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7
8 Attorneys for Plaintiff,
9 AS YOU SOW

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO

13 AS YOU SOW, a non-profit corporation,)

CASE NO. 969173

14 Plaintiff,)

STIPULATION FOR ENTRY OF
JUDGMENT

15 vs.)

16 R.T. VANDERBILT COMPANY, INC.,)

17 Defendant.)
18

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

23 DATED: July 27, 1995

24 By: Syda Kosofsky

Syda Kosofsky
Attorneys for Plaintiff, AS YOU SOW

25 DATED: July 20, 1995

26 By: Mark S. Geraghty

Mark S. Geraghty
Attorneys for Defendant,
R.T. VANDERBILT COMPANY, INC.

Exhibit A

SETTLEMENT AGREEMENT

On May 31, 1995 in San Francisco, California, **As You Sow ("AYS")** and **R.T. Vanderbilt Company, Inc. ("R.T. Vanderbilt")** 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

R.T. Vanderbilt is a New York company that currently manufactures and distributes industrial minerals, chemicals, and protective coating products, some of which contain toluene, silica, cadmium, lead, carbon black, carbon tetrachloride, aniline, formaldehyde, captan, and nickel; 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

On October 1, 1988, silica was officially listed by the State of California as a chemical known to cause cancer, pursuant to Health & Safety Code §25249.8; and

On October 1, 1987, cadmium (and cadmium compounds) and carbon tetrachloride were officially listed by the State of California as chemicals known to cause cancer, pursuant to Health & Safety Code §25249.8; and

On February 27, 1987, lead was officially listed by the State of California as a chemical known to cause birth defects or other reproductive harm, and on October 1, 1992, lead (and lead compounds) was officially listed by the State of California as a chemical known to cause cancer, pursuant to Health & Safety Code §25249.8; and

On January 1, 1990, carbon black, captan, and aniline were officially listed by the State of California as chemicals known to cause cancer, pursuant to Health & Safety Code §25249.8; and

On January 1, 1988, formaldehyde was officially listed by the State of California as a chemical known to cause cancer, pursuant to Health & Safety Code §25249.8; and

On October 1, 1989, nickel (and certain nickel compounds) was officially listed by the State of California as a chemical known to cause cancer, pursuant to Health & Safety Code §25249.8; and

A list of R.T. Vanderbilt products containing toluene, silica, cadmium, lead, carbon black, carbon tetrachloride, aniline, formaldehyde, captan, and nickel which are covered by this Agreement is provided in Exhibit "A" (the "Products"). The Products have been distributed by R.T. Vanderbilt for sale and/or use in California since February 27, 1988; and

On September 15, 1994, AYS served R.T. Vanderbilt with a document entitled "60-Day Notice" which provided R.T. Vanderbilt with notice that it was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products it distributes for sale and/or use in California expose users to Proposition 65-listed chemicals, including toluene; and

On March 17, 1995, AYS served R.T. Vanderbilt with an additional document entitled "60-Day Notice" which provided R.T. Vanderbilt with notice that it was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products it distributes for sale and/or use in California expose users to Proposition 65-listed chemicals, including but not limited to lead (and lead compounds), carbon black, carbon tetrachloride, nickel (and nickel compounds), aniline, formaldehyde, captan, and cadmium (and cadmium compounds); and

On April 28, 1995, AYS filed a complaint entitled As You Sow v. The R.T. Vanderbilt Company, et al. (No. 969173) 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 Proposition 65-listed chemicals in certain R.T. Vanderbilt products; and

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Product Labeling.** Beginning immediately, R.T. Vanderbilt shall initiate revisions to its current labels and to its current packaging. R.T. Vanderbilt agrees, by September 1, 1995 for any of the chemical products and after exhaustion of current package inventories for any of the mineral products, it shall not ship (or cause to be shipped) any of the Products for sale or use in the State of California unless each such Product contains one of the following warning statements on its label or packaging:

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

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

- 1.2. For Products containing two or more substances listed by the State of California as known to cause birth defects or other reproductive harm:

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

- 1.3. For Products containing a substance listed by the State of California as known to cause cancer:

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

- 1.4. For Products containing two or more substances listed by the State of California as known to cause cancer:

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

- 1.5. For Products containing any combination of substances 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."

