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FILED

NOV 18 1996

8 Attorneys for Plaintiff
9 AS YOU SOW

JOHN P. MONTGOMERY
Court Executive Officer
MARIN COUNTY COURTS
By: P. Fan, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SAN MARIN

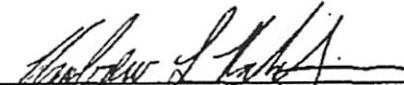
12 AS YOU SOW, a non-profit)
13 corporation,)
14)
15 Plaintiff,)
16)
17 v.)
18)
19 QUEST CHEMICAL CORPORATION, and)
20 DOES 1 THROUGH 2000)
21)
22 Defendants,)
23)
24)
25)
26)
27)
28)

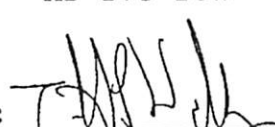
No. 168160

STIPULATION FOR ENTRY OF
JUDGMENT AND JUDGMENT ON
STIPULATION

ENTERED

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

7
8 Dated: ~~October~~ ^{November} 5, 1996 By: 
9 Andrew L. Packard, Esq.
10 Attorneys for Plaintiff
AS YOU SOW

11 Dated: ~~October~~ ^{Nov.} 5, 1996 by: 
12 Timothy P. Walker, Esq.
13 Attorneys for Defendant
QUEST CHEMICAL CORPORATION

14
15 IT IS HEREBY ORDERED that judgment be entered in
16 accordance with the terms of the stipulation between the
17 parties. - EXHIBIT "A" was

18
19 Dated: November 14, 1996


20 Judge of the Superior Court
21
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SETTLEMENT AGREEMENT

This Settlement Agreement (this "Agreement") is entered into by and between **As You Sow**, a California non-profit corporation ("AYS") and **Quest Chemical Corporation**, a Texas corporation ("QUEST") as of October 31, 1996 (the "Effective Date").

WHEREAS:

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

QUEST manufactures, distributes and sells various products in the State of California that contain the following chemicals listed pursuant to Proposition 65: toluene, dichloromethane (methylene chloride), tetrachloroethylene (perchloroethylene), and trichloroethylene;

A complete list of the names of the products (including any such product's private label designation) that contain one or more of the chemicals listed above, and which are covered by this Agreement (the "Products") is provided in Exhibit A hereto;

The Products have been distributed and sold by QUEST for use in California since April 1, 1989;

On November 8, 1995, AYS first served QUEST and all of the requisite public enforcement agencies with a document entitled "60-Day Notice" which provided QUEST and such public agencies with notice that QUEST was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products it sells in California expose users to Proposition 65-listed chemicals;

On July 29, 1996, AYS filed a complaint entitled As You Sow v. Quest Chemical Corporation, et al. (No. 168160) in the Marin County Superior Court, naming QUEST as a defendant and alleging violations of Business & Professions Code §17200 and Health & Safety Code §25249.6 on behalf of individuals in California who allegedly are exposed to chemicals listed pursuant to Proposition 65 contained in certain QUEST products; and,

With respect to those eight (8) Products referenced in ¶5 herein, as of September 1, 1996, Quest had made no decision, or taken any action, to reformulate these Products to remove all chemicals listed pursuant to Proposition 65.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Product Labeling.** Beginning immediately, QUEST shall initiate revisions to its current labels for the Products. QUEST shall use its best efforts to ensure that all Products are relabeled as quickly as possible, however, QUEST agrees that as of December 1, 1996, it shall not ship (or cause to be shipped) any of the Products for sale or use in or into the State of California unless each such Product contains the appropriate warning statement on its label as follows:

1.1. For Products containing a chemical listed by the State of California as known to cause birth defects or other reproductive harm:

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

1.2. For Products containing a chemical listed by the State of California as known to cause cancer:

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

1.3. For Products containing any combination of chemicals listed by the State of California as known to cause cancer and known to cause birth defects or other reproductive harm:

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

Quest may use warnings that vary from the above in their use of plural or singular syntax (e.g., "this product contains chemical(s)" or that add language to identify the chemical or chemicals for which the warning is provided. The 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. The parties agree that the sample label attached hereto as Exhibit B satisfies this requirement.

2. **Warnings For Products in Commerce.** QUEST agrees that within thirty (30) days from the Effective Date, it shall provide Warning Materials by certified mail to the customers that QUEST knows or has reason to believe sell or distribute the Products in California in an effort to ensure that users receive Proposition 65 warnings for Products that have entered the stream of commerce prior to the Effective Date and which have not been labeled in strict accordance with Section 1 of this Agreement.

Such Warning Materials shall include a reasonably sufficient number of warning stickers (considering the size of each particular customer and the amount of Products each customer has purchased over the past twelve months), and a letter of instruction for the placement of the stickers. Exemplars of these Warning Materials are attached hereto as Exhibit C.

3. ~~Material Safety Data Sheet Revisions.~~ QUEST agrees to revise ~~Section VI~~ entitled "Health Hazard Data" on each Material Safety Data Sheet ("MSDS") pertaining to each of the Products listed on Exhibit A of this Agreement, to include the applicable warning language set forth in ¶1 of this Agreement. Final MSDSs incorporating the revised warning language will begin to be distributed in the normal course of business on or before December 1, 1996. An exemplar of a QUEST MSDS for one of the Products, revised pursuant to this paragraph, is attached hereto as Exhibit D.

SECTION
II
h

4. **Restitution.** QUEST agrees to pay \$19,500 in restitution to AYS on the Effective Date. This payment, which is made pursuant to Business & Professions Code §17203, shall be forwarded by AYS to the Sierra Club Legal Defense Fund, a non-profit group working to reduce exposures to toxic chemicals, and to increase consumer, worker and community awareness of the health hazards posed by toxic chemicals.

5. **Penalty.** Pursuant to Health & Safety Code §25249.7(b), QUEST shall pay a civil penalty in the amount of \$25,000, in two installments. The first installment of \$10,000 shall be due on the Effective Date. The second installment of \$15,000 shall be due on January 1, 1997.

However, this second installment shall be waived if QUEST reformulates the eight (8) Products designated with an asterisk on Attachment A to this Agreement to remove all chemicals listed pursuant to Proposition 65. In order to receive a complete waiver of this second installment, an officer of QUEST shall provide AYS, on or before December 15, 1996, with written certification that (a) these eight Products have been so reformulated, and (b) beginning on December 1, 1996, QUEST permanently ceased all sales of these eight Products in the State of California.

All penalty monies shall be apportioned by AYS in accordance with Health & Safety Code §25192, with 75% of these funds remitted by AYS to the State of California.

6. **Reimbursement of Fees and Costs.** AYS and QUEST have agreed that AYS will submit an application to the Court, pursuant to California Code of Civil Procedure §1021.5 for its investigation fees and costs, expert fees, reasonable attorneys' fees, and any other costs incurred by AYS in this matter. AYS

and QUEST agrees that neither party may appeal the trial judge's determination of AYS' \$1021.5 application in this matter.

7. AYS Release. AYS, in consideration of the QUEST's commitments and payments set forth herein, on its own behalf, its attorneys, employees, successors, assigns, predecessors, subrogees, principals, agents, consultants and insurers, waives and hereby releases and forever discharges QUEST, and its distributors, customers and users of Products, as well as each of its successors, assigns, predecessors, stockholders, officers, directors, subrogees, subsidiaries, divisions, trustees, corporate parents, affiliates, board members, consultants, agents, attorneys, and employees from any and all claims, demands, actions, causes of action, damages, responsibilities, obligations and liabilities, at law or in equity, in contract or tort or otherwise, whether known or unknown, up to and including the date of entry of judgment in Marin Superior Court No. 168160, arising out of or relating to the Products' compliance with Proposition 65, Business and Professions Code §§17200 et seq., or any other statute or common law claim with respect to the Products' compliance with Proposition 65.

8. QUEST Release. QUEST, by this Agreement, waives all rights to institute any form of legal action against AYS, its members, officers, directors, attorneys and representatives (the "AYS Releasees") for all actions or statements made by the AYS Releasees in the course of seeking enforcement of Proposition 65 or Business & Profession Code §§17200 et seq. against QUEST.

