

ENDORSED  
FILED  
San Francisco County Superior Court

AUG 06 2010

CLERK OF THE COURT  
BY: GINA GONZALES  
Deputy Clerk

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Attorneys for Plaintiff:  
AS YOU SOW

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

AS YOU SOW  
Plaintiff,  
vs.  
PETCO ANIMAL SUPPLIES, INC./PETCO  
ANIMAL SUPPLIES STORES, INC;  
PETSTAGES, INC.; COOPSPORT  
INTERNATIONAL LP; and DOES 1 through  
100, inclusive,  
Defendants.

Case No. CGC 09-485923  
**CONSENT JUDGMENT**

This Consent Judgment is entered into by and between Plaintiff AS YOU SOW and Defendants COOPSPORT INTERNATIONAL LP and PETSTAGES, INC. ("Defendants") to resolve the claims raised in Plaintiff's Complaint filed in the above-captioned action. This Consent Judgment shall be effective upon entry. As You Sow and Defendants (collectively "the Parties") agree to the terms and conditions set forth below.

**1. INTRODUCTION**

1.1 As You Sow is a 501(c)(3) non-profit California Corporation dedicated to, among other causes, the protection of the environment, the promotion of human health, the improvement of

1 worker and consumer rights, environmental education, and corporate accountability. As You Sow  
2 is based in San Francisco, California and incorporated under the laws of the State of California.

3 1.2 Defendant COOPSPORT INTERNATIONAL LP is a person in the course of doing  
4 business pursuant to Health and Safety Code section 25249.11, subdivision (b), and has manufactured  
5 and distributed for sale in California products that contain Di(2-ethylhexyl) phthalate ("DEHP") and  
6 lead. Defendant PETSTAGES, INC. is a person in the course of doing business pursuant to Health  
7 and Safety Code section 25249.11, subdivision (b), and has manufactured and distributed for sale in  
8 California products that contain Di(2-ethylhexyl) phthalate ("DEHP"). DEHP and lead are both  
9 chemicals regulated by the State of California as known to cause cancer and reproductive toxicity  
10 pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), at  
11 California Health and Safety Code section 25249.5 et seq., and Title 22, California Code of  
12 Regulations, section 12000 et seq.

13 1.3 On November 26, 2008, As You Sow sent a 60-day Notice of Violation to Defendants  
14 and to public enforcers as required by Health & Safety Code section 25249.7 alleging that Defendants  
15 violated Proposition 65 by failing to provide clear and reasonable warning before exposing users to  
16 DEHP and/or lead in their products.

17 1.4 The "Fetcher Football" dog toy of COOPSPORT INTERNATIONAL, LP and the  
18 "Twin Pull" dog toy of PETSTAGES, INC. referenced in As You Sow's November 26, 2008 60-day  
19 Notice shall be referred to as "the Covered Products."

20 1.5 On March 9, 2009, As You Sow filed a Complaint against Defendants and Defendant  
21 PETCO ANIMAL SUPPLIES, INC./PETCO ANIMAL SUPPLIES STORES, INC. in the San  
22 Francisco Superior Court, Case No. CGC 09-485923, alleging, *inter alia*, that Defendants violated  
23 Proposition 65 due to the alleged failure to provide clear and reasonable warning that users of the  
24 Products identified in the November 26, 2008 60-day Notice were exposed to DEHP and/or lead,  
25 chemicals known to the state of California to cause cancer and reproductive toxicity.

26 1.6 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
27 jurisdiction over Defendants as to the allegations contained in the Complaint, that venue is proper  
28 in San Francisco County, that this Court has jurisdiction to enter this Consent Judgment as a

1 resolution of all claims that were alleged in the Complaint, and that the Court shall retain jurisdiction  
2 to implement the Consent Judgment.

3 1.7 The Parties enter into this agreement to settle certain disputed claims as alleged in the  
4 Complaint, and to avoid prolonged and costly litigation. By executing and complying with this  
5 agreement, neither Party admits any facts or conclusions of law including, but not limited to, any  
6 facts or conclusions of law regarding any violations of Proposition 65, or any other statutory,  
7 common law or equitable claim or requirement relating to or arising from the sale of the Covered  
8 Products in California. Neither shall this Consent Judgment be construed as an admission that any  
9 act provided for herein, or any warnings regarding exposure to DEHP and/or lead from the Covered  
10 Products are required under Proposition 65 or any other statute, regulation, or common law  
11 requirement. Nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy,  
12 or defense that Plaintiff and Defendants may have in any other or in future legal proceedings  
13 unrelated to these proceedings. However, this paragraph shall not diminish or otherwise affect the  
14 obligation, responsibilities, and duties of the Parties under this Consent Judgment.

15 1.8 The term "Effective Date" means the date of entry of this Consent Judgment.

