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FILED
 ALAMEDA COUNTY
 JUN 15 1995
 RONALD G. OVERHOLT, Exec. Off./Clerk
 By *Linde Steffens*

5 Attorneys for Plaintiff
 6 AS YOU SOW

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 9 IN AND FOR THE COUNTY OF ALAMEDA


11 AS YOU SOW, a non-profit)
 corporation,)
 12)
) **Case No. 748606-3**
))
) **STIPULATION FOR ENTRY OF**
 13) **JUDGMENT**
))
))
 14) **Health & Safety Code §25249**
) **Bus. & Prof. Code §17200;**
 15 SPIES HECKER, INC., a corporation,))
 and DOES 1 through 1000,))
))
) **(Other)**
 16))
 Defendants.))

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1 IT IS HEREBY STIPULATED, by and between plaintiff As
2 You Sow and defendant Spies Hecker, Inc., through their
3 respective representatives, that judgment in the above-entitled
4 action be entered in accordance with the terms of the settlement
5 between the parties, which is attached hereto.

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7 Dated: ~~May~~ ^{June} 8, 1995

8 By: 
Patrick Wilson
Attorneys for Plaintiff
AS YOU SOW

9
10 RADCLIFF BRESTOFF & FRANDSEN

11
12
13 Dated: May 25, 1995

14 By: 
Nelson E. Brestoff
Attorneys For Defendant
Spies Hecker, Inc.

SETTLEMENT AGREEMENT

On ^{May}~~April~~ 1, 1995 in San Francisco, California, As You Sow ("AYS") and Spies Hecker, Inc. ("Spies Hecker") 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

Spies Hecker is a company that currently manufactures, distributes and/or sells paint, coatings, adhesives, reducers and other products which contain toluene, chromium (hexavalent compounds), lead and di(2-ethylhexyl)phthalate; 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 February 27, 1987, lead 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, 1992, lead 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, 1988, di(2-ethylhexyl)phthalate was officially listed by the State of California as a chemical known to cause cancer pursuant to Health & Safety Code §25249.8; and

On February 27, 1987, chromium (hexavalent 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 the products which are covered by this Agreement is provided in Attachment A (the "Products"). The Products were manufactured, distributed or sold by Spies Hecker for sale or use in California, since January 1, 1989; and

On October 28, 1994, AYS served Spies Hecker with a document entitled, 60-Day Notice, which provided Spies Hecker 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 toluene, a reproductive toxin; and

On April 5, 1995, AYS served Spies Hecker with an additional document entitled, 60-Day Notice, which provided Spies Hecker with notice that it was allegedly in violation of Health & Safety Code §25249.6 for failing to warn individuals that certain products it sells in California expose users to toluene and lead, which are listed pursuant to Health & Safety Code §25249.8 as reproductive toxins, and to chromium (hexavalent compounds), lead and di(2-ethylhexyl)phthalate, which are listed pursuant to Health & Safety Code §25249.8 as carcinogens; and

On March 10, 1995 AYS served Spies Hecker with a summons and complaint entitled As You Sow v. Spies Hecker (Case No. 748606-3) in Alameda Superior Court; and

In order to avoid costly and time-consuming litigation, AYS and Spies Hecker have agreed to settle all claims that have been brought or that could have been brought against Spies Hecker for exposures to Proposition 65 chemicals arising from Spies Hecker's manufacturing, distribution or sale of the Products containing the Proposition 65 chemicals.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Spies Hecker agrees that as of June 1, 1995, it shall not ship (or cause to be shipped) any products containing toluene, lead, chromium (hexavalent compounds) or di(2-ethylhexyl)phthalate for sale or use in the State of California unless they comply with Health & Safety Code §25249.6 and 22 California Code of Regulations §12601 for each such product by providing a warning directly on the container of the product that is 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, and that bears the statement:

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

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

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

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

(c) For products containing chemical(s) listed under Proposition 65 as a reproductive toxin and a chemical(s) listed under Proposition 65 as a carcinogen:

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

2. Spies Hecker also agrees to initiate revisions to the products' Material Safety Data Sheets ("MSDS") to add appropriate Proposition 65 warnings. The MSDS warnings should be consistent with the label warnings outlined in ¶ 1 (a) through (c) above. These revisions shall be completed by Spies Hecker by June 1, 1995.

3. Spies Hecker agrees to pay \$5850.00 to AYS upon execution of this Agreement. The restitutionary component of this payment, which is made pursuant to Business & Professions Code §17203, shall be distributed to the Sierra Club Legal Defense Fund for enforcement of environmental laws including those that regulate chemicals listed under Proposition 65. 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 Spies Hecker's attention, litigating and negotiating a settlement in the public interest.

4. AYS, by this Agreement, waives all rights to institute action against Spies Hecker, its distributors or customers which sell or use Spies Hecker's Products, whether under Proposition 65, Business & Profession Code §§17200 et seq., or any other statute or common law claim based on Spies Hecker's failure to warn individuals about exposure toluene, lead, chromium (hexavalent compounds), and di(2-ethylhexyl)phthalate from any of the Products identified in Attachment A.

5. Spies Hecker, 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, or as a result of, seeking enforcement of Proposition 65 against Spies Hecker.

6. The parties shall file a stipulated judgment to be approved pursuant to CCP §664.6 with the Superior Court in accordance with the terms set forth in this Agreement.

7. 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.

8. The terms of this Agreement shall be governed by the laws of the State of California.

9. All correspondence to AYS shall be mailed to:

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

All correspondence to Spies Hecker shall be mailed to:

Hugh Schwartz
Executive Vice President- Spies Hecker, Inc.
55 Sea Lane
Farmingdale, NY 11735

and to:

Nelson E. Brestoff, Esq.
Radcliff, Brestoff & Frandsen
777 South Figueroa Street
Fortieth Floor
Los Angeles, CA 90017-5800

10. Nothing in this Agreement shall be construed as an admission by Spies Hecker 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 Spies Hecker 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 Spies Hecker under this Agreement.

11. 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:

Seray Ayso
As You Sow

Dated:

5/1/95

AGREED TO:

By:

[Signature]
Spies Hecker

Dated:

4/19/95