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FILED
San Francisco County Superior Court
JAN 14 1994
ALAN CARLSON, Clerk
BY: *J. Douglas* Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

AS YOU SOW, a non-profit
corporation,

Plaintiff,

v.

NOXELL CORPORATION, et al.,

Defendants.

No. 950766

JUDGMENT

AS YOU SOW, a non-profit
corporation,

Plaintiff,

v.

ORLY INTERNATIONAL, et al.,

Defendants.

In the above-entitled consolidated actions, plaintiff As You
Sow and defendant Tevco, Inc., having stipulated, through their
respective counsel of record, that judgment be entered pursuant

JUDGMENT

1 to the terms of the settlement agreement entered into by the
2 parties on December 29, 1993, a copy of which is attached hereto
3 as Exhibit A.

4 IT IS HEREBY ORDERED that judgment be entered in accordance
5 with the terms of the Stipulation and the Settlement Agreement
6 between the parties, and that all terms, conditions and
7 provisions of the Settlement Agreement be given full and
8 immediate effect.

9 Dated January 13, 1994

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Odette Marie Victoire

Judge of the Superior Court

JUDGMENT

SETTLEMENT AGREEMENT

On December 29, 1993 in San Francisco, California, As You Sow ("AYS") and Tevco, Inc. ("Tevco") agreed to the following terms and conditions.

WHEREAS:

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

B. Tevco is a New Jersey based company that manufactures products, some of which contain toluene and are sold in bulk containers such as 5, 30 and 55 gallon containers ("bulk containers") to companies in the cosmetics business; and

C. On January 1, 1991, toluene was officially listed by the State of California as a chemical known to cause birth defects and other reproductive harm, pursuant to Health & Safety Code § 25249.8; and

D. On April 5, 1993, AYS filed a complaint in the San Francisco Superior Court entitled As You Sow v. Orly International, et al. (No. 950767) which was subsequently removed to the United States District Court for the Northern District of California (No. C 93-3764 CAL) (the "Litigation") alleging violations of Health & Safety Code § 25249.5 et seq. ("Proposition 65") and Business & Professions Code § 17200 et seq. ("The Unfair Competition Act"); and

E. Tevco has filed a general denial of all claims asserted in AYS' complaint and alleged that its products are exempt from the warning requirement of Health & Safety Code § 25249.6 because studies of the exposure to toluene associated with the use of its products, based on evidence and standards of comparable scientific validity to the evidence and standards which form the scientific basis for the listing of toluene pursuant to Health & Safety Code § 25249.8 and California Code of Regulations § 12000, show that the exposure has no observable effect, assuming exposure at 1000 times the level in question.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Nothing in this Settlement Agreement shall be construed as an admission by Tevco 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 Tevco of any fact, finding, issue of law or violation of law. However, this paragraph shall not diminish or otherwise affect the obligation, responsibilities and duties of Tevco under this Settlement Agreement.

2. Tevco agrees not to ship (or caused to be shipped for sale) any nail enamel products unless it knows or has reason to believe that the nail polish will not be offered for sale in the State of California or unless Tevco is in compliance with either the following Option A or Option B:

OPTION A: Such products shall have been formulated so as to eliminate the presence of toluene as an intended ingredient; or

OPTION B:

(1) Each bulk container of nail enamel products formulated with toluene as an intended ingredient shall have on it a notice which contains a warning 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. The notice shall be deemed to comply with this requirement if it is printed on a paper, sticker or other material no less than four inches by three inches (4" x 3") in size and bears the following statement:

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

Two forms of warning are attached hereto as Appendix A-1 and A-2. The exemplar shown in Appendix A-2 represents the warning label currently in use by Tevco. When Tevco's current supply of labels is exhausted, Tevco shall use the label shown in Appendix A-1. The use of either form of warning label will be deemed to comply with the requirements of Option B(1).

and

(2) In addition, Tevco shall provide (or shall have provided) to each of its existing domestic customers who purchase nail enamel products formulated with toluene as an intended ingredient (other than those with whom AYS has entered into a settlement agreement) a letter on Tevco letterhead containing the text shown on Appendix B hereto. Tevco shall also provide each new domestic customer who purchases nail enamel products formulated with toluene as an intended ingredient a letter on Tevco letterhead containing the text shown on Appendix C hereto at the time the first shipment is made. The letters shall be sent by certified mail, return receipt requested. Once Tevco has provided a particular customer with a letter in the form shown in either Appendix B or C Tevco is deemed to be in compliance with this subparagraph (2) of Option B as to that customer.

