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13 Attorneys for Defendant
14 UNITED COATINGS, INC.
15 and WALMART, INC.

16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO

18 AS YOU SOW, a nonprofit
19 corporation,
20
21 Plaintiff,

22 vs.

23 THE SHERWIN-WILLIAMS
24 COMPANY,
25 et al.
26
27 Defendants.

28) CASE NO. 954568
) (and consolidated matters
) 952433, 954993, 957067

JUDGMENT

29 This cause came on to be heard on the joint motion of the Plaintiff, As You
30 Sow, Inc. ("As You Sow") and the Defendants United Coatings, Inc. ("United Coatings")
31 and WalMart Stores, Inc. ("WalMart"). Due notice of this motion having been given to
32 the People of the State of California in care of the Attorney General, Daniel E.
33 Lungren.

34 The parties have advised the Court that the Defendants, WalMart and United
35 Coatings, have offered to settle and compromise any and all matters or things in
36 controversy and dispute in this consolidated cause upon the following terms and
37

conditions, and subject to this Court's approval and the entry of a final Judgment Order.

1 1. The Complaint and Amended Complaints were filed herein by As You
2 Sow, a not-for-profit public interest corporation dedicated to promoting consumer
3 awareness, protecting the environment and improving human health.

4 As You Sow has alleged that United Coatings is a company that currently
5 manufactures consumer products including aerosol spray paints, some of which contain
6 toluene and that WalMart is a retailer selling some of the toluene-containing products
7 manufactured by United Coatings.

8 2. Toluene was officially listed by the State of California as a chemical known
9 to cause birth defects or other reproductive harm pursuant to the California Health and
10 Safety Code, Section 25249.8.

11 3. As You Sow has alleged that it is in compliance with the notice provisions
12 set forth in the Health and Safety Code, Section 25249.7 and to the knowledge of As You
13 Sow neither the Attorney General of the State of California nor any other public
14 prosecutor or city attorney has commenced any action under Proposition 65 against
15 WalMart or United Coatings. As You Sow represents that it has established its right to
16 bring this action.

17 4. A list of the products which contain toluene which United Coatings has
18 manufactured for retail sale in California since January 1, 1992, as well as those which
19 Walmart has made available for retail sale in California, is provided in attachment A (the
20 "Products").

21 5. United Coatings warrants that as of March 1, 1994 each of its California
22 retailers and distributors were provided with warning signs or warning stickers which
23 comply with the requirements of Proposition 65 (and written instructions for the
24 placement of the signs or stickers) in an effort to ensure that consumers receive
25 Proposition 65 warnings for Products that were already shipped for sale in California.
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Said warnings state:

WARNING:

(In compliance with Proposition 65.) This Product Contains a Chemical(s) Known to the State of California to Cause Cancer, Birth Defects or Other Reproductive Harm

The parties agree that said warning is adequate within the scope and purview of Proposition 65.

6. United Coatings further warrants that as of the date hereof, it will not ship or cause to be shipped or offered for retail sale within the State of California through its customer WalMart or any other customer, any of the Products which do not carry either a warning label that is in full compliance with the California Health and Safety Code, Section 25249.6 and 22CCR12601 as same may be amended or modified, or otherwise comply with the consumer product warning requirements under Proposition 65. Such warning shall be displayed with such conspicuousness, as compared with other words, statements or designs so as to render it likely to be read and understood by an ordinary individual, and shall bear the appropriate warning statement, as follows:

For products containing toluene or other reproductive toxins as listed in 22 CCR 12000:

WARNING:

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

For products containing methylene chloride or other carcinogens as listed in 22 CCR 12000:

WARNING:

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

For products containing reproductive toxins and carcinogens:

WARNING:

This product contains chemicals known to the State of California to cause Cancer, Birth Defects or Other Reproductive Harm.

United Coatings warrants that when a Product containing reproductive toxins and carcinogens is relabelled, the clarity of the above warning shall be improved

1 to state the following:

2 WARNING: This product contains chemicals known to the
3 State of California to cause Cancer and Birth
4 Defects or Other Reproductive Harm.

5 7. The foregoing provisions of this Order notwithstanding, the parties have
6 acknowledged that in the course of the manufacturing process, substantial inventories have
7 been manufactured of the subject aerosol Products which contain a Proposition 65 warning
8 label which reads as follows:

9 WARNING: This Product Contains a Chemical Known to
10 the State of California to Cause Cancer, Birth
11 Defects or Other Reproductive Harm

12 Because of the economic realities of the circumstances, the provisions
13 contained in this Judgment Order are to be construed to authorize United Coatings and
14 WalMart to distribute said existing inventory and product in the current manufacturing
15 pipeline for a period of thirty months after the entry of this order, with the understanding
16 that during said period of time, United Coatings shall cause its further production to have
17 the labels on said aerosol cans modified by removing the word "Cancer" from said warning
18 when such removal is consistent with paragraph 6 of this Order. After the passage of
19 thirty months from the date of the entry of the Judgment Order herein, the warning as set
20 forth above shall be changed to that which is required for products which contain toluene
21 but no chemical known to the State of California which causes cancer.

22 8. It is the understanding and intent of the parties to settle and compromise
23 all claims, and that said settlement will accomplish a complete and final release, discharge
24 and waiver of any and all claims alleged or which could have been alleged against United
25 Coatings, WalMart, their officers, directors, employees, agents, representatives,
26 subsidiaries, assigns, distributors, affiliates and retailers whether under Proposition 65,
27 Business and Professional Code § 17,200 *et seq.* or any other statute or common law claim
28 based upon United Coatings' and/or WalMart's alleged failure to warn consumers about

1 exposure to toluene from the use of the Products.

