



FILED
ALAMEDA COUNTY

DEC 05 2008

CLERK OF THE SUPERIOR COURT

By *[Signature]* Deputy *gd.*

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10 As You Sow
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
(Unlimited Jurisdiction)

AS YOU SOW,
Plaintiff,
v.

CASE NO. RG 08-396643

CONSENT JUDGMENT

SHEFFIELD BRONZE PAINT
CORPORATION; TRUE VALUE COMPANY;
and DOES 1 through 100 INCLUSIVE,
Defendants.

This Consent Judgment is entered into by and between Plaintiff AS YOU SOW("AYS") and Defendant SHEFFIELD BRONZE PAINT CORPORATION ("Sheffield") to resolve all claims raised in the plaintiff's complaint filed in the above-captioned action. This Consent Judgment shall be effective upon entry. AYS and Sheffield (collectively "the Parties") agree to the terms and conditions set forth below.

1. INTRODUCTION

1.1 AYS is a non-profit foundation dedicated to, among other causes, the protection of the environment, the promotion of human health, the improvement of worker and consumer rights, environmental education, and corporate accountability. AYS is based in San Francisco, California and incorporated under the laws of the State of California.

1 1.2 Sheffield manufactures and distributes paints for sale in California stores. Sheffield's
2 paints contain ethylbenzene, a chemical regulated by the State of California as known to cause
3 cancer pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"),
4 California Health and Safety Code §25249.5 et seq.; Title 22, California Code of Regulations,
5 §12000 et seq.

6 1.3 On April 24, 2008 AYS sent a 60-day Notice of Violation to Sheffield, True Value
7 Company and to public enforcers as required by Health & Safety Code Section 25249.7 alleging that
8 Sheffield violated Proposition 65 by failing to provide clear and reasonable warning before
9 exposing users to ethylbenzene in paints (specifically Deep Gold Leaf Finishes 2 oz., Pale Gold Leaf
10 Finishes 2 oz., and Rich Gold Leaf Finishes 2 oz. products).

11 1.4 On June 23, 2008 AYS sent a 60-day Notice of Violation to Sheffield, True Value
12 Company and to public enforcers as required by Health & Safety Code Section 25249.7 alleging that
13 Sheffield violated Proposition 65 by failing to provide clear and reasonable warning before
14 exposing users to ethylbenzene in paints (specifically Porcelain Touch Up 1 oz., Gold Leaf Finish -
15 Statutory Bronze 2 oz., Gold Leaf Finish - Copper 2 oz., Gold Leaf Finish - Antique 2 oz., Gold Leaf
16 Finish - Superlite 2 oz., Gold Leaf Finish - Pale 4 oz., Gold Leaf Finish - Pale 8 oz.).

17 1.5 The Sheffield paints included in AYS' April 24, 2008 Notice letter, AYS' June 23,
18 2008 Notice letter, as well as Sheffield's Gold Leaf (all hues - 1 quart), Sheffield's Clear Lacquer
19 (8 oz.), and Sheffield's Clear Lacquer (1 quart) shall be referred to collectively as "the Covered
20 Products."

21 1.6 On July 3, 2008, AYS filed a Complaint against Sheffield in the Alameda Superior
22 Court, No. RG08-396643, alleging that Defendants violated Proposition 65 due to the alleged failure
23 to provide clear and reasonable warning that users of the products identified in the April 24, 2008
24 60-day Notice were exposed to ethylbenzene, a chemical known to the state of California to cause
25 cancer.

26 1.7 Sheffield has represented that as of August, 2008, in response to AYS Notice letters
27 and Complaint, it removed all inventory of the Covered Products without Proposition 65 warnings
28 from the California marketplace.

1 1.8 To the extent that the allegations in the June 23, 2008 60-Day Notice are not
2 otherwise subsumed within the allegations of the April 24, 2008 60-Day Notice, and upon the
3 expiration of 60 days if no public prosecutor has commenced and is diligently prosecuting the
4 violations alleged in the June 23, 2008 60-Day Notice, the Complaint shall be deemed amended to
5 include allegations against Defendants based on the June 23, 2008 60-Day Notice.

6 1.9 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
7 jurisdiction over Defendants as to the allegations contained in the Complaint, that venue is proper
8 in Alameda County, that this Court has jurisdiction to enter this Consent Judgment as a resolution
9 of all claims that were alleged in the Complaint, and that the Court shall retain jurisdiction to
10 implement the Consent Judgment.

