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5

FILED
San Francisco County Superior Court

NOV 27 1995

ALAN CARLSON, Clerk
BY: *[Signature]*
Deputy Clerk

6 Attorneys for Plaintiff
AS YOU SOW
7

8 SUPERIOR COURT OF CALIFORNIA

9 IN AND FOR THE COUNTY OF SAN FRANCISCO

10
11 AS YOU SOW, a non-profit)
corporation,)
12)
Plaintiff)
13)
v.)
14)
SUREGUARD, INC., a corporation,)
15 and DOES 1 through 1500,)
16)
Defendants.)
17)
_____)


Case No. 968995

STIPULATION FOR ENTRY OF
JUDGMENT AND JUDGMENT ON
STIPULATION

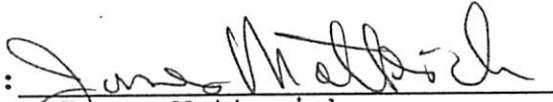
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1 IT IS HEREBY STIPULATED, by and between plaintiff As
2 You Sow and defendant Sureguard, Inc., through their
3 respective representatives, that judgment in the above-
4 entitled action be entered in accordance with the terms of the
5 settlement agreement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

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9 Dated: September 26, 1995

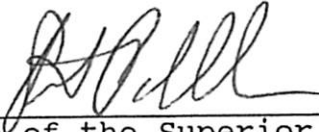
by: 
Eric S. Somers
Attorneys for Plaintiff
AS YOU SOW

10
11
12
13 Dated: ~~September~~ October 16, 1995

by: 
James Mattesich
Attorneys for Defendant
Sureguard, Inc.

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16
17 IT IS HEREBY ORDERED that judgment be entered in
18 accordance with the terms of the stipulation between the
19 parties.
20

21
22 Dated: ~~September~~ OCT 30, 1995


Judge of the Superior Court
STUART R. POLLAK
PRESIDING JUDGE

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25
26
27 968995
28 As You Sow
vs. Sureguard

Exhibit A

SETTLEMENT AGREEMENT

On September 26, 1995 in San Francisco, California, **As You Sow** ("AYS") and **Sureguard, Inc.** ("SUREGUARD") agreed to the following terms and conditions:

WHEREAS:

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

SUREGUARD is a corporation headquartered in Texas that manufactures and/or distributes various aerosols, lacquers, glosses, mattes, texturing products, retouching products and photographic products in the State of California that contain toluene, a reproductive toxin listed pursuant to Proposition 65 ("Listed Chemicals"); and

A list of the products that contain toluene and which are covered by this Agreement is provided in Exhibit A (the "Products"); and

The Products have been distributed and sold by SUREGUARD for use in California since January 1, 1992; and

On October 28, 1994, AYS first served SUREGUARD and the appropriate public enforcement agencies with a document entitled "60-Day Notice" which provided SUREGUARD 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.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Labeling. SUREGUARD agrees that as of December 31, 1995 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 the following appropriate warning statement on its label (a sticker affixed to a blank area on the product or product label).

For products containing a Proposition 65 chemical 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."

65 warnings for Products that have not been labelled in accordance with Section 1 hereof. Such warning materials shall include a reasonably sufficient number of warning stickers reflecting the appropriate warning statement as set forth in Section 1 hereof (considering the size of each particular customer and the amount of Products each customer has purchased), a letter of instruction for the placement of the stickers, and a Notice and Acknowledgment postcard. A sample of these materials is attached hereto as Exhibit C.

J.M. # 15,000
3. **Restitution and Costs.** SUREGUARD agrees to pay ~~\$18,000~~ to AYS upon execution of this Agreement. The restitutionary component of this payment, which is made pursuant to Business & Professions Code §17203, shall be forwarded by AYS to Communities for a Better Environment. Communities for a Better Environment is a statewide public interest organization that is researching the extent and effects of selenium contamination in the San Francisco Bay. 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 SUREGUARD's attention, litigating and negotiating a settlement in the public interest.