3. As reimbursement to AYS for its reasonable costs and fees, Tevco shall pay to AYS a total of \$80,000. The payments shall be made in three installments, as follows:

<u>On or before</u>	<u>Tevco shall pay</u>
Fifteen days after entry of judgment by the Superior Court	\$25,000
July 1, 1994	\$25,000
January 1, 1995	\$30,000

Payments shall be by check made payable to "As You Sow" and mailed to As You Sow c/o Clifford Chanler, Esq., Chanler & Associates, 1700 Montgomery St., 3rd Fl., San Francisco, CA 94111.

4. Stipulations, Remand, and Entry of Judgment

a. AYS and Tevco agree that within three (3) business days of the signing of this Settlement Agreement, the parties shall sign and Tevco shall file in the United States District Court for the Northern District of California the "Stipulation and Order for Remand" which is attached hereto as Appendix D.

b. Within seven (7) business days of the entry of the Stipulation and Order for Remand in the Federal Court, AYS and Tevco shall sign the Stipulation for Entry of Judgment which is attached hereto as Appendix E. Within three (3) business days after the signing of Appendix E, AYS shall file the original signed copy of that Appendix E and seek entry by the San Francisco Superior Court of the Judgment in the form attached hereto as Appendix F.

c. AYS shall give to Tevco a conformed, file-stamped copy of the "Judgment" entered by San Francisco Superior Court within three (3) business days after the court enters it.

d. In the event either the Federal Court or the Superior Court fail or refuse to enter the orders submitted to them, then at the election of either party this Settlement Agreement shall be deemed to be null and void and of no further force or effect.

5. By this Settlement Agreement, AYS, acting on its own behalf and on behalf of its members, subsidiaries, affiliates, successors and assigns, and its directors, officers, agents, attorneys, representatives, employees, and the California general public as specified in Health and Safety Code Section 25249.7(d), releases Tevco, and all of Tevco's officers, directors, agents, attorneys, representatives, heirs, successors and assigns (collectively [including Tevco] the "Defendant Releasees") from all claims and waives all rights to institute any form of legal action against the Defendant Releasees, including but not limited to any claim for penalties, damages, fines, sanctions, restitution, fees (including fees for attorneys, experts and others) or costs in the Litigation, whether under Proposition 65, California Business and Profession Code §§ 17200 *et seq.* or any other statute, provision of common law or any theory or issues whatsoever based on the alleged failure of any of the Defendant Releasees to warn about exposure to toluene from the manufacture, sale, distribution or use of any of Tevco's products or arising out of the parties' relations in these matters or relating to the Litigation, the action brought by the Cosmetics, Toiletries and Fragrance Association against As You Sow, or the subject matter of this settlement. AYS further covenants not to sue any of the Defendant Releasees based on any claim so released. AYS also agrees to do whatever is necessary to expunge, delete, remove or eliminate, (as of not later than December 31, 1993) any lis pendens or other cloud on title it may have filed, recorded or otherwise created with respect to Tevco or its assets. In consideration of the mutual covenants and agreements contained herein, no penalties, restitution, fines or other sanctions shall be sought to be imposed upon Tevco or any other of the Defendant Releasees for Tevco's manufacture, distribution and/or sale of any of its products on account of their containing toluene without a Proposition 65 warning. This Settlement Agreement

constitutes a full and final settlement as to Tevco and the other Defendant Releasees with respect to all claims, violations, actions, damages, costs, penalties or causes of action under Proposition 65 and the Unfair Competition Act arising from the sale of any products (on account of their containing toluene) manufactured, sold or distributed by Tevco.

