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6 Attorneys for Plaintiff
AS YOU SOW

7 SUPERIOR COURT OF CALIFORNIA
8 IN AND FOR THE COUNTY OF MARIN
9

10 AS YOU SOW, a non-profit)	Case No. 167221
11 corporation,)	
12 Plaintiff)	STIPULATION FOR ENTRY OF
13 v.)	<u>JUDGMENT</u>
14 NATIONAL SANITARY SUPPLY)	
15 COMPANY; and DOES 1 through)	
1000,)	
16 Defendants.)	
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IT IS HEREBY STIPULATED, by and between plaintiff As
You Sow and defendant National Sanitary Supply Company,
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 30th, 1996

for by: *Pia A. Angelikis*
Pia A. Angelikis
Attorneys for Plaintiff
As You Sow

Dated: October 2, 1996

by: *Janine S. Simerly*
Janine S. Simerly
Attorneys for Defendant
National Sanitary Supply Co.

SETTLEMENT AGREEMENT

This Settlement Agreement (this "Agreement") is entered into by and between As You Sow, a California non-profit corporation ("AYS") and National Sanitary Supply Company, a Delaware corporation ("NSS") as of October 14, 1996 (the "Effective Date").

WHEREAS:

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

NSS manufactures, distributes and sells various products in the State of California that contain the following chemicals listed pursuant to Proposition 65: Methlenechloride, Toluene, and Ethylene Glycol Monoethyl Ether;

The NSS products that contain one or more of the chemicals listed above and which are covered by this Agreement (the "Products") are: 1) Strip-It Paint & Sealer Remover and 2) Aqua Tone II Sealer;

The Products have been distributed and sold by NSS for use in California since before April 19, 1992;

On November 8, 1995, AYS first served NSS and all of the requisite public enforcement agencies with a document entitled "60-Day Notice" which provided NSS and such public agencies with notice that NSS 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 April 19, 1996, AYS filed a complaint entitled As You Sow v. National Sanitary Supply Company, et al. (No. 167221) in the Marin County Superior Court, naming NSS as a defendant and alleging violations of Business & Professions Code §17200 and Health & Safety Code §25249.6 on behalf of individuals in California who allegedly are exposed to chemicals listed pursuant to Proposition 65 contained in certain NSS products.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Product Labeling.** Beginning immediately, NSS shall initiate revisions to its current labels for the Products. NSS shall use its best efforts to ensure that all Products are relabeled as quickly as possible, however, NSS agrees that as of November 15, 1996, it shall not ship (or cause to be shipped) any of the Products for sale

or use in or into the State of California unless each such Product contains the appropriate warning statement on its label as follows:

1.1. For Products containing a chemical listed by the State of California as known to cause birth defects or other reproductive harm:

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

1.2. For Products containing a chemical listed by the State of California as known to cause cancer:

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

1.3. For Products containing any combination of chemicals listed by the State of California as known to cause cancer and 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."

The 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.

2. **Material Safety Data Sheet Revisions.** NSS agrees to revise Section IV, entitled "Health Hazard Data" on each Material Safety Data Sheet ("MSDS") pertaining to each of the Products listed at page 1 of this Agreement, to include the applicable warning language set forth in ¶ 1 of this Agreement. Final MSDSs incorporating the revised warning language will begin to be distributed in the normal course of business on or before November 15, 1996.

3. **Restitution.** NSS agrees to pay \$5,000 in restitution to AYS on the Effective Date. This payment, which is made pursuant to Business & Professions Code §17203, shall be forwarded by AYS to California non-profit groups working to reduce exposures to toxic chemicals, and to increase consumer, worker and community awareness of the health hazards posed by toxic chemicals.

4. **Penalty.** Pursuant to Health & Safety Code §25249.7(b), NSS shall pay, on November 18, 1997, a civil penalty in the amount of \$5,000. Penalty monies shall be apportioned by AYS in accordance with Health & Safety Code §25192, with 75% of these funds remitted by AYS to the State of California. This \$5,000 penalty

will be waived if, prior to November 18, 1997, NSS provides AYS with an affidavit from an authorized NSS employee showing that either Strip It Paint & Sealer Remover or Aqua Tone II Sealer has been reformulated to remove Proposition 65 listed chemicals or that best efforts have been made to reformulate the product to remove Proposition 65-listed chemicals (with a description of such best efforts) or that the product is no longer being sold in California.

