

1 Clifford A. Chanler, State Bar No. 135534
Andrew L. Packard, State Bar No. 168690
2 CHANLER & SOMERS
1700 Montgomery Street, Suite 110
3 San Francisco, CA 94111
(415) 391-1122
4 Fax: (415) 391-1157
5 Attorneys for Plaintiff
AS YOU SOW
6
7
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
11

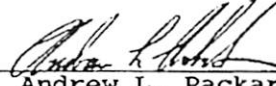
12 AS YOU SOW, a non-profit)	Case No. 968031
corporation,)	
13)	
Plaintiff,)	STIPULATION FOR ENTRY OF
14)	<u>JUDGMENT</u>
v.)	
15)	
SNAP PRODUCTS, INC., a)	
16 corporation, and DOES 1 through)	
1000,)	
17 Defendants.)	
_____)	

18
19
20
21
22
23
24
25
26
27
28

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
27
28

IT IS HEREBY STIPULATED, by and between plaintiff AS
You Sow and defendant Snap Products, 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: ~~October~~ ^{November} 13, 1995

By: 
Andrew L. Packard, Esq.
Attorneys for Plaintiff
AS YOU SOW

Dated: ~~October~~ ^{November} 13, 1995

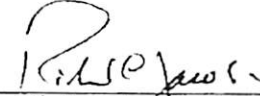
By: 
Richard C. Jacobs, Esq.
Attorneys for Defendant
SNAP PRODUCTS, INC.

Exhibit A

SETTLEMENT AGREEMENT

On October 18, 1995, As You Sow ("AYS") and Snap Products, Inc. ("Snap") 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

Snap currently manufactures and distributes in the State of California products that contain toluene, methylene chloride, perchloroethylene and trichloroethylene; and

The State of California has officially listed toluene as a chemical known to cause birth defects or other reproductive harm, pursuant to Health & Safety Code §25249.8; and

The State of California has officially listed methylene chloride, perchloroethylene and trichloroethylene as chemicals known to cause cancer, pursuant to Health & Safety Code §25249.8; and

On July 29, 1994, AYS served Snap with a document entitled "60-Day Notice" which provided Snap with notice that it 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; and

On March 17, 1995, AYS served Snap with a summons and complaint in the case of As You Sow v. Snap Products, Inc., et al., (Case No. 968031) which is currently pending in the San Francisco County Superior Court;

A list of the Snap products containing toluene, methylene chloride, perchloroethylene and trichloroethylene and which are covered by this Settlement Agreement is attached as Exhibit A (the "Products"); and

Snap has provided AYS with information concerning each of the products it manufactures and ships into California, and each of those products is listed on Attachment B; and

In order to avoid costly and time-consuming litigation, AYS and Snap have agreed to settle claims that have been brought or could have been brought against each other arising from the manufacture or sale by Snap of the Products listed in Attachment A.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Labeling.** Snap agrees not to ship (or cause to be shipped) any of the Products for sale or use in the State of California unless each such Product contains the following warning statement on its label:

For Products containing Proposition 65-listed carcinogens only:

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

For Products containing Proposition 65-listed reproductive toxins only:

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

For Products containing both Proposition 65-listed carcinogens and reproductive toxins:

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

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.

Snap shall provide such labeling on the Products in the ordinary course of business, but no later than February 1, 1996.

2. **Civil Penalties.** Snap agrees to pay to AYS a civil penalty of \$16,000 pursuant to Health & Safety Code §25249.7(b), due in two installments. The first installment, in the amount of \$1,000, is payable within ten (10) days of the mutual execution of this Settlement Agreement. The second installment, in the amount of \$15,000, is due on or before February 15, 1996; provided, however, that upon written certification provided to AYS from an officer of Snap before February 15, 1996, \$5,000 due in the second installment of the civil penalty shall be waived for each of those three Products designated with an asterix on Exhibit A that Snap has reformulated (and no longer ships) to eliminate the presence of toluene and tetrachloroethylene as ingredients of such Product. Thus, if Snap so reformulates and no longer ships each Product designated with an asterix on Exhibit A, the entire amount of \$15,000 due on February 15, 1996, shall be waived. Any penalty monies received by AYS shall be apportioned by AYS in accordance with Health & Safety Code §25192.

3. **Restitution.** As a restitutionary measure, pursuant to Business & Professions Code §17203, Snap agrees to pay \$5,000 to AYS, which AYS shall pay to Bike Aid, a San Francisco-based non-profit group dedicated to raising environmental awareness and reducing toxic exposures. Payment of this sum shall be made within 10 days of the mutual execution of this Settlement Agreement.

4. **Fees and Costs.** In an effort to defray AYS' investigation fees and costs, expert fees and costs, reasonable attorneys' fees, and any other costs incurred as a result of investigating and bringing this matter to Snap's attention and negotiating a settlement in the public interest, Snap shall pay AYS the reasonable sum of \$12,000. Payment of this sum shall be made within 10 days of the mutual execution of this Settlement Agreement.

5. **AYS Release.** AYS, and its members, employees and agents, and its attorneys, their employees and agents, by this Settlement Agreement, waive and release all rights to institute any form of legal action against Snap, and its distributors, customers or any retailers which sell Snap's products, whether under Proposition 65, Business & Professions Code §§17200 *et seq.*, or any other statute or common law claim, which relates to or arises out of Snap's alleged failure to warn about exposure to toluene, methylene chloride, perchloroethylene or trichloroethylene, contained in any of the Products listed in Attachment A.

6. **Snap Release.** Snap, and its employees and agents, and their attorneys and their employees and their agents, by this Settlement Agreement, waive and release 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, as of the date this Settlement Agreement is executed, in the course of seeking enforcement of Proposition 65 against Snap.