- 1.6. 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 satisfactory label is attached hereto as Exhibit B.

2. **Current Production.** In an effort to ensure that individuals receive Proposition 65 warnings for the products, R.T. Vanderbilt has taken or will immediately take the following actions: (a) with regards to the Products which are not mineral Products, affix warning labels to the container, cap, lid or label of such Products; and (b) with regards to the Products which are mineral Products, the Company has sent a letter to its customers setting forth the appropriate Proposition 65 warnings. The warning labels and warning letter contain one of the following statements:

- 2.1. For products containing a substance listed by the State of California as known to cause birth defects or other reproductive harm:

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

- 2.2. For products containing two or more substances listed by the State of California as known to cause birth defects or other reproductive harm:

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

- 2.3. For products containing a substance listed by the State of California as known to cause cancer:

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

- 2.4. For Products containing two or more substances listed by the State of California as known to cause cancer:

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

- 2.5. For Products containing any combination of substances 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."

- 2.6. 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 satisfactory warning letter is attached hereto as Exhibit "C".

3. **Interim Warning Materials.** In an effort to ensure that individuals receive Proposition 65 warnings during the period while R.T. Vanderbilt produces labels in accordance with ¶1, R.T. Vanderbilt agrees, by the date of this Agreement, it shall provide a Notice letter providing warnings to users of the Products and notification that R.T. Vanderbilt intends to provide warnings for the Products. An exemplar of a satisfactory Notice letter is attached hereto as Exhibit "D".

4. **MSDS Revisions.** Beginning immediately, R.T. Vanderbilt 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 ¶1. 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 August 1, 1995.
5. **Restitution and Investigation Costs.** R.T. Vanderbilt agrees to pay \$18,500 to AYS upon execution of this Agreement. The restitutionary portion of this amount, made pursuant to Business & Professions Code §17203, shall be distributed to the Silicon Valley Toxics Coalition (SVTC), located in San Jose. SVTC is a public interest organization involved in projects to educate the public about environmental hazards of Silicon Valley industries. 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 R.T. Vanderbilt's attention, litigating and negotiating a settlement in the public interest.
6. **AYS Release.** AYS, by this Agreement, waives all rights to institute action against R.T. Vanderbilt, 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 based on R.T. Vanderbilt's failure to warn users about exposure to Proposition 65 chemicals from any of the Products identified in Exhibit "A".
7. **R.T. Vanderbilt Release.** R.T. Vanderbilt, 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 R.T. Vanderbilt.
8. **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.
9. **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.
10. **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.
11. **Governing Law.** The terms of this Agreement shall be governed by the laws of the State of California.

12. Correspondence.

All correspondence to AYS shall be mailed to:

Syda Kosofsky, Esq.
Chanler & Associates
1700 Montgomery Street, Suite 110
San Francisco, California 94111

All correspondence to R.T. Vanderbilt shall be mailed to:

Mark Geraghty, Esq.
Dickson, Carlson & Campillo
120 Broadway, Third Floor
P.O. Box 2122
Santa Monica, California 90407-2122

- 13. No Admission.** Nothing in this Agreement shall be construed as an admission by R.T. Vanderbilt 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 R.T. Vanderbilt 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 R.T. Vanderbilt under this Agreement.