6. By this Settlement Agreement, Tevco (acting on its own behalf and on behalf of any subsidiaries, affiliates, successors, assigns, officers, directors, employees, agents, attorneys and representatives it may have) releases all claims and waives all rights to institute any form of legal action (including but not limited to any claim for damages, fines, sanctions, fees [including fees of attorneys, experts and others] or costs in the Litigation) against AYS and any of AYS' officers, directors, agents, attorneys, representatives, heirs, successors and assigns (collectively the "AYS Releasees") based on any statute, provision of common law or any theory or issues whatsoever and for any and all actions or statements (and failures to act or state something) made by any of the AYS Releasees, in the course of seeking enforcement of Proposition 65's warning requirement for nail enamel containing toluene or arising out of the parties' relations in these matters or relating to the Litigation or the subject matter of this settlement. Tevco further covenants not to sue any of the AYS Releasees based on any claim so released.

7. Each party hereby acknowledges that it is aware that it may hereafter discover facts in addition to or different from those which it now knows or believes to be true with respect to the subject matters of this Settlement Agreement, but that it is its intention fully, finally and forever to settle any and all disputes and differences, asserted or unasserted, known and unknown, suspected and unsuspected which now exist, may exist or have existed, with respect to the matters settled pursuant to this Settlement Agreement. In light of the foregoing and in view of the fact that each party has been advised by its counsel relating to the provisions of § 1542 of the Civil Code of the State of California, each party specifically waives, to the extent permitted by law, the provisions and the benefits of the provisions of said § 1542 as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

8. Neither party shall make public in any way the existence or terms of this Settlement Agreement prior to the entry of judgment in the form attached hereto as Appendix F. For a period of thirty days following the entry of that judgment, AYS will give Tevco at least 24 hours notice of its intention to issue any press release or public statement regarding this settlement.

9. Tevco will provide to AYS certain specified information which could have been obtained by AYS in discovery had the Litigation continued. All such information (other than material safety data sheets provided to Tevco by its suppliers of toluene) will be subject to the terms of Pretrial Order #2 in the Litigation. That information is:

a. As to each of not more than ten Tevco customers (but not including any who have already entered into a settlement agreement with AYS) identified to Tevco by AYS on or before January 15, 1994, Tevco will provide to AYS (i) a copy of anything in its sales department file pertaining to that customer, covering the period January 1, 1992 to the present which refers to toluene, or the sale of toluene products, or Proposition 65, (ii) a specially generated computer printout showing, by invoice number, each purchase of nail enamel by that customer since January 1, 1992 including the invoice number, formula reference and quantity of each such formula, and (iii) a copy of the five formulas containing the maximum amount of toluene in their base, prepared by Tevco for that customer redacted to show only the amount of toluene in that formulation;

b. As to each of Tevco's suppliers of toluene, Tevco will provide AYS with documents covering the period January 1, 1992 to the present, which shall consist of (i) its vendor file (ii) any material safety data sheets, certifications or other documentation from that supplier pertaining to toluene, (iii) any correspondence between Tevco and that supplier that refers to toluene or Proposition 65 or both and (iv) a specially generated computer printout showing for each purchase of toluene the date purchased or delivered, the number of gallons, and a purchase order number (if in the computer data base for that entry.)

c. Tevco shall furnish to AYS copies of all material safety data sheets pertaining to toluene which it received from any of its suppliers of toluene or from any person who sold toluene to such a supplier.

d. Tevco employees Laly Torres and Deborah Zewacki shall participate in a conference call with Clifford Chanler, Esq. to discuss the information furnished pursuant to subparagraphs 10 a-c above. It is expected that the conference call will last not more than two hours. Other representatives of Tevco, including its counsel may participate in that call.

e. In the event that AYS finds it necessary to subpoena from Tevco (in other litigation AYS may bring against entities other than Tevco, alleging violations of Proposition 65 arising from the sale or distribution of nail polish containing toluene), then that subpoena may be served upon Barry Goode, Esq., McCutchen, Doyle, Brown & Enersen, 3 Embarcadero Center, San Francisco, California 94111, and such service shall be deemed to be service upon Tevco.