2 9. United Coatings and WalMart, their officers, directors, employees, agents,
3 representatives, subsidiaries, assigns, affiliates, and their attorneys, by this Agreement,
4 hereby waive against As You Sow and its members, employees, agents, and attorneys ("As
5 You Sow Releasees"), any claim, known or unknown, under any federal, state or local law
6 for all actions or statements made by As You Sow Releasees in the course of seeking
7 enforcement of Proposition 65 against United Coatings and WalMart.

8 10. It is the understanding of the parties, upon which understanding the
9 Defendants WalMart and United Coatings have relied, that the entry of this Judgment
10 shall constitute *res adjudicata*.

11 11. It is the agreement of the parties that this Judgment Order settles as of the
12 date hereof all violations of the referenced statutes and common law, whether committed
13 by either defendant or by any entity within either defendants' chain of distribution,
14 including, but not limited to, retail sellers of the Products.

15 It is the intended effect of this Judgment Order to compromise and settle
16 this dispute and that this Judgment Order bars further claims, whether directly under
17 Proposition 65 or not, that arise from the failure to provide the Proposition 65 warning
18 for the Products as of this Order.

19 If another person, such as any other private plaintiff, has another claim on
20 behalf of the general public that is based on the failure to comply with Proposition 65 or
21 the Unfair Competition Act, Business and Professions Code § 17,200 *et seq.*, due to failure
22 to warn of toluene in the Products, that claim will be barred.

23 Notwithstanding the above, the obligations of the parties set forth in this
24 Judgment Order shall not be affected.

25 12. The parties have entered into this agreement to settle and compromise any
26 and all claims brought herein or which could have been brought herein or in the
27 consolidated matter. The parties have settled these disputed claims for the purpose of
28 avoiding prolonged litigation and to ensure that the requirements of Proposition 65 are

1 expeditiously carried out.

2 By the execution of this agreement to settle and compromise all claims,
3 and the entry of Judgment thereon, neither defendant hereto admits any violation of
4 Proposition 65, the Unfair Competition Act, any other related statute, or common law
5 obligation. Nothing contained in this agreement or the Judgment Order to be entered
6 herein shall be construed as an admission by Defendants or either of them of any fact
7 issue, issue of law or violation of law, nor shall any person construe compliance with this
8 Order as being an admission by Defendants or either of them of any fact issue, issue of
9 law or violation of law. However this paragraph shall not diminish or otherwise affect the
10 obligations and responsibilities of any party to this Judgment.

11 13. United Coatings agrees that it will immediately use its best efforts to
12 reformulate one or more Products so as to eliminate the presence of toluene, as well as
13 any other chemical listed in 22 CCR § 12000.

14 If United Coatings fails to accomplish reformulation of one or more of the
15 Products by June 30, 1995, said failure shall not constitute violation of this Judgment
16 Order or a breach of the agreement to settle and compromise the claims asserted in this
17 proceeding by As You Sow. In the event that reformulation is unsuccessful, United
18 Coatings shall, no later than July 31, 1995, provide As You Sow with a confidential written
19 report setting forth the reasons why reformulation was not yet achieved, such as product
20 efficacy, price-competitiveness, or consumer acceptance, and further describing the
21 continued research and development efforts of United Coatings. Such report shall be of
22 reasonable length and detail to allow evaluation as to whether such best efforts were
23 made, however As You Sow acknowledges that such research and development work may
24 constitute a trade secret and agrees not to disclose the contents of the research to anyone
25 and to keep same confidential for a period of 10 years from the date of its receipt by As
26 You Sow.

27 14. United Coatings has, as a part of the above, offered on its behalf and on
28 behalf of WalMart to reimburse As You Sow for its cost of investigation and legal fees

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in the sum of \$70,000.00 payable forthwith upon the entry of a final and non-appealable order.

As You Sow has accepted said offer.

15. In the event that a future dispute arises with respect to any provisions(s) of this Judgment Order, the Court may award to the prevailing party costs and reasonable attorneys' fees.

16. The parties to said settlement and compromise intend that same shall be governed by the laws of the State of California.

The Court, having considered the proposed offer and agreement to settle and compromise any and all claims set forth in the Complaints and Amended Complaints filed herein against United Coatings and WalMart, or which could have been filed in said complaints and being fully advised in the premises doth find: (1) that it has jurisdiction over the parties hereto and the subject matter hereof; and (2) that said agreement to compromise and settle all claims alleged in the relevant Complaints and Amended Complaints against United Coatings and WalMart is fair, is just, is equitable and is in the public interest.

THEREFORE, it is adjudged, ordered and decreed:

1. That the parties shall carry out the terms of the above and foregoing agreement to settle and compromise all claims herein.

2. That this cause insofar as same pertains to United Coatings and WalMart shall be and the same hereby is concluded without costs, all costs having been paid.

3. The Court reserves jurisdiction over said parties for the sole purpose of enforcing the above agreement to compromise and settle claims set forth above.

4. The Court finds specifically and intends this Judgment Order to be a final Order having determined there is no just reason for delay in enforcement or appeal of this

Order.

STIPULATION

We stipulate and agree to the entry of the above and foregoing Order. We further stipulate to and do hereby waive all rights of appeal from this final Judgment Order.

AS YOU SOW, INC.

By: *David H. Fyfe*
Its Attorneys

UNITED COATINGS, INC.

By: *Russell A. Montoya*
Its Attorney

WALMART STORES, INC.

By: *Russell A. Montoya*
Its Attorney

DATED: March 21, 1994

ENTER: _____
Judge

DATED: March __, 1994

EFSKY
TROELICH
D.