5. **Reimbursement of Fees and Costs.** NSS agrees to reimburse AYS for its investigation fees and costs, expert fees, reasonable attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to NSS's attention, litigating and negotiating a settlement in the public interest. On the Effective Date, NSS shall pay AYS \$15,000 as reimbursement of its reasonable investigation fees and costs, reasonable attorney fees and costs, and other costs (including expert fees and costs) incurred in this matter, through September 15, 1996. NSS agrees to pay, on or before November 1, 1996, a minimum of \$500 in additional attorneys fees incurred in concluding this matter, said further sum in no case to exceed \$1,500.

6. **AYS Release.** AYS, by this Agreement, waives all rights to institute any form of legal action against NSS, its distributors or customers, whether under Proposition 65 or Business & Profession Code §§17200 et seq., based upon NSS'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.

7. **NSS Release.** NSS, 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") 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 NSS.

8. **Warranties and Representations.** The parties make the following representations and warranties:

8.1. NSS represents and warrants as follows:

8.1.1. Strip It Paint & Sealer Remover and Aqua Tone II Sealer contain one or more substances known to the state of California to cause cancer or birth defects or other reproductive harm, and that NSS has no analytical, risk assessment, or other data indicating that an exposure to either or both products poses "no significant risk" or will have "no observable effect," as each such standard is applicable and as each is defined under Health & Safety Code § 25249.10(c).

8.1.2. In the event that NSS obtains analytical, risk assessment, or other data that shows that an exposure to Strip It Paint & Sealer Remover or Aqua Tone II Sealer poses "no significant risk" or will have "no observable effect," as each such standard is applicable and as each is defined under Health & Safety Code §

25249.10(c), NSS shall provide AYS with 90 days prior written notice of its intent to limit or eliminate the warning provisions under Section 1 herein and shall provide AYS with all such supporting data. Within thirty (30) days of receipt of NSS's exposure data, AYS shall provide NSS with written notice of its desire to challenge the data (in the event that AYS chooses to make such a challenge), and AYS and NSS shall negotiate in good faith to attempt to reach a settlement. In the event that no settlement is reached within thirty (30) days of mailing by AYS of such notice of challenge, AYS and NSS agree to submit such challenge to the Court for determination, pursuant to the Court's continuing jurisdiction of this matter under C.C.P. §664.6 and Section 9 of this Agreement. The prevailing party shall be entitled to reasonable attorneys' fees and costs associated with such a determination. If AYS does not challenge NSS's notice or the Court determines that no warning is required for a particular Product or Products, NSS shall no longer be required to provide the warnings described in Section 1 of this Agreement for those Products.

MATERIALLY
OR
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8.1.3. NSS understands that the sales data provided to AYS' counsel by NSS in a letter from Naomi Dallob dated June 13, 1996 was a material factor upon which AYS has relied to determine the amount of penalties and restitution in Sections 3 and 4 of this agreement. The sales data provided in the above-referenced letter is true and accurate. NSS acknowledges that, in the event AYS finds that the sales data is materially inaccurate, all other parts of this Agreement notwithstanding, AYS will have the right to rescind this Agreement and re-institute an enforcement action against NSS. In such a case, all applicable statutes of limitation shall be deemed tolled for the period between April 19, 1996 (the date AYS filed the instant action) and the date AYS notifies NSS that it is rescinding this Agreement pursuant to this subpart.

9. **Stipulated Judgment.** The parties shall file a stipulated judgment to be approved pursuant to CCP §664.6 by the Marin County Superior Court in accordance with the terms of this 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. **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.

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

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

Clifford Chanler, Esq.
Chanler Law Group
1700 Montgomery Street
Suite 110
San Francisco, CA 94111

All correspondence to NSS shall be mailed to:

Janine Simerly, Esq.
Bronson, Bronson & McKinnon
505 Montgomery Street
San Francisco, CA 94111

14. No Admissions. Nothing in this Agreement shall be construed as an admission by NSS 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 NSS 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 NSS under this Agreement.

15. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

16. 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:

AGREED TO:

AS YOU SOW

NATIONAL SANITARY SUPPLY
COMPANY

PAUL C. VOET
PRESIDENT + CEO

Printed Name & Title

Printed Name & Title

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Clifford Chanler, Esq.
Chanler Law Group
1700 Montgomery Street
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San Francisco, CA 94111

All correspondence to NSS shall be mailed to:

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16. 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:

AGREED TO:

AS YOU SOW

NATIONAL SANITARY SUPPLY
COMPANY



Lisa S. Wiggins, General Counsel
Printed Name & Title

Printed Name & Title

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