16 **2. REPRESENTATIONS**

17 2.1 Each Defendant hereby represents (1) that each Defendant sold the Covered Products  
18 to only one retailer, i.e., PETCO; (2) that each Defendant has instructed PETCO to destroy and/or  
19 return all unsold items of the Covered Products to Defendants; (3) that PETCO has done so; (4) that  
20 each Defendant has withdrawn, as of January 7, 2009 for PETSTAGES, INC., and as of January 29,  
21 2010 for COOPSPORT INTERNATIONAL LP, all inventory of the Covered Products from the  
22 marketplace in both California and nationwide; and (5) that each Defendant will not in the future sell  
23 any of the Covered Products.

24 2.2 If any of the representations set forth in Section 2.1 above are false, Plaintiff may  
25 pursue its claims for injunctive relief as specified in the Complaint identified in Section 1.5,  
26 notwithstanding the release contained in Section 6 of this Consent Judgment.

27 **3. INJUNCTIVE RELIEF**

28 3.1 At all times after the Effective Date, Defendants shall provide the following warning

1 statement for all Covered Products which contain DEHP and/or lead and are sold, distributed, or  
2 manufactured for sale or use whether in the State of California or elsewhere:

3 For the "Fetcher Football" dog toy of COOPSPORT INTERNATIONAL LP:

4 WARNING: This product contains Di(2-ethylhexyl) phthalate (DEHP) and lead,  
5 chemicals known to the State of California to cause cancer and reproductive toxicity.

6 For the "Twin Pull" dog toy of PETSTAGES, INC.:

7 WARNING: This product contains Di(2-ethylhexyl) phthalate (DEHP), a chemical  
8 known to the State of California to cause cancer and reproductive toxicity.

9 3.2 The warning statement required in Section 3.1 shall be prominently affixed to or  
10 printed on the front of the Covered Products' packaging and labeling by Defendants. The warning  
11 statement required in Section 3.1 shall also be provided for the Covered Products on any website  
12 maintained by Defendant. The warnings shall be legible, in bold, and greater than 12-point type face.  
13 The warnings shall be displayed with such conspicuousness, as compared with other words,  
14 statements, designs, or devices on the Covered Products, or their packaging or labeling, as to render  
15 it likely to be read and understood by an ordinary individual under customary conditions of purchase  
16 or use.

17 3.3 No later than December 31, 2009, Defendants shall remove DEHP, lead, and any other  
18 phthalate known by the State of California to cause cancer or reproductive toxicity, as identified by  
19 Proposition 65 ("Prop 65 phthalates"), from their entire product lines (including the Covered  
20 Products), shall cease to ship for sale in California all products that contain DEHP, lead, or any other  
21 Prop 65 phthalate, and shall provide notice to As You Sow of its reformulation of its product line  
22 (including the Covered Products) pursuant to this section, and that it has ceased all such shipments  
23 to California.

24 3.4 Within 120 days of the Effective Date of this Consent Judgment, Defendants will  
25 notify As You Sow in writing of Defendants' efforts to comply with Sections 3.1, 3.2, and 3.3 of this  
26 Consent Judgment.

#### 27 4. SETTLEMENT PAYMENT

28 4.1 Pursuant to this Consent Judgment, Defendant COOPSPORT INTERNATIONAL LP  
shall pay \$22,481.00 in the form of a check made payable to "Lippe Gaffney Wagner, Attorney

1 Client Trust Account” as reimbursement for Plaintiff’s attorneys fees, investigation costs, and other  
2 reasonable litigation costs and expenses, as well as civil penalties and payments in lieu of civil  
3 penalties. The check shall be delivered by overnight delivery to Jennifer Naegele, LIPPE GAFFNEY  
4 WAGNER LLP, 329 Bryant Street, Suite 3D, San Francisco, CA, 94107. In the event this Consent  
5 Judgment becomes null and void under Paragraph 8 *infra*, Plaintiff shall, within fifteen (15) days,  
6 return the payment made under this paragraph to Defendant.

7 4.2 As You Sow shall allocate the payments made pursuant to Section 4.1 as follows:

8 4.2.1 \$15,061.00 as reimbursement for the investigation costs, laboratory testing  
9 costs, Plaintiff’s attorneys fees, and other reasonable litigation costs and expenses.

10 4.2.2 \$1,000.00 as a civil penalty pursuant to Health and Safety Code section  
11 25249.7, subdivision (b). As You Sow shall remit 75 percent of this amount to the State of California  
12 pursuant to Health and Safety Code section 25249.12, subdivision (b).

13 4.2.3 \$6,420.00 as payments in lieu of additional civil penalties. These funds shall  
14 be used by As You Sow to reduce or remediate exposures to toxic chemicals and to increase  
15 consumer, worker, and community awareness of the health hazards posed by toxic chemicals in  
16 California via its program work, but primarily through grants to other 501(c)(3) non-profit  
17 organizations working in toxics reduction, remediation, and/or environmental education. In deciding  
18 among the grantee proposals, the As You Sow Board of Directors (“Board”) takes into consideration  
19 a number of important factors, including: (1) the nexus between the harm done in the underlying  
20 case(s), and the grant program work; (2) the potential for toxics reduction; prevention, remediation,  
21 or education benefits to California citizens from the proposal; (3) the budget requirements of the  
22 proposed grantee and the alternate funding sources available to it for its project; and (4) the Board’s  
23 assessment of the grantee’s chances for success in its program work. As You Sow shall ensure that  
24 all funds will be disbursed and used in accordance with As You Sow’s mission statement, articles of  
25 incorporation, and bylaws and applicable state and federal laws and regulations.

