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FILED
San Francisco County Superior Court
NOV 27 1995
ALAN CARLSON, Clerk
By: Walter E. [Signature]
Deputy Clerk

5 Attorneys for Plaintiff
6 AS YOU SOW

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 IN AND FOR THE COUNTY OF SAN FRANCISCO
9

10 AS YOU SOW, a non-profit) Case No. 971350
11 corporation,)
12 Plaintiff) JUDGMENT ON STIPULATION
13 v.) FOR ENTRY OF JUDGMENT
14 ECLECTIC PRODUCTS, INC.; MEGA)
15 POWER, INC.;)
16 and DOES 1 through 1000,)
17 Defendants.)

18 In the above-entitled action, plaintiff As You Sow
19 and defendant Mega Power, Inc., having stipulated through
20 their respective representatives, that judgment be entered
21 pursuant to the terms of the settlement agreement entered into
22 by the parties, said stipulation being attached hereto,

23 IT IS HEREBY ORDERED that judgment be entered in
24 accordance with the terms of the stipulation between the
25 parties.

26 Dated: October 11/22, 1995

[Signature]
Judge of the Superior Court

27
28

SETTLEMENT AGREEMENT

On August 24, 1995 in San Francisco, California, As You Sow ("AYS") and Mega Power, Inc. ("Mega Power") 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

Mega Power is a Florida company that currently distributes automobile maintenance products, including "Mega Power Brake Cleaner #31," which contains tetrachloroethylene (perchloroethylene) (the "Product"); and

On April 1, 1988, tetrachloroethylene (perchloroethylene CAS# 127184) was officially listed by the State of California as a chemical known to cause cancer, pursuant to Health & Safety Code §25249.8 ("Proposition 65"); and

The Product has been distributed by Mega Power for sale and/or use in California since April 1, 1989; and

On March 17, 1995, AYS served Mega Power with a document entitled "60-Day Notice" which provided Mega Power with notice that it was allegedly in violation of Proposition 65 for failing to warn purchasers that "Mega Power Brake Cleaner #31," exposes users to tetrachloroethylene (perchloroethylene); and

In response to the 60-Day Notice, Mega Power revised the label of the Product to comply with Proposition 65 and undertook review of all Mega Power Products for the purpose of complying with Proposition 65; and

On July 27, 1995, AYS filed its complaint entitled As You Sow v. Eclectic Products, Inc.; Mega Power, Inc.; et al. (No. 971350) in the San Francisco Superior Court alleging violations of Business & Professions Code §17200 and Health & Safety Code §25249.6 on behalf of individuals in California who allegedly are exposed to certain Proposition 65-listed chemicals included in the Product manufactured by Mega Power; and

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Product Labelling.** Mega Power agrees that as of January 1, 1996, it shall not ship (or cause to be shipped) the Product for sale or use in the State of California unless each such Product contains the following warning statement on its label:

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

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. An exemplar of a proper label is attached hereto as Exhibit "A".

2. **Products in Commerce.** Mega Power agrees that by January 1, 1996, it shall provide the following warning materials to its customers that Mega Power knows or has reason to believe sell or use the Products in California in an effort to ensure that users receive Proposition 65 warnings for Products that have not been labelled pursuant to paragraph 1: (a) sufficient warning stickers; (b) a Notice letter providing instructions for the placement of the stickers; and (c) a Notice and Acknowledgment letter. The stickers shall be printed in black ink on a white background, be at least 4 cm by 1 cm, and display the following statement:

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

Exemplars of proper warning stickers are attached hereto as Exhibit "B". The Notice letter is attached hereto as Exhibit "C". The Notice and Acknowledgment letter is attached hereto as Exhibit "D". After 15 days, if a customer has not returned the Notice and Acknowledgment postcard, Mega Power shall suspend shipments of the Products to such retailer until such customer agrees to place the stickers on the Products.

3. **Settlement Amount.**

3.1. **Penalties.** Pursuant to Health & Safety Code §25249.7(b), Mega Power shall pay a civil penalty of \$500 upon execution of this Agreement. Penalty monies shall be apportioned by AYS in accordance with Health & Safety Code §25192.

3.2. **Restitution and Investigation Costs.** Mega Power agrees to pay \$4,700 to AYS upon execution of this Agreement. The restitutionary component of this amount, made pursuant to Business & Professions Code §17203, shall be transferred to the West County Toxics Coalition. 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 Mega Power's attention, litigating and negotiating a settlement in the public interest.

4. **Material Safety Data Sheets.** Beginning January 1, 1996, Mega Power shall generate MSDSSs for Products so that the warnings will be consistent in wording with the on-label warning language required by ¶1. Final printed MSDSSs incorporating the revised warnings will begin to be distributed in the normal course of business but, in any event, these shall be distributed no later than January 1, 1996.
5. **AYS Release.** AYS, by this Agreement, waives all rights to institute action against Mega Power, its distributors or retailers which sell Mega Power's Products, whether under Proposition 65, Business & Profession Code §§17200 et seq., or any other statute or common law claim based on Mega Power's failure to warn consumers about exposure to tetrachloroethylene from the Product.
6. **Mega Power Release.** Mega Power, by this Agreement, waives all rights to institute any form of legal action against AYS, its members, officers, directors, attorneys and representatives (the "AYS Releases") based on any statute or provision of common law and for all actions or statements made by the AYS Releases in the course of seeking enforcement of Proposition 65 against Mega Power.
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. **Attorney's 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. **Stipulated Judgment.** The parties shall file a stipulated judgment to be approved pursuant to CCP §664.6 by the San Francisco County Superior Court in accordance with the terms of this agreement.
10. **Governing Law.** The terms of this Agreement shall be governed by the laws of the State of California.
11. **Correspondence.** All correspondence to AYS shall be mailed to:

Hernan G. Sanhueza, Esq.
Chanler & Associates
1700 Montgomery Street, Suite 110
San Francisco, CA 94111

All correspondence to Mega Power shall be mailed to:

J. David Haynes, Esq.
Sugar Creek Professional Center
10225 Ulmerton Rd.
Building 11
Largo, FL 34641

12. **No Admission.** Nothing in this Agreement shall be construed as an admission by Mega Power 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 Mega Power of any fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not diminish or otherwise affect the obligation, responsibilities, and duties of Mega Power under this Agreement.
13. **Authority to Execute.** 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:

AGREED TO:

By: Larry Macken
As You Sow

By: [Signature]
Mega Power, Inc.

Date: 9/26/95

Date: 8-24-95

EXHIBIT A

(Attach Mega Power label here)

MEGA POWER
31
DECREASES ON CONTACT FOR ALL TYPES OF BRAKES
FAST-ACTING
Brake Cleaner
CAUTION
VAPOR HARMFUL - CONTAINS UNDER PRESSURE
NET WEIGHT 20 OZ 57 g

MEGA POWER
31
Brake Cleaner
CLEANS BRAKE, CLUTCH & ELECTRICAL PARTS
REMOVES BRAKE FLUID, GREASE & OIL • LEAVES NO RESIDUE • EFFECTIVE ON BOTH DRUM AND DISC ASSEMBLIES • ELIMINATES DISC BRAKE SQUEAL AND CHATTER • DOES NOT CONTAIN CARBON TETRACHLORIDE OR SILICONES • NO DISASSEMBLY REQUIRED
DIRECTIONS FOR CLEANING
1. Protect rubber brake parts from accidental overspray when application.
2. Thoroughly spray MEGA POWER 31 Brake Cleaner onto parts and allow to run off.
3. Let air dry or dry with a soft cloth.
4. Repeat application if necessary.
5. Use the same process for cleaning clutches and electrical parts.
NOTE: Contains Tetrahydrofuran, a chemical known to the State of California to cause cancer. Formulated and Manufactured for MEGA POWER INCORPORATED CLEARWATER, FL 34622
DANGER: Contents under pressure. Do not puncture, incinerate or expose above 120° F. Exposure to fire or prolonged temperatures can cause bursting.
GAS FLAMMABLE Vapor harmful. Contains 1,1,1 Trichloroethane and Tetrahydrofuran. Use only in well-ventilated areas. Avoid prolonged or repeated breathing of vapor or spray mist. Remove containers from use immediately. Replace covers on containers after each use. Wipe up spills. Avoid Chloroform, a substance which may pose health and environmental by degrading into the upper atmosphere.
FIRST AID: - IF SWALLOWED, call your nearest hospital emergency room or physician immediately for instructions. IN CASE OF EYE CONTACT, immediately flush with water for at least 15 minutes. Irritation persists, get medical attention.
KEEP OUT OF REACH OF CHILDREN

NEW LABEL

EXHIBIT "B"

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

EXHIBIT C

[Mega Power Letterhead]

IMPORTANT LEGAL NOTICE

Date:

Attention: Customers of Mega Power

Subject: California Proposition 65 Warnings for Mega Power Products

The following Mega Power product exposes users to TETRACHLOROETHYLENE (PERCHLOROETHYLENE), a chemical known to the State of California to cause CANCER:

Mega Power Brake Cleaner #31

Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), the purchasers and/or users of this product must be given clear and reasonable warning of this chemicals' carcinogenicity.

Although Mega Power has begun labeling and stickering the products with proper warnings, some of your inventory may not contain such warnings. Until the labeling change is completed, you must take certain actions to ensure that users of the products receive Proposition 65 warnings, as follows:

Affix a warning sticker to the cap of each product which 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 subject you to legal action by the California Attorney General, wherein monetary penalties of up to \$2,500 per violation could be sought.

Return the enclosed postcard affirming your compliance with Proposition 65's warning requirements for the listed product. If, within 15 days of mailing, we do not receive the return post card 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 product until such time as you will agree in writing

to provide the required warning or until the products have been labeled by us with the proper warnings.

Should you have any questions or concerns about this matter, please do not hesitate to contact Mega Power, Inc. at 1-813-855-6664 by phone, or by mail at the above address. In addition, we will be glad to supply additional warning stickers if requested.

Sincerely,

Title

EXHIBIT D

ACKNOWLEDGEMENT LETTER FROM CUSTOMERS

* * * *

The undersigned certifies that this customer has received (a) the Important Legal Notice letter regarding Proposition 65 warning requirements and (b) warning stickers. The undersigned further certifies that this customer will comply with Proposition 65 warning requirements by affixing the warning stickers provided to them in the manner directed.

[Name & Title]

[Customer Name]

[Address]

Please send me _____ additional stickers.