10. In the event that,

a. it is finally adjudicated by a California court that a Proposition 65 warning is not required for nail enamel products containing a certain percentage of toluene; or

b. AYS resolves its dispute with another entity in a manner such that, or a State agency determines that, certain nail enamel or nail care products containing a certain percentage of toluene may be sold in California without a Proposition 65 warning; or

c. Proposition 65 is repealed or the rules or regulations thereunder are amended so that toluene is no longer listed as a reproductive toxicant;

the commitments referenced in paragraph 2 shall be modified so as to allow Tevco to manufacture, sell, market and ship such nail enamel or nail care products in a manner consistent with such adjudications, determinations or changes in law or regulations as provided in the following sentence. If any of the events described in subparagraphs (a)-(c) above occur, and a party wishes to modify the commitments referenced in paragraph 2, then Tevco may, upon thirty days written notice to AYS, apply to the court for a modification of its obligations under paragraph 2 of this Settlement Agreement (and only that paragraph) to be consistent with such significantly changed circumstances.

11. 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.

12. Entry of judgment by the Court pursuant to this Settlement Agreement shall, inter alia:

a. constitute a full and final adjudication of all claims against Tevco, including but not limited to any based on alleged violations of Proposition 65 and of Business & Professions Code § 17200 et seq. which arise from the alleged failure to provide clear and reasonable warning of exposure to toluene from use of products offered for sale in California; and

b. bar any and all other persons from prosecuting against Tevco any claim (including without limitation, direct claims and claims for indemnification and or contribution) based upon alleged violations of Proposition 65 and Business and Profession Code § 17200 et seq. which arise from the alleged failure to provide clear and reasonable warning of exposure to toluene from use of products offered for sale in California (provided however that this paragraph 12.b shall in no way limit any claims AYS has or may have against any of Tevco's customers); and

c. vacates (i) the Order for Preliminary Injunction dated October 5, 1993 and entered pursuant to the Stipulation for Preliminary Injunction dated October 5, 1993 in the Litigation and (ii) the Preliminary Injunction dated October 5, 1993 in the Litigation.

13. This Settlement Agreement may be executed in one or more counterparts which, taken together, shall be deemed to constitute one and the same document.

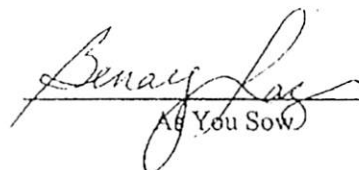
14. The terms of this Settlement Agreement shall be governed by the laws of the State of California.

15. All notices or correspondence to be given pursuant to this Settlement Agreement or relating to this Settlement Agreement shall be served on any party by the others at the addresses shown on Appendix G. Appendix G may be amended by giving notice to all parties to this Settlement Agreement.

16. This is an integrated agreement. All agreements, covenants, representations and warranties, express or implied, oral or written, of the parties concerning the subject matter of this Settlement Agreement are contained herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any party (or the representative of any party) to any other party (or the representative or agent of any party) concerning the subject matter hereof. All prior and contemporaneous conversations, prior drafts of this Settlement Agreement, negotiations, possible and alleged agreements, representations, covenants and warranties concerning the subject matter hereof other than those referred to herein are merged herein and shall not be used to interpret the language and/or meaning of this Settlement Agreement.

17. Nothing contained in this Settlement Agreement shall inure to the benefit of any supplier of one or more chemicals used by Tevco.

Dated: December __, 1993


Benay
As You Sow

Dated: December 29, 1993


Robert Kellerman
Tevco

WARNING



Use of this product will expose you to TOLUENE, a chemical known to the State of California to cause birth defects or other reproductive harm.

APPENDIX A-1

WARNING:

“This product contains
a chemical known to the State of
California to cause birth defects
or other reproductive harm.”

CALIFORNIA WARNING REQUIREMENT NOTICE

Dear Customer:

Our records indicate that you purchased nail enamel that contains toluene. Please review this notice regarding California law on notice to consumers.