26 4.2.4 Defendant COOPSPORT INTERNATIONAL LP shall deliver half of the total  
27 payment at the time of execution of this Agreement, and the other half at the time of entry of  
28 judgment in this case.

1           4.3     Within fifteen (15) days following the Parties' execution of this Consent Judgment,  
2 Defendant PETSTAGES, INC. shall pay \$50,000.00 in the form of a check made payable to "Lippe  
3 Gaffney Wagner, Attorney Client Trust Account" as reimbursement for Plaintiff's attorneys fees,  
4 investigation costs, and other reasonable litigation costs and expenses, as well as civil penalties and  
5 payments in lieu of civil penalties. The check shall be delivered by overnight delivery to Jennifer  
6 Naegele, LIPPE GAFFNEY WAGNER LLP, 329 Bryant Street, Suite 3D, San Francisco, CA, 94107.  
7 In the event this Consent Judgment becomes null and void under Paragraph 8 *infra*, Plaintiff shall,  
8 within fifteen (15) days, return the payment made under this paragraph to Defendant.

9           4.4     As You Sow shall allocate the payments made pursuant to Section 4.3 as follows:

10           4.4.1   \$16,061.00 as reimbursement for the investigation costs, laboratory testing  
11 costs, Plaintiff's attorneys fees, and other reasonable litigation costs and expenses.

12           4.4.2   \$4,000.00 as a civil penalty pursuant to Health and Safety Code section  
13 25249.7, subdivision (b). As You Sow shall remit 75 percent of this amount to the State of California  
14 pursuant to Health and Safety Code section 25249.12, subdivision (b).

15           4.4.3   \$29,939.00 as payments in lieu of additional civil penalties. These funds shall  
16 be used by As You Sow to reduce or remediate exposures to toxic chemicals and to increase  
17 consumer, worker, and community awareness of the health hazards posed by toxic chemicals in  
18 California via its program work, but primarily through grants to other 501(c)(3) non-profit  
19 organizations working in toxics reduction, remediation, and/or environmental education. In deciding  
20 among the grantee proposals, the As You Sow Board of Directors ("Board") takes into consideration  
21 a number of important factors, including: (1) the nexus between the harm done in the underlying  
22 case(s), and the grant program work; (2) the potential for toxics reduction, prevention, remediation,  
23 or education benefits to California citizens from the proposal; (3) the budget requirements of the  
24 proposed grantee and the alternate funding sources available to it for its project; and (4) the Board's  
25 assessment of the grantee's chances for success in its program work. As You Sow shall ensure that  
26 all funds will be disbursed and used in accordance with As You Sow's mission statement, articles of  
27 incorporation, and bylaws and applicable state and federal laws and regulations.

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1       **5. ENFORCEMENT OF CONSENT JUDGMENT**

2           5.1       The Parties may, by motion or order to show cause before the Superior Court of the  
3 County of San Francisco, enforce the terms and conditions of this Consent Judgment. In the event  
4 that a dispute arises with respect to any of the provisions of this Consent Judgment, the Parties shall  
5 meet and confer within ten (10) days after either Party receives written notice of an alleged violation  
6 of this agreement. The prevailing party in any dispute regarding compliance with the terms of this  
7 Consent Judgment shall be awarded any fines, costs, penalties, or remedies provided by law.

8       **6. CLAIMS COVERED AND RELEASE**

9           6.1       As to the Covered Products, this Consent Judgment is a full, final, and binding  
10 resolution between As You Sow and Defendants and their parents, shareholders, divisions,  
11 subdivisions, subsidiaries, partners, sister companies, and their successors and assigns (“Defendant  
12 Releasees”), and all entities to whom they distribute or sell the Covered Products, including but not  
13 limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and  
14 licensees (“Downstream Defendant Releasees”) – including Defendants PETCO ANIMAL  
15 SUPPLIES, INC. and PETCO ANIMAL SUPPLIES STORES, INC. with regard to their sales of the  
16 Covered Products – of any actual and potential claims that were or could have been brought by As  
17 You Sow for the alleged failure to provide clear, reasonable, and lawful warnings of exposure to  
18 DEHP and/or lead used or contained in the Covered Products manufactured, distributed, and/or sold  
19 by Defendants.

20           6.2       As to the Covered Products, compliance with the terms of this Consent Judgment by  
21 Defendant resolves any issue from the date of entry of this Consent Judgment into the future  
22 concerning compliance by Defendants, Defendant Releasees, and Downstream Defendant Releasