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Mark Todres, State Bar No. 168389
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Attorneys for Plaintiff
AS YOU SOW

FILED

JUL 18 1995

HOWARD HANSON
MARIN COUNTY CLERK
by J. Steele, Deputy
J. Steele

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF MARIN

AS YOU SOW, a non-profit corporation,
Plaintiff
v.
SURFACE PROTECTION INDUSTRIES,
INC., R.J. MCGLENNON COMPANY,
INC., and DOES 1 through 1000,
Defendants.

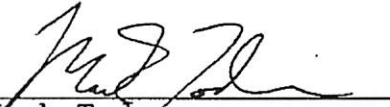
) Case No. 162032
)
) STIPULATION FOR ENTRY OF
) JUDGMENT AND JUDGMENT ON
) STIPULATION

ENTERED

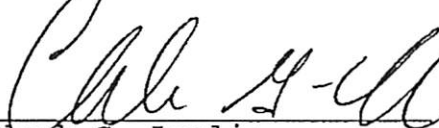
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IT IS HEREBY STIPULATED, by and between plaintiff As
You Sow and defendant R.J. McGlennon Company, Inc., through
their respective representatives, that judgment in the above-
entitled action be entered in accordance with the terms of the
settlement agreement between the parties, which is attached
hereto as Exhibit A.

Dated: June 21, 1995

by: 
Mark Todrés
Attorney for Plaintiff
AS YOU SOW

Dated: June 22, 1995

by: 
Clark G. Leslie
Attorney for Defendant
R.J. MCGLENNON & COMPANY

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

Dated: ~~June~~ JULY 12, 1995

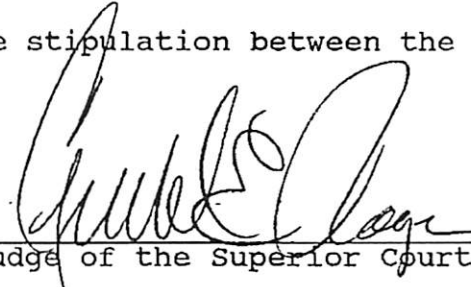

Judge of the Superior Court

Exhibit A

SETTLEMENT AGREEMENT

On June 21, 1995 in San Francisco, California, As You Sow ("AYS") and R.J. McGlennon Company, Inc. ("McGlennon") 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

McGlennon is a California company that has been manufacturing and distributing paints, primers, enamels, lacquers, urethanes and reducers that contain toluene; and

On August 25, 1994, AYS served McGlennon with a document entitled "60-Day Notice" which provided McGlennon with notice that it was allegedly in violation of Health & Safety Code §25249.6 for failing to properly warn purchasers that certain products it distributes for sale and/or use in California expose users to toluene, a chemical known to the State of California to cause birth defects or other reproductive harm; and

On October 28, 1994, AYS filed a complaint entitled As You Sow v. Surface Protection Industries, et al. (No. 162032) in the Marin Superior Court, naming McGlennon as a defendant and alleging violations of Business & Professions Code §17200 and Health & Safety Code §25249.6 on behalf of individuals in California who are exposed to toluene through use of certain McGlennon products; and

A list of the products containing toluene which are covered by this Agreement is provided in Exhibit A (the "Products"). The Products have been distributed by McGlennon for sale and/or use in California since January 1, 1992.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Reformulation.** McGlennon agrees not to sell any of the Products in California after October 1, 1995 unless such Products have been reformulated so as to eliminate the presence of toluene and to replace it with a non-toxic alternative. The substituted chemical, if any, shall not be a chemical listed pursuant to Proposition 65 or the chemical xylene. McGlennon shall provide AYS with written certification of its success in completing the reformulation commitments contained herein by October 1, 1995.
2. **Product Labeling.** For the products McGlennon fails to reformulate pursuant to the commitments set forth in ¶1, it shall initiate revisions to its current labels for the

Products. McGlennon shall use its best efforts to ensure that all Products are relabeled as quickly as possible; however, all Products shall be relabeled no later than October 31, 1995. The new labels for each Product sold in California shall contain one of the following statements:

(a) For products containing a chemical listed under Proposition 65 as a reproductive toxin, but which contain no chemicals listed as carcinogens:

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

(b) For products containing a chemical listed under Proposition 65 as a carcinogen, but which contain no chemicals listed as reproductive toxins:

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

(c) For products containing chemicals listed under Proposition 65 as reproductive toxins and chemicals listed under Proposition 65 as a carcinogen:

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

The appropriate 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.

3. **MSDS Revisions.** Beginning immediately, McGlennon will initiate revisions to its current MSDSs for the Products so that the warning or warnings will be consistent in wording with the on-label warning language required by ¶2. Final printed MSDSs incorporating the revised warnings will begin to be distributed in the normal course of business but in any event no later than December 31, 1995. An example of an acceptable MSDS is attached as Exhibit C.

4. Settlement Amount.

4.1. Penalty. McGlennon agrees to pay a civil penalty pursuant to Health & Safety Code §25249.7 of \$2,000 for each of the Products that it is unable to reformulate pursuant to ¶1. This payment shall be made to AYS on October 8, 1995 in settlement of the disputed claims referred to in this Agreement. Should McGlennon fail to comply with ¶1 for any of the Products, the penalties shall be apportioned by AYS in accordance with Health & Safety Code §25192.

4.2. Investigation, Expert, and Attorneys Fees. The parties agree that the amount of McGlennon's reimbursement of AYS' investigation and expert fees and costs as well as attorneys fees and costs incurred as a result of bringing this matter to McGlennon's attention and litigating and negotiating a settlement in the public interest shall be determined through binding arbitration (the "Fee Arbitration"). The parties agree to submit the Fee Arbitration matter to the arbitrator by August 17, 1995. If the arbitration has not been heard by August 17, 1995, AYS shall have the option to move the Marin Superior Court for its costs and fees pursuant to California Code of Civil Procedure ("CCP") §1021.5. The parties further agree that the Fee Arbitration shall be governed by the following procedure:

- the parties have agreed that Judge Edward Stern (Ret.) will be the arbitrator unless there is a conflict of interest in which circumstance the parties shall agree to an alternate arbitrator from Judicial Arbitration Mediation Services ("JAMS") by July 15, 1995;
- the parties shall each serve an opening brief on the arbitrator and each other by August 3, 1995, such brief not to exceed 15 pages;
- the parties may each submit an opposition brief by August 10, 1995, such brief not to exceed 10 pages;
- any argument requested by the arbitrator shall be heard on August 17, 1995;
- the arbitrator shall issue a final opinion within 30 days of the hearing date;

- the parties may seek recovery of their fees and costs for this arbitration in accordance with applicable law.
5. **AYS Release.** AYS, by this Agreement, waives all rights to institute action against McGlennon, its distributors or retailers which sell the Products, whether under Proposition 65, Business & Profession Code §§17200 et seq., or any other statute or common law claim (excepting CCP §1021.5 and analogous common law fee recovery doctrines) based on McGlennon's failure to warn consumers about exposure to Proposition 65 chemicals from any of the Products. However, this release in no way extends to AYS' investigation and expert fees and costs as well as its attorneys fees and costs incurred as a result of bringing this matter to McGlennon's attention and litigating and negotiating a settlement in the public interest.
 6. **McGlennon Release.** McGlennon, 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") based on any statute or provision of common law and for all actions or statements made by the AYS Releasees in the course of seeking enforcement of Proposition 65 against McGlennon.
 7. **Stipulated Judgment.** The parties shall file a stipulated judgment to be approved pursuant to CCP §664.6 by the Marin Superior Court in accordance with the terms of this agreement.
 8. **Unenforceability.** 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.
 9. **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.
 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:

Mark Todres, Esq.
Chanler & Associates
1700 Montgomery Street, Suite 110
San Francisco, CA 94111

All correspondence to McGlennon shall be mailed to:

Clark G. Leslie, Esq.
1107 Palm Avenue, Suite B
San Mateo, CA 94401-4318

- 12. **No Admission.** Nothing in this Agreement shall be construed as an admission by McGlennon 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 McGlennon 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 McGlennon 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: *Benay 1995*
As You Son

BY: *Robert J. McGlennon*
R.J. McGlennon Company, Inc.

Dated: 6/20/95

Dated: 6-22-95