The citizens of the State of California have enacted the Safe Drinking Water and Toxic Enforcement Act of 1986, better known as Proposition 65. This law requires, in part, that no person may expose an individual to a chemical known to the State of California to cause birth defects or other reproductive harm without first giving clear and reasonable warning. (You should consult your own attorney about the law's requirements and penalties for violation.)

Toluene, a solvent used in nail enamel, is listed by the State of California as a chemical known to cause reproductive toxicity. Accordingly, as of January 1, 1992, a specific warning has been required for products containing toluene sold in the State of California.

In order to comply with Proposition 65, you should take steps to ensure that individuals in California using your nail enamel containing toluene receive clear and reasonable warning. Such warning should be provided through a label or hangtag on each bottle of nail enamel that you know or have reason to believe will be sold in California. The warning must be prominent and conspicuously displayed so that it is likely to be read. The warning should state:

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

For nail enamel containing toluene that you know or have reason to believe will be used in nail or beauty salons in California, a warning sign should be provided for posting within the salon. The warning on the sign should state:

WARNING: The following products contain a chemical known to the State of California to cause birth defects or other reproductive harm. [list product names]

We understand you may be receiving from the Nail Manufacturers Council some additional information about this.

Tevco has developed several nail enamel formulas without toluene, which may allow for improvement over conventional nail enamel. If you have any questions, please call us.

TEVCO INC.

APPENDIX B

CALIFORNIA WARNING REQUIREMENT NOTICE

Dear Customer:

You have purchased nail enamel that contains toluene. Please review this notice regarding California law on notice to consumers.

The citizens of the State of California have enacted the Safe Drinking Water and Toxic Enforcement Act of 1986, better known as Proposition 65. This law requires, in part, that no person may expose an individual to a chemical known to the State of California to cause birth defects or other reproductive harm without first giving clear and reasonable warning. (You should consult your own attorney about the law's requirements and penalties for violation.)

Toluene, a solvent used in nail enamel, is listed by the State of California as a chemical known to cause reproductive toxicity. Accordingly, as of January 1, 1992, a specific warning has been required for products containing toluene sold in the State of California.

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TEVCO INC.

APPENDIX C

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FILED
San Francisco County Superior Court
JAN 14 1994
ALAN CARLSON, Clerk
BY: *A. Douglas*
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

AS YOU SOW, a non-profit
corporation,

Plaintiff,

v.

NOXELL CORPORATION, et al.,

Defendants.

No. 950766

JUDGMENT

AS YOU SOW, a non-profit
corporation,

Plaintiff,

v.

ORLY INTERNATIONAL, et al.,

Defendants.

In the above-entitled consolidated actions, plaintiff As You
Sow and defendant Tevco, Inc., having stipulated, through their
respective counsel of record, that judgment be entered pursuant

JUDGMENT

1 McCUTCHEN, DOYLE, BROWN & ENERSEN
BARRY P. GOODE
2 Three Embarcadero Center
San Francisco, California 94111
3 Telephone: (415) 393-2000

4 Attorneys for Defendant
Tevco, Inc.
5
6

7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA
9

10 AS YOU SOW,

11 Plaintiff,

12 v.

13 ORLY INTERNATIONAL; TEVCO,
14 INC.; KIRKER CHEMICALS;
BRUCCI, LTD.; CHARNI
15 COSMETICS; CREATIVE NAIL
DESIGN, INC.; JESSICA
16 COSMETICS, INTERNATIONAL; LA
BELL; MAR VISTA INTERNATIONAL;
17 MISS MARION COSMETICS; MISS
PROFESSIONAL NAIL PRODUCTS,
18 INC., ROYAL BEAUTY SUPPLY;
CLARINS USA, INC.; LANCOME,
19 INC.; HOLDER IMAGES, INC.;
MAVLA S.A., COSMETICALLY
20 SEALED INDUSTRIES, INC.;
AMERICAN INTERNATIONAL IND.;
21 JOHNSON PRODUCTS; AMWAY CORP.;
CHRISTIAN DIOR PERFUMES INC.;
22 VITAL NAILS, INC.; OPI
PRODUCTS, INC.; ESSIE
23 COSMETICS, LTD.; and DOES 3
24 through 10,

