41830
Snowflake Frost	03781
	06050
	05050
So Beige	65054
Stardust Peach	05753
	03806
Starlight Pink	
Sterling Mauve	05208
Sundrenched Coral	41814
	41658
Sunlit Spice	05125
Tangerine	41830
	41874
Tawny Peach	06298
	06751

Nailslicks/Sheerslicks
Nail Polish
(0.4 fl. oz.)

NIS Code

T-Bird Red	18615
	17245
Tea Rose	05133
	03880
Terra Cotta	05191
	04903
Think Pink	05117
Tropical Punch	09451
	07791
Twilight Mauve	41707
	41864
White Lace	05753
	06753

Professional One Coat
Nail Polish
(0.5 fl. oz.)

NIS Code

Almost Almond	69436
Almost Pink	65666
Cameo	69452
Carnation Petal	69410
Clear-In-A-Flash	65575
Copper Glow	65632
Cranberry	65640
Desert Rose	65608
Frankly Scarlet	65567
Gypsy Rose	65549
Honey Glaze	65690
Iced Blush	65640
Mad About Melon	65690
Moon Dance Pink	65591
Pink Champagne	65674
Plumblush	69428
Plum Loco	65541
Praline Pink	65591
Quick Silver	65682
Really Red	65666
Sienna Clay	69444
Silk Blossom	69428
Smokey Topaz	65616
Sugar Plum Ice	65583
Sunkissed Coral	65658
Twilight Rose	65624

Salon Solutions

Nail Care

(0.38 fl. oz.)

NIS Code

Body-Building Acrylic Strengthener	71887
Tough Nails Hardener	71861
Anti-Chip Protecting Topcoat	71879
Perfect Surface Basecoat	71853
Moisture-Rich Hydrating Basecoat	76556
Quick Shine Nail Finish	76564
No Smudge Quick Dry	71895
Nail Treatment Fluid	71828
Total Care Nail, Cuticle and Hand Creme	71902
Smooth Cuticle Pumice Creme	71910

CLARION

Pure Performance

Nail Polish

(0.5 fl. oz.)

NIS Code

Azalea	61953
Begonia	61789
Bermuda Sunset	61995
Cabernet	61680
Calypso	61797

Pure Performance

Nail Polish

(0.5 fl. oz.)

NIS Code

Camellia	61797
Cinnamon	61739
Classic Red	61672
Coral	61804
Crimson	61854
Crystal Cabernet	61838
Delicate Peach	61896
French Berry	61979
Geranium	61870
Highland Heather	61987
Iced Peppermint	75839
Mango	61937
Melon	61838
Mocha	61846
Natural Mauve	78555
Nutmeg	61979
One Perfect Rose	61713
Pale Shell	61965
	61995
Peppermint	61820

Pure Performance
Nail Polish
(0.5 fl. oz.)

NIS Code

Petal Pink	61961
Pink Carnation	61979
	61979
Poppy	61862
Raspberry	61705
Red Brick	75805
Rose Taffeta	61937
	61937
Ruby	61763
Russet	75847
Sea Shell	75813
Sierra Rose	61929
Simply Pink	61812
Simply Scarlet	61862
Soft Dusk	61987
Tea Rose	61896
Tender Tulip	25821
Tulip	61771
Victoria Mauve	61903
Wild Ginger	61755
Wood Violet	61911

Nail Care
(0.5 fl. oz.)

NIS Code

Fault Fixer	76382
Fortifying Base	76407
Invisible Strength	76449
Polish Lock	76415
Shine Booster	76423
Nail Rebound	76374
Toned & Tough	76390
Cuticle Smoother	76431

MAX FACTOR

Diamond Hard
Nail Polish
(0.5 fl. oz.)

NIS Code

A Dozen Roses	00014
Antique Mauve	00043
Azalea	00017
Barely Ivory	00972
Berried Mauve	00016
Blackberry Brandy	00046
Bowtie Red	00621

Diamond Hard
Nail Polish
(0.5 fl. oz.)