9. Warranties and Representations. The parties make the following representations and warranties:

9.1. QUEST represents and warrants as follows:

9.1.1. Each of the Products listed in Exhibit A contains one or more substances known to the state of California to cause cancer or birth defects or other reproductive harm, and that QUEST has no analytical, risk assessment, or other data indicating that an exposure to any or all Products listed in Exhibit A poses "no significant risk" or will have "no observable effect," as each such standard is applicable and as each is defined under Health & Safety Code § 25249.10(c).

9.1.2. In the event that QUEST obtains analytical, risk assessment, or other data that shows that an exposure to any or all Products listed in Exhibit A poses "no significant risk" or will have "no observable effect," as each such standard is applicable and as each is defined under Health & Safety Code § 25249.10(c), QUEST shall provide AYS with 90 days prior written notice of its intent to limit or eliminate the warning provisions under ¶1 herein and shall provide AYS with all such supporting data. Within thirty (30) days of receipt of QUEST's exposure data, AYS shall provide QUEST with written

notice of its desire to challenge the data (in the event that AYS chooses to make such a challenge), and AYS and QUEST shall negotiate in good faith to attempt to reach a settlement. In the event that no settlement is reached within thirty (30) days of mailing by AYS of such notice of challenge, AYS and QUEST agree to submit such challenge to the Court for determination, pursuant to the Court's continuing jurisdiction of this matter under C.C.P. §664.6 and ¶10 of this Agreement. The prevailing party shall be entitled to reasonable attorneys' fees and costs associated with such a determination. If AYS does not challenge QUEST's notice or the Court determines that no warning is required for a particular Product or Products, QUEST shall no longer be required to provide the warnings described in ¶1 of this Agreement for those Products.

9.1.3. QUEST understands that the sales data provided to AYS' counsel by QUEST in a letter from Bruce Klafter dated February 16, 1996 was a material factor upon which AYS has relied to determine the amount of penalties and restitution in ¶4 and ¶5 of this agreement. The sales data provided in the above-referenced letter is true and accurate. QUEST acknowledges that, in the event AYS finds that the sales data is materially inaccurate, all other parts of this Agreement notwithstanding, AYS will have the right to rescind this Agreement and re-institute an enforcement action against QUEST. In such a case, all applicable statutes of limitation shall be deemed tolled for the period between July 29, 1996 (the date AYS filed the instant action) and the date AYS notifies QUEST that it is rescinding this Agreement pursuant to this subpart.

10. Stipulated Judgment. The parties shall file a stipulated judgment to be approved pursuant to CCP §664.6 by the Marin County Superior Court in accordance with the terms of this agreement.

11. 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.

12. Attorneys' 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.

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

14. **Notices.** All correspondence to AYS shall be mailed to:

Clifford Chanler, Esq.
Chanler Law Group
1700 Montgomery Street
Suite 110
San Francisco, CA 94111

All correspondence to QUEST shall be mailed to:

Timothy P. Walker, Esq.
Orrick, Herrington & Sutcliffe
Old Federal Reserve Bank Building
400 Sansome Street
San Francisco, CA 94111-3143

15. **No Admissions.** Nothing in this Agreement shall be construed as an admission by QUEST 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 QUEST of any fact, finding, conclusion, issue of law, or violation of law. However, this Section shall not diminish or otherwise affect the obligation, responsibilities, and duties of QUEST under this Agreement.

16. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

17. **Authorization.** 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.

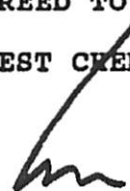
AGREED TO:

AS YOU SOW

Printed Name & Title

AGREED TO:

QUEST CHEMICAL CORPORATION



Printed Name & Title

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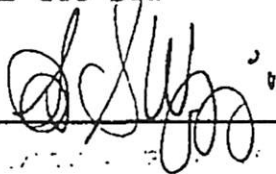
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17. **Authorization.** The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Agreement.

AGREED TO:

AS YOU SAW



LISA S. WIGGINS ; GENERAL COUNSEL

Printed Name & Title

AGREED TO:

QUEST CHEMICAL CORPORATION

Printed Name & Title