4. **Penalty.** Pursuant to Health & Safety Code §25249.7(b), SUREGUARD shall pay a civil penalty of \$8,000 on or before October 1, 1996. This penalty shall be waived upon written certification, on or before October 1, 1996, that SUREGUARD has reformulated its "Retouch Photo Lacquer" by removing toluene as an ingredient and creating a toluene free, non-toxic, water-based product.

5. **AYS Release.** AYS, by this Settlement Agreement, waives all rights to institute action against SUREGUARD, its distributors or customers, whether under Proposition 65, Business & Profession Code §§17200 et seq., or any other statute or common law claim based on SUREGUARD's failure to warn about exposure to Proposition 65 listed chemicals contained in any of the Products manufactured on or prior to the date of this Agreement. AYS acknowledges that compliance with the terms of this Agreement with respect to the Products shall constitute compliance with Proposition 65 by SUREGUARD.

6. **SUREGUARD Release.** SUREGUARD, 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 or Business & Profession Code §§17200 et seq. against SUREGUARD with respect to the Products.

7. **MSDS Revisions.** SUREGUARD 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 or sticker warning language required by Section 1 hereof. Final MSDSS incorporating the revised warning language will begin to be distributed in the normal course of business on or before December 31, 1995.

8. **Supplier Information.** SUREGUARD agrees to provide AYS with all MSDSS and labels (or copies of labels) which SUREGUARD has received from its suppliers of toluene over the last three years and an affidavit from an employee of SUREGUARD having the requisite knowledge and authority to state that the MSDSS and labels were in fact received from each such supplier of toluene.

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

Eric S. Somers, Esq.
Chanler & Somers
1700 Montgomery Street
Suite 110
San Francisco, CA 94111

All correspondence to SUREGUARD shall be mailed to:

James Mattesich, Esq.
Livingston & Mattesich
1201 K Street
Suite 1100
Sacramento, CA 95814

13. **No Admissions.** Nothing in this Agreement shall be construed as an admission by SUREGUARD 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 SUREGUARD 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 SUREGUARD under this Agreement.

14. **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:

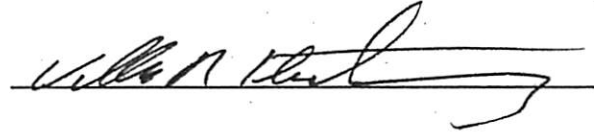
AS YOU SOW

Printed Name

Title

AGREED TO:

SUREGUARD, INC.



William R. Klosterman
Printed Name

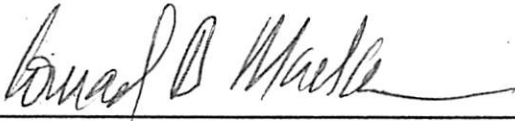
VP - CFO
Title

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14. 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

Conrad MacKerrow

Executive Director

AGREED TO:

SUREGUARD, INC.

Printed Name

Title

EXHIBIT A

SUREGUARD PRODUCT LIST

001	Pro-Texture
225	Pro-Texture Plus
354	UV Clear Gloss
355	UV Lustre
356	UV Matte Special
357	UV Matte
358	UV Retouch
359	UV Comp Gloss
910	Clear Gloss
911	Clear Gloss Photo Lacquer
920	Lustre
921	Lustre Photo Lacquer
930	Matte Special
931	Matte Special Photo Lacquer
940	Matte
941	Matte Photo Lacquer
950	Retouch
951	Retouch Photo Lacquer
956	Retouch-Vellum
957	Retouch-Vellum P/L Aerosol
980	Pro-Texture
981	Pro-texture Photo Lacquer
1431	Pro-Texture
3547	UV Retouch
3580	UV Clear Gloss
3581	UV Lustre
3582	UV Matte Special
3583	UV Matte
3584	UV Comp. Gloss
910-55	Clear Gloss Photo Lacquer
PL10-1	High Gloss Lacquer
PL10-55	High Gloss Lacquer
PL20-1	Semi-Gloss Photo Lacquer
PL21-A	Semi-Gloss Photo Lacquer
PL30-1	Semi-Matte Photo Lacquer
PL31-A	Semi-Matte Photo Lacquer
PL40-1	Flat Matte Photo Lacquer
PL41-A	Flat Matte Photo Lacquer
PL52-1	Retouchable Photo Lacquer II
PL52-A	Retouchable Photo Lacquer II
PL70-1	Photo Lacquer Solvent
PL80-1	Texture