NIS Code

Cameo	00002
Chilled Wine	00044
Classic Coral	00803
Crystal Clear	00001
Curtain Call Red	00027
Eureka Paprika	00980
Fantasy Rose	00804
Faux Pearle	00029
In The Buff	00975
Knockout Pink	00288
Lavender Lace	00040
Lavender Blues	00015
Lilac Blush	00974
Madly Mauve	00016
Mango	00990
Mauve Taffeta	00039
Moonlit Mauve	00805
Naughty Rose	00976
Pale Fire	00291
Peach Sorbet	00618
Pink Hollywood	00012
Pink Violets	00619
Pink Potpourri	00011
Pink Tease	00971
Pink Pizazz	00287
Pink Lights	00751
Pinkermelon	00536
Pinkermelon	00535
Plumberry	00021
Precious Metal	00031
Raisin	00926
Rare Amethyst	00089
Red Hot Pink	00286
Redhot Red	00025
Rose Dusk	00006
Rose Parade	00750
Rose Garden	00609
Rosewine	00020
Sandstone	00003
Scarlet	00067
Sexy Peach	00973
Shrimp	00672
Silverscreen	00048
Solid Gold Rose	00078
Sunset Coral	00086
Tea Rose	00013
Vintage Wine	00022
Watermelon	00892

Diamond Hard
Nail Polish
(.34 fl. oz.)

NIS Code

24 Karat Rose	00272
A Dozen Roses	00239
Antique Mauve	00273
Antiqued Pink	00241
Azalea	00236
Barely Ivory	00225
Beaujolais	00275
Bistro Red	00253
Blackberry Brandy	00280
Chilled Wine	00281
Classic Coral	00235
Crystal Clear	00294
Curtain Call Red	00230
Fantasy Rose	00266
Faux Pearle	00285
Firebrand	00255
Firewood	00286
Framboise	00248
Fresh Rose	00228
Indian Spice	00293
Java	00261
Lavender Lace	00271
Madly Mauve	00233
Naughty Rose	00224
Orchid Mist	00264
Papaya	00256
Paris Red	00284
Peach Flambe	00292
Pink Gold	00270
Pink Ribbon	00267
Pink Potpourri	00244
Plum Wine	00249
Precious Metal	00289
Premier Red	00252
Raisin	00266
Rare Amethyst	00263
Rose Garden	00243
Rose Dusk	00259
Rosewine	00231
Rosewood	00258
Sandstone	00260
Scarlet	00283
Sheerly Pink	00227
Sheerly Peach	00226
Smashing Red	00251
Softspoken Mauve	00246
Spiced Sienna	00262
Striking Red	00237
Sunrise Coral	00287
Tangelo	00257

Diamond Hard
Nail Polish
(.34 fl. oz.)

NIS Code

Teasing Pink	00245
Tropical Pink	00242
Vintage Wine	00238
Vivid Mauve	00247
Wild Cherry	00250

Nail Care
(0.5 fl. oz.)

NIS Code

Diamond Hard Base & Top Coat	00653
Fortifying Base Coat	00098
Shine & Shield Top Coat	00099
Quick Set Nail Dry	00097
Twice the Wear Nail Care	15491
Twice the Wear 6 pc. Chipper	47024
Nail Think	14665
2nd Nail Nail Saver	13839

1 the Settlement Agreement between the parties, which is attached
2 hereto as Exhibit A.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

DATED: _____

CHANLER & ASSOCIATES

Clifford A. Chanler
Attorneys for
As You Sow

DATED: _____

NORMAN C. HILE
WILLIAM P. KEALEY
ORRICK, HERRINGTON & SUTCLIFFE

Norman C. Hile
Attorneys for Max Factor & Co.
and Noxell Corporation

EXHIBIT A TO STIPULATION

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

AS YOU SOW, a non-profit)	No. 950766
corporation,)	
)	JUDGMENT ON STIPULATION FOR
Plaintiff,)	<u>ENTRY OF JUDGMENT</u>
)	
v.)	
)	
NOXELL CORPORATION et al.,)	
)	
Defendants.)	
)	
)	
)	

In the above-entitled action, plaintiff As You Sow and defendants Noxell Corporation and Max Factor & Co., having stipulated through their respective representatives that judgment be entered into pursuant to the terms of the Settlement Agreement (the "Agreement") entered into by the parties and dated August 26, 1993, a copy of which is attached hereto, and

Having considered the matter and finding good cause

///
///
///

1 therefor, IT IS HEREBY ORDERED THAT judgment be entered and given
2 effect in accordance with the terms of that Agreement.

3

4 DATED: _____

5

6

Judge of the Superior Court

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26