7. **MSDS Revisions.** Snap shall ensure that the Material Safety Data Sheets ("MSDS") for each of the Products contains a warning that will be substantially consistent in wording with the on-label warning language required by paragraph 1 of this Settlement Agreement. Snap shall prepare and ship revised MSDS's incorporating the revised warning language in the ordinary course of business, but no later than October 15, 1995.

8. **Intent Of Parties.** AYS and Snap agree that this Settlement Agreement is intended to resolve any and all claims that were or could have been brought under Proposition 65, Business and Professions Code §§17200 *et seq.*, or any other statute or common law claim, which involve, relate to or arise out of Snap's alleged failure to warn consumers about exposure to any of the chemicals listed under Proposition 65 and involves any of the Products listed in Attachment A. AYS and Snap further agree that this Settlement Agreement is appropriate and adequate to protect the public from any of the acts alleged in the Complaint, and that this Settlement Agreement is also intended to and is appropriate and adequate to provide restitution to the public as a result of such acts or any gains Snap may have obtained from such acts.

9. **Stipulated Judgment.** The parties shall file a stipulated judgment to be approved pursuant to Code of Civil Procedure §664.6 by the San Francisco County Superior Court in accordance with the terms of this Settlement Agreement.

10. **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.

11. **Disputes Under the Agreement.** 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.

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

13. **Correspondence.** All correspondence to AYS shall be mailed to:

Andrew L. Packard, Esq.
Chanler & Associates
1700 Montgomery Street
Suite 110
San Francisco, CA 94111

All correspondence to Snap shall be mailed to:

Richard C. Jacobs, Esq.
Howard, Rice, Nemerovski, Canady,
Falk & Rabkin
Three Embarcadero Center, Seventh Floor
San Francisco, CA 94111

14. **Non-Admission.** Nothing in this Agreement shall be construed as an admission by Snap of any fact, finding, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Snap 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 Snap under this Settlement Agreement.

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

AGREED TO:

AS YOU SOW

Conrad Mackie
11/6/85
Date

AGREED TO:

SNAP PRODUCTS, INC.

Samuel P.M. Li
10/12/85
Date

EXHIBIT A

1. S 581--Snap Wire Dryer
2. S 625--Snap Belt Dressing *
3. S 665--Snap Lithium White Grease *
4. S 670--Snap Carb and Choke Cleaner
5. S 685--Snap Brake Cleaner
6. S 925--Snap Tire Shine
7. S 683--Snap Brake Cleaner
8. S 630--Snap Silicone Spray
9. S 684--Snap Brake Parts Cleaner *

EXHIBIT B

1. S-291--Snap Super Concentrated Octane Booster
2. S-294--Outlaw Super Concentrated Fuel Injection Cleaner
3. S-293--Snap Super Concentrated Fuel Injection Cleaner
4. S-560--Snap De-Icer
5. S-540--Snap Starting Fluid
6. S-500--Snap Stay Cool
7. S-340--Snap Foaming Engine Cleaner & Degreaser
8. S-281--Outlaw Super Concentrated Gas Treatment
9. S-297--Outlaw Fuel System Treatment
10. S-295--Outlaw Horsepower Booster
11. S-922--Snap Tire Black
12. S-660--Snap PTFE Rust Penetran
13. S-616--Snap Rubberized Undercoating
14. S-615--Snap Undercoat
15. S-928--Snap V & L
16. S-262--Snap Heavy Duty Brake Fluid
17. S-264--Snap Heavy Duty Brake Fluid
18. S-266--Snap Heavy Duty Brake Fluid
19. S-265--Snap 2-Cycle Engine Oil
20. S-125--Snap PTFE Antiwear Engine Treatment
21. S-150--Snap Concentrated Super Oil Treatment
22. S-150S--Snap Concentrated Super Oil Treatment
23. S-155--Snap Oil Treatment
24. S-175--Snap Oil Treatment with DuPont Teflon

EXHIBIT B CONTINUED--PAGE TWO

25. S-201--Snap Motor Sealer
26. S-240--Snap Automatic Transmission Fluid
27. S-251--Snap Power Steering Sealer
28. S-260--Snap Hydraulic Jack Oil
29. S-269--Snap Hydraulic Jack Oil
30. S-270--Snap Power Steering Fluid
31. S-272--Snap Power Steering Fluid
32. S-280--Snap Gas Treatment
33. S-282--Snap Lead Substitute
34. S-290--Snap Super Octane Booster
35. S-292--Snap Fuel Injection Cleaner
36. S-298--Snap Emissions Test Passer
37. S-380--Snap Diesel Fuel Treatment
38. S-381--Snap Diesel Fuel Treatment
39. S-510--Snap Fast Flush
40. S-520--Snap Anti-Rust
41. S-530--Snap Stop Leak
42. S-570--Snap Liquid Windshield De-Icer
43. S-620--Snap Engine Degreaser
44. S-640--Snap Liquid All Purpose Cleaner
45. S-650--Snap Motor Flush
46. S-701--Snap Fuel System Cleaner
47. S-810--Snap Automatic Transmission Sealer and Conditioner
48. S-920--Snap Tire Cleaner
49. S-277K--Snap Fix-A-Flat

EXHIBIT B CONTINUED--PAGE THREE

- 50. S-455K--Snap Fix-A-Flat
- 51. S-457K--Snap Fix-A-Flat
- 52. S-680--Snap Glass Cleaner
- 53. S-500--Snap Stay Cool
- 54. S-296--Outlaw Horsepower Booster