- 14. 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:

By: _____

As You Sow

AGREED TO:

By: _____

R.T. Vanderbilt Company

Exhibit A

EXHIBIT A

1. Blackout Black
2. Blackout White
3. Cadmate Ethyl Dustless Spec.
4. Cadmate Ethyl Dustless
5. Clay Bilt-Plates 156
6. Clay Continental
7. Clay Dixie
8. Clay McNamee
9. Clay Peerless 1
10. Clay Peerless 2 Airfloated
11. Ledate Amyl
12. Ledate Methyl Dustless
13. Pyrax ABB
14. Pyrax HS
15. Pyrax RG 140 Mesh
16. Pyrax RG 16 Mesh
17. Pyrax WA
18. Vanax 808
19. Vancide TH
20. Vancide 89
21. Cancide 89 RE
22. Vancloy
23. Vanfre AP-2
24. Vanfre HYP
25. Van gel B
26. Van gel O
27. Van gel ES
28. Vanlube 71
29. Vanox NBC
30. Vanox NBC*
31. Veecote
32. Veegum
33. Veegum D
34. Veegum HS
35. Veegum HV
36. Veegum K
37. Veegum S6565
38. Veegum Ultra

Exhibit B

•VANDERBILT REG. U.S. PAT. & TM. OFF.

For Industrial Use Only

VANOX* NBC

ANTIOXIDANT

NICKEL DIBUTYLDITHIOCARBAMATE, CAS No. 13927-77-0

CAUTION! May cause severe irritation to the eyes. Avoid prolonged or repeated contact with eyes. Avoid breathing dust. Use with adequate ventilation.

California Proposition 65: WARNING! This product contains a chemical known to the State of California to cause cancer.

RTV PRODUCT

53783

BEFORE USING OR HANDLING THIS PRODUCT,
READ THE MATERIAL SAFETY DATA SHEET FOR VANOX NBC
Issued: 6/95
Replaces: 10/94
Made in U.S.A.

V R.T. Vanderbilt Company, Inc.

• RTV PRODUCT, 53783, is a registered trademark of R.T. Vanderbilt Company, Inc. •
• INFORMATION: For more information, contact R.T. Vanderbilt Company, Inc., 1000 North 10th Street, P.O. Box 1000, Nashville, TN 37203. •
• NON-WARRANTY OF RESULTS: Customer assumes all responsibility for the use of this product. R.T. Vanderbilt Company, Inc. does not warrant the results of the use of this product. •

TOTAL P. 03

JUL-20-1995 15:41

R.T. VANDERBILT

203 Bx 5914 P. 03/03

Exhibit C



R.T. Vanderbilt Company, Inc.

INDUSTRIAL MINERALS AND CHEMICALS

30 WINFIELD STREET, P.O. BOX 5150, NORWALK, CONNECTICUT 06856-5150 • (203) 853-1400
FAX (203) 853-1452 • CABLE: "DILTVAN", NORWALK, CONNECTICUT • TWX 710-468-2840

June 29, 1995

Attention: Health and Safety Department

Dear Sir or Madam,

This letter is to advise you that R.T. Vanderbilt Company is amending the labels and Material Safety Data Sheets of the product(s) listed in Attachment A, in order to meet the requirements of California's Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65). Our sales records indicate that you have purchased the listed product(s). Pursuant to Proposition 65, users of listed products must be given clear and reasonable warning of the reproductive toxicity and carcinogenicity of the ingredient chemicals.

R.T. Vanderbilt Company is in the process of amending the labels of the relevant products, but until the change is completed, you should ensure that users of the product(s) receive Proposition 65 warnings. The product(s) listed in Attachment A contain a listed carcinogen, and the following warning is required:

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

As you will know, failure to provide Proposition 65 warnings may subject you to legal action and monetary penalties.

Should you have any questions or concerns about this matter, please do not hesitate to contact me at the above address.