EXHIBIT B

[Exemplary Label or Sticker]

EXHIBIT C

[Sureguard Letterhead]

IMPORTANT LEGAL NOTICE

Date:

Attention: Customers of Sureguard, Inc.

Subject: California Proposition 65 Warnings

This letter is to advise you that the Sureguard, Inc. ("Sureguard") products listed in Attachment A to this letter expose users of those products to chemicals known to the State of California to cause birth defects or other reproductive harm. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), the purchasers and/or users of the products listed on Attachment A must be given clear and reasonable warning that a particular product contains a reproductive toxin.

Although Sureguard has begun labeling the listed products with proper warnings, you may have in your possession certain products that were manufactured and distributed before the new labeling was implemented. Until those products have been sold or used, you must take certain actions to ensure that purchasers of the products receive Proposition 65 warnings.

You will be in compliance with Proposition 65 for the products listed on Attachment A if you affix the enclosed warning stickers to the products in the manner described below. The following materials will enable you to provide warnings in compliance with the law:

- (1) One hundred (100) Warning Stickers; and
- (2) A return postcard indicating that you have received the enclosed materials and will comply with the warning requirements of Proposition 65 for the listed products.

You should affix a warning sticker to the container, cap, label or package of each listed product which does not have a Proposition 65 warning on its label. The sticker must be affixed so that it is conspicuous and likely to be read and understood by an ordinary individual under customary conditions of use.

Failure to provide a Proposition 65 warning for the listed products may subject you to legal action by the California Attorney General or various environmental groups, wherein monetary penalties of up to \$2,500 per violation could be sought.

You should return the enclosed postcard affirming your compliance with Proposition 65's warning requirements for the listed products.

Should you have any questions or concerns about this matter, please do not hesitate to contact _____ at 1-800-XXX-XXXX by phone, or by mail at the above address. In addition, we will be glad to supply additional warning stickers if requested.

Sincerely,

Title

For products containing two or more Proposition 65 chemicals 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."

For products containing a Proposition 65 chemical 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."

For products containing two or more Proposition 65 chemicals 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."

For products containing both a Proposition 65 chemical listed by the State of California as known to cause cancer and a Proposition 65 chemical 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 cancer and birth defects or other reproductive harm."

This warning statement shall have a line border around it and 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. If the warning is in the form of a sticker, the warning sticker should contain the aforementioned and described warning statement and be affixed to the container, cap, or a blank area of the label or package of each product listed in Exhibit A. The parties agree that the sample label or sticker attached hereto as Exhibit B satisfies this requirement. The parties further agree that a sticker that is placed on top of other language on the label or product shall not satisfy this requirement.

2. **Warnings For Products in Commerce.** SUREGUARD agrees that on or before December 31, 1995, it shall provide warning materials by certified mail to the customers that SUREGUARD knows or has reason to believe sell, distribute or use the Products in California in an effort to ensure that users receive Proposition

RETURN POSTCARD FROM CUSTOMERS

* * * *

The undersigned certifies that this customer of Sureguard, Inc. has received (a) the Important Legal Notice letter regarding Proposition 65 warning requirements, (b) the list of Sureguard, Inc. products requiring a warning, and (c) 100 warning stickers. The undersigned further certifies that it will comply with Proposition 65 warning requirements by affixing the warning stickers provided to them in the manner directed.

[Name & Title]

[Company]

[Address]

Please send me _____ additional stickers.