25 Defendant.
26

No. C93 3764 CAL

STIPULATION AND ORDER FOR
REMAND

STIPULATION AND ORDER FOR REMAND
APPENDIX D

1 Plaintiff As You Sow and defendant Tevco, Inc, by and
2 through their respective attorneys, hereby advise the Court that
3 they have settled all disagreements between them including As You
4 Sow's assertion that this case ought to be remanded to State
5 Court.

6 As part of the settlement of this case, the parties
7 have stipulated that the case shall be remanded for entry of a
8 stipulated judgment by the San Francisco Superior Court.

9 Accordingly, the parties stipulate and request that
10 this Court order this case remanded to the Superior Court of the
11 State of California in and for the City and County of San
12 Francisco; provided however that if the San Francisco Superior
13 Court does not enter judgment upon the parties' stipulation on or
14 before January 31, 1994 that this order of remand shall be null

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STIPULATION AND ORDER FOR REMAND

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APPENDIX D

STIPULATION AND ORDER FOR REMAND

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1 and void and of no further effect and this Court shall have

2 jurisdiction over this case *nam pro tunc*.

3 Dated: December —, 1993

As You Sow

7 Dated: December —, 1993

Teveco, Inc.

11 IT IS SO ORDERED

12 Dated: December —, 1993

United States District Court Judge

1 McCUTCHEM, DOYLE, BROWN & ENERSEN
BARRY GOODE (State Bar #64135)
2 Three Embarcadero Center
San Francisco, California 94111-4066
3 Telephone: (415) 393-2000
4 Attorneys for TEVCO, Inc.

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO

10

11 AS YOU SOW, a non-profit
corporation,

12

13 Plaintiff,

14

v.

15 NOXELL CORPORATION, et al.,

16

Defendant.

17 AS YOU SOW, a non-profit
corporation,

18

19 Plaintiff,

20

v.

21 ORLY INTERNATIONAL, et al.,

22

Defendants.

23

24 Plaintiff As You Sow and defendant Tevco, Inc, by and
25 through their respective counsel hereby stipulate and agree that
26 in accordance with the terms of the Settlement Agreement entered

No. 950766

STIPULATION FOR ENTRY OF
JUDGMENT

APPENDIX E

1 into by them, a copy of which is attached to the proposed
2 Judgment filed herewith, that judgment be entered in the form
3 filed herewith.

4 Dated: December 14, 1993

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8 Dated: December __, 1993

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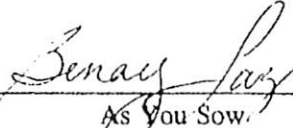
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As You Sow.

Tevco, Inc.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

AS YOU SOW, a non-profit corporation,

Plaintiff,

v.

NOXELL CORPORATION, et al.,

Defendants.

No. 950766

JUDGMENT

AS YOU SOW, a non-profit corporation,

Plaintiff,

v.

ORLY INTERNATIONAL, et al.,

Defendants.

In the above-entitled consolidated actions, plaintiff As You Sow and defendant Tevco, Inc., having stipulated, through their respective counsel of record, that judgment be entered pursuant

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2 parties on December 29, 1993, a copy of which is attached hereto
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6 between the parties, and that all terms, conditions and
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8 immediate effect.

9 Dated December __, 1993

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Judge of the Superior Court

Notices to AYS shall be sent to:

Clifford Chanler, Esq.
Chanler & Associates
1700 Montgomery St., 3rd Fl.
San Francisco, CA 94111

Notices to Tevco shall be sent to:

Mr. Mitchell L. Schlossman
President
Tevco, Inc.
110 Pomponio Avenue
So.Plainfield, NJ 07080

with a copy to

Barry Goode, Esq.
McCutchen, Doyle, Brown & Enersen
Three Embarcadero Center
San Francisco, CA 94111

APPENDIX G