11 1.10 The Parties enter into this agreement to settle certain disputed claims as alleged in
12 the complaint, and to avoid prolonged and costly litigation. By executing and complying with this
13 agreement, neither Party admits any facts or conclusions of law including, but not limited to, any
14 facts or conclusions of law regarding any violations of Proposition 65, or any other statutory,
15 common law or equitable claim or requirement relating to or arising from the sale of Sheffield in
16 California. Neither shall this Consent Judgment be construed as an admission that any act provided
17 for herein, or any warnings regarding exposure to the Chemicals from the Products are required
18 under Proposition 65 or any other statute, regulation, or common law requirement. Nothing in this
19 Consent Judgment shall prejudice, waive, or impair any right, remedy, or defense that Plaintiff and
20 Defendants may have in any other or in future legal proceedings unrelated to these proceedings.
21 However, this paragraph shall not diminish or otherwise affect the obligation, responsibilities, and
22 duties of the Parties under this Consent Judgment.

23 1.11 The term "Effective Date" means the date of entry of this Consent Judgment.

24 **2. INJUNCTIVE RELIEF**

25 2.1 If, at any time after the Effective Date, Sheffield sells, distributes or manufactures
26 any Covered Products for sale or use in the State of California, it shall provide the following
27 warning statement:

28 **"WARNING: This product contains a chemical known to the State of California to**

1 cause cancer.”

2 2.2 If, at any time after the Effective Date, Sheffield sells, distributes or manufactures
3 any Covered Products for sale or use in the State of California which contains a chemical listed
4 under Proposition 65 as a reproductive toxin, the following warning shall also be provided:
5

6 **WARNING:** This product contains chemicals known to the State of California to cause
7 cancer and birth defects and other reproductive harm.”

8 2.3 The warning statements required in Section 2.1 and Section 2.2 shall be prominently
9 affixed to or printed on the Covered Product’s packaging and labeling by Sheffield and shall be
10 displayed with such conspicuousness, as compared with other words, statements, designs, or devices
11 on the Covered Product, or its packaging or labeling, as to render it likely to be read and understood
12 by an ordinary individual under customary conditions of purchase or use. For purposes of this
13 Section, a warning may be contained in the same section of the packaging and labeling that contains
14 other safety warnings, if any, concerning the use of the Covered Product. The type size of the
15 warning must be legible, but need not be any larger than any other warning provided for the Covered
16 Product, and its relative size may take into account the nature, immediacy, and acuteness of the risks
17 for which other warnings are provided.
18

19
20 2.4 No later than 30 days following the parties’ execution of this Consent Judgment,
21 Sheffield shall cause all Covered Products without Proposition 65 warnings to be removed from the
22 California marketplace and to be returned to Sheffield for a full refund. Sheffield shall no longer
23 offer the Covered Products for sale in California, unless they contain Proposition 65 warnings as
24 required in Sections 2.1, 2.2 and 2.3 above. Within 60 days of the Effective Date of this Consent
25 Judgment, Sheffield will notify Plaintiff in writing of Sheffield’s efforts to remove Covered Products
26 without Proposition 65 warnings from California, and to no longer offer the Covered Products
27
28

1 without Proposition 65 warnings for sale in California.

2 **3. SETTLEMENT PAYMENT**

3
4 3.1 Within 15 days following the parties' execution of this Consent Judgment, Sheffield
5 shall pay \$17,000.00 in the form of a check made payable to "Brian Gaffney, Attorney Client Trust
6 Account."

7
8 3.2 Within 45 days following the parties' execution of this Consent Judgment, Sheffield
9 shall pay \$1,900.00 in the form of a check made payable to "Brian Gaffney, Attorney Client Trust
10 Account." For each of the nine (9) months thereafter, no later than the first day of each month,
11 Sheffield shall pay \$1,900.00 in the form of a check made payable to "Brian Gaffney, Attorney
12 Client Trust Account.

13
14 3.3 Each of the checks mandated by this Consent Judgment shall be delivered by
15 overnight delivery to Brian Gaffney, LAW OFFICES OF BRIAN GAFFNEY, 605 Market St., Suite
16 505, San Francisco, CA 94105. In the event this Consent Judgment becomes null and void under
17 Paragraph 8 infra, Plaintiff shall, within fifteen days, return the payment(s) made under this section
18 to Sheffield.