Very truly yours,

Paul Vanderbilt
Vice President
Legal Affairs

PV:pjo
Enclosure



R.T. Vanderbilt Company, Inc.
INDUSTRIAL MINERALS AND CHEMICALS

30 WINFIELD STREET, P.O. BOX 5150, NORWALK, CONNECTICUT 06856-5150 • (203) 853-1400
FAX (203) 853-1452 • CABLE: "BILTVAH" NORWALK, CONNECTICUT • TWX 710-468-2940

June 29, 1995

Attention: Health and Safety Department

Dear Sir or Madam,

This letter is to advise you that R.T. Vanderbilt Company is amending the labels and Material Safety Data Sheets of the product(s) listed in Attachment A, in order to meet the requirements of California's Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65). Our sales records indicate that you have purchased the listed product(s). Pursuant to Proposition 65, users of listed products must be given clear and reasonable warning of the reproductive toxicity and carcinogenicity of the ingredient chemicals.

R.T. Vanderbilt Company is in the process of amending the labels of the relevant products, but until the change is completed, you should ensure that users of the product(s) receive Proposition 65 warnings. The product(s) listed in Attachment A contain both a listed reproductive toxin and carcinogen, and the following warning is required:

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

As you will know, failure to provide Proposition 65 warnings may subject you to legal action and monetary penalties.

Should you have any questions or concerns about this matter, please do not hesitate to contact me at the above address.

Very truly yours,

Paul Vanderbilt
Vice President
Legal Affairs

PV:pjo
Enclosure

Exhibit D



R.T. Vanderbilt Company, Inc.

INDUSTRIAL MINERALS AND CHEMICALS

30 WINFIELD STREET, P.O. BOX 5150, NORWALK, CONNECTICUT 06850-5150 • (203) 853-1400
FAX (203) 853-1452 • CABLE "DILTVAN" NORWALK, CONNECTICUT • TWX 710-468-2940

June 29, 1995

Attention: Health and Safety Department

Dear Sir or Madam,

This letter is to advise you that R.T. Vanderbilt Company is amending the labels and Material Safety Data Sheets of the product(s) listed in Attachment A, in order to meet the requirements of California's Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65). Our sales records indicate that you have purchased the listed product(s). Pursuant to Proposition 65, users of listed products must be given clear and reasonable warning of the reproductive toxicity and carcinogenicity of the ingredient chemicals.

R.T. Vanderbilt Company is in the process of amending the labels of the relevant products, but until the change is completed, you should ensure that users of the product(s) receive Proposition 65 warnings. The product(s) listed in Attachment A contain a listed carcinogen, and the following warning is required:

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

As you will know, failure to provide Proposition 65 warnings may subject you to legal action and monetary penalties.

Should you have any questions or concerns about this matter, please do not hesitate to contact me at the above address.

Very truly yours,

Paul Vanderbilt
Vice President
Legal Affairs

PV:pjo
Enclosure



R.T. Vanderbilt Company, Inc.

INDUSTRIAL MINERALS AND CHEMICALS

30 WINFIELD STREET, P.O. BOX 5150, NORWALK, CONNECTICUT 06856-5150 • (203) 853-1400
FAX (203) 853-1452 • CABLE: "DILTVAN", NORWALK, CONNECTICUT • TWX 710-468-2940

June 29, 1995

Attention: Health and Safety Department

Dear Sir or Madam,

This letter is to advise you that R.T. Vanderbilt Company is amending the labels and Material Safety Data Sheets of the product(s) listed in Attachment A, in order to meet the requirements of California's Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65). Our sales records indicate that you have purchased the listed product(s). Pursuant to Proposition 65, users of listed products must be given clear and reasonable warning of the reproductive toxicity and carcinogenicity of the ingredient chemicals.

R.T. Vanderbilt Company is in the process of amending the labels of the relevant products, but until the change is completed, you should ensure that users of the product(s) receive Proposition 65 warnings. The product(s) listed in Attachment A contain both a listed reproductive toxin and carcinogen, and the following warning is required:

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

As you will know, failure to provide Proposition 65 warnings may subject you to legal action and monetary penalties.

Should you have any questions or concerns about this matter, please do not hesitate to contact me at the above address.

Very truly yours,

Paul Vanderbilt
Vice President
Legal Affairs

PV:pjo
Enclosure