19
20 3.4 Of the \$36,000 total settlement monies paid pursuant to this Consent Judgment,
21 \$21,782.00 shall be reimbursement for plaintiff's attorneys fees and reasonable litigation costs
22 (\$7,564.00 costs).

23
24 3.5 Of the settlement monies paid pursuant to this Consent Judgment, \$2,500.00 shall be
25 a Civil Penalty pursuant to Health and Safety Code Section 25249.7(b). As You Sow shall remit
26 75% of this amount to the State of California pursuant to Health and Safety Code Section
27 25249.12(b).

28 3.6 Of the settlement monies paid pursuant to this Consent Judgment, \$11,718.00 shall

1 be payments to be made in lieu of additional civil penalties. These funds shall be used by As You
2 Sow to reduce or remediate exposures to toxic chemicals and to increase consumer, worker and
3 community awareness of the health hazards posed by toxic chemicals in California via its program
4 work, but primarily through grants to other 501(c)(3) non-profit organizations working in toxics
5 reduction, remediation and/or environmental education. In deciding among the grantee proposals,
6 the As You Sow Board of Directors ("Board") takes into consideration a number of important
7 factors, including: (1) the nexus between the harm done in the underlying case(s), and the grant
8 program work; (2) the potential for toxics reduction, prevention, remediation or education benefits
9 to California citizens from the proposal; (3) the budget requirements of the proposed grantee and
10 the alternate funding sources available to it for its project; and (4) the Board's assessment of the
11 grantee's chances for success in its program work. AYS shall ensure that all funds will be disbursed
12 and used in accordance with AYS' mission statement, articles of incorporation, and bylaws and
13 applicable state and federal laws and regulations. These payments shall not be construed as a credit
14 against the personal claims of absent third parties for restitution against Defendants.

18 **4. ENFORCEMENT OF CONSENT JUDGMENT**

19
20 4.1 The Parties may, by motion or order to show cause before the Superior Court of the
21 County of Alameda, enforce the terms and conditions of this Consent Judgment. In the event that
22 a dispute arises with respect to any of the provisions of this Consent Judgment, the Parties shall meet
23 and confer within 10 days after either Party receives written notice of an alleged violation of this
24 Agreement. The prevailing party in any dispute regarding compliance with the terms of this Consent
25 Judgment shall be awarded any fines, costs, penalties, or remedies provided by law. Additionally,
26 the prevailing party shall be awarded its reasonable attorney's fees and costs.

28 **5. CLAIMS COVERED AND RELEASE**

1 5.1 As to the Covered Products, this Consent Judgment is a full, final, and binding
2 resolution between AYS and Sheffield and its parents, shareholders, divisions, subdivisions,
3 subsidiaries, partners, sister companies and their successors and assigns (“Defendant Releasees”),
4 and all entities to whom they distribute or sell Covered Products, including but not limited to
5 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees
6 (“Downstream Defendant Releasees”), of any actual and potential claims that were or could have
7 been brought by AYS for the alleged failure to provide clear, reasonable, and lawful warnings of
8 exposure to ethylbenzene used or contained in the Covered Products manufactured, distributed,
9 and/or sold by Sheffield.
10

11
12 5.2 As to the Covered Products, compliance with the terms of this Consent Judgment by
13 Sheffield resolves any issue from the date of entry of this Consent Judgment into the future
14 concerning compliance by Sheffield, Defendant Releasees and Downstream Defendant Releasees
15 with regard to Proposition 65 as to the presence of, or exposure to, ethylbenzene in the Covered
16 Products. manufactured, distributed or sold by Sheffield.
17

18 5.3 Upon entry of the Consent Judgment, the Parties waive their respective rights to a
19 hearing or trial on the allegations of the complaint.
20

21 **6. GOVERNING LAW AND CONSTRUCTION**

22 6.1 This agreement shall be governed by the laws of the State of California.

23 6.2 The Parties, including their counsel, have participated in the preparation of this
24 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties as
25 achieved through formal mediation. This Consent Judgment was subject to revision and
26 modification by the Parties and has been accepted and approved as to its final form by all Parties and
27 their counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall
28

1 not be interpreted against any Party as a result of the manner of the preparation of this Consent
2 Judgment. Each Party to this Consent Judgment agrees that any statute or rule of construction
3 providing that ambiguities are to be resolved against the drafting Party should not be employed in
4 the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California
5 Civil Code section 1654.
6

7 **7. MODIFICATION OF CONSENT JUDGMENT**

8 7.1 This Consent Judgment may be modified only upon written agreement of the Parties,
9 with approval of the Court, or pursuant to court order issued upon noticed motion of a Party for good
10 cause shown, and upon entry of a modified Consent Judgment by this Court. Any Party seeking to
11 modify this Consent Judgment shall meet and confer with all affected Parties prior to filing a motion
12 to modify the Consent Judgment in a good faith to attempt to resolve any differences.
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15 **8. COURT APPROVAL**

16 8.1 The Court shall either approve or disapprove of this Consent Judgment in its entirety,
17 without alteration, deletion or amendment, unless otherwise so stipulated by the Parties and their
18 counsel. Defendants agree not to oppose this Consent Judgment.
19

20 8.2 In the event that the Court fails to approve and order entry of the Consent Judgment
21 without any change whatsoever (unless otherwise so stipulated by the Parties), this Consent
22 Judgment shall become null and void upon the election of either Party and upon written notice to
23 all of the Parties to the Action pursuant to the notice provisions herein, and shall not be introduced
24 into evidence or otherwise used in any proceeding for any purpose.
25

26 **9. ENTIRE AGREEMENT**

27 9.1 The Parties declare and represent that no promise, inducement or other agreement has
28 been made conferring any benefit upon any Party except those contained herein and that this

1 agreement contains the entire agreement pertaining to the subject matter hereof. This agreement
2 supersedes any prior or contemporaneous negotiations, representations, agreements and
3 understandings of the Parties with respect to such matters, whether written or oral. Parol evidence
4 shall be inadmissible to show agreement by, between, or among the Parties to any term or condition
5 contrary to or in addition to the terms and conditions contained in this Consent Judgment. The
6 Parties acknowledge that each has not relied on any promise, representation or warranty, expressed
7 or implied, not contained in this agreement.
8

9
10 **10. APPLICATION OF CONSENT JUDGMENT**

11 10.1 This Consent Judgment shall apply to and be binding upon the Parties hereto, their
12 divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

13
14 **11. ATTORNEYS' FEES**

15 11.1 Except as specifically provided in this Consent Judgment, each Party shall bear its
16 own attorney's fees and costs incurred in connection with the 60-day Notices of Violation and
17 Plaintiff's complaint.

18
19 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7.**

20 12.1 Plaintiff shall comply with the reporting requirements referred to in Health and Safety
21 Code section 25249.7(f) (and established in Title 11 of the California Code of Regulations sections
22 3000-3008), and shall move for approval of this consent judgment pursuant to the terms thereof.

23
24 **13. PROVISION OF NOTICE**

25 All correspondence and notices required by this Consent Judgment to the Parties shall be sent
26 as follows:

27 //

28 //

1 To Plaintiff As You Sow

2 As You Sow Foundation
3 ATTN: Kara Buchner / Larry Fahn
4 311 California Street, Suite 510
5 San Francisco, CA 94104

With a copy to:

Brian Gaffney
LAW OFFICES OF BRIAN GAFFNEY
605 Market Street, Suite 505
San Francisco, CA 94105

6 To Sheffield

7 Sheffield Bronze Paint Corporation
8 ATTN: Mel Hart, president
9 17814 S. Waterloo Road
10 Cleveland, Ohio 44119

With a copy to:

Randy Hart, Esq.
HAHN, LOESER, AND PARKS
2800 BP Tower
Cleveland, Ohio 44114
rjh@hahnlaw.com

Maria Solomon-Williams, Esq.
CLINTON & CLINTON
100 Oceangate Boulevard
Fourteenth Floor
Long Beach, California 90802
(562) 216-5001 fax
msolomon@clinton-clinton.com

15 **14. EXECUTION AND COUNTERPARTS**

16 14.1 This Consent Judgment may be executed in counterparts and by means of facsimile
17 or portable document format (pdf), which taken together shall be deemed to constitute one
18 document.
19

20 **15. AUTHORIZATION**

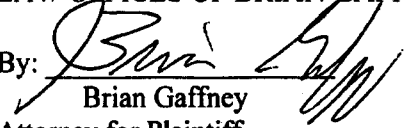
21 15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
22 by the party he or she represents to stipulate to this Consent Judgment and to enter into and execute
23 the Consent Judgment on behalf of the party represented and legally bind that party. The
24 undersigned have read, understand, and agree to all of the terms and conditions of this Consent
25 Judgment.
26

27 //

1 **APPROVED AS TO FORM:**

2 Dated: September 25, 2008

LAW OFFICES OF BRIAN GAFFNEY

3 By: 
4 Brian Gaffney
5 Attorney for Plaintiff
6 As You Sow

7 Dated: _____, 2008

CLINTON & CLINTON

8 By: _____
9 Maria Solomon-Williams
10 Attorney for Defendants
11 Sheffield Bronze Paint Corporation;
12 True Value Company

13 **IT IS SO STIPULATED:**

14 Dated: _____, 2008

AS YOU SOW

15 By: _____

16 Its: _____

17 Dated: _____, 2008

SHEFFIELD BRONZE PAINT CORPORATION

18 By: _____

19 Its: _____

20 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

21 The Court hereby incorporates the terms of the Consent Judgment into this Order. If a party
22 violates the provisions of this Consent Judgment, this Court retains jurisdiction over this matter.

23 Dated: _____, 2008

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25 JUDGE OF THE SUPERIOR COURT

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APPROVED AS TO FORM:

Dated: _____, 2008

LAW OFFICES OF BRIAN GAFFNEY

By: _____

Brian Gaffney
Attorney for Plaintiff
As You Sow

Dated: _____, 2008

CLINTON & CLINTON

By: _____

Maria Solomon-Williams
Attorney for Defendants
Sheffield Bronze Paint Corporation;
True Value Company

IT IS SO STIPULATED:

Dated: 9/25/08, 2008

AS YOU SOW

By: Larry Jahn

Its: Executive Director

Dated: _____, 2008

SHEFFIELD BRONZE PAINT CORPORATION

By: _____

Its: _____

IT IS SO ORDERED, ADJUDGED AND DECREED:

The Court hereby incorporates the terms of the Consent Judgment into this Order. If a party violates the provisions of this Consent Judgment, this Court retains jurisdiction over this matter.

Dated: _____, 2008

JUDGE OF THE SUPERIOR COURT

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APPROVED AS TO FORM:

Dated: _____, 2008

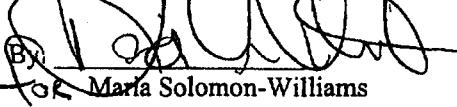
LAW OFFICES OF BRIAN GAFFNEY

By: _____

Brian Gaffney
Attorney for Plaintiff
As You Sow

Dated: Sept 28, 2008

CLINTON & CLINTON

By: 

OK Maria Solomon-Williams
Attorney for Defendants
Sheffield Bronze Paint Corporation;
True Value Company

IT IS SO STIPULATED:

Dated: _____, 2008

AS YOU SOW

By: _____

Its: _____

Dated: _____, 2008

SHEFFIELD BRONZE PAINT CORPORATION

By: _____

Its: _____

IT IS SO ORDERED, ADJUDGED AND DECREED:

The Court hereby incorporates the terms of the Consent Judgment into this Order. If a party violates the provisions of this Consent Judgment, this Court retains jurisdiction over this matter.

Dated: _____, 2008

JUDGE OF THE SUPERIOR COURT

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APPROVED AS TO FORM:

Dated: _____, 2008

LAW OFFICES OF BRIAN GAFFNEY

By: _____

Brian Gaffney
Attorney for Plaintiff
As You Sow

Dated: _____, 2008

CLINTON & CLINTON

By: _____

Maria Solomon-Williams
Attorney for Defendants
Sheffield Bronze Paint Corporation;
True Value Company

IT IS SO STIPULATED:

Dated: _____, 2008

AS YOU SOW

By: _____

Its: _____

Dated: 9/25/08, 2008

SHEFFIELD BRONZE PAINT CORPORATION

By: [Signature]

Its: President

IT IS SO ORDERED, ADJUDGED AND DECREED:

The Court hereby incorporates the terms of the Consent Judgment into this Order. If a party violates the provisions of this Consent Judgment, this Court retains jurisdiction over this matter.

Dated: ACS, 2008

[Signature]
JUDGE OF THE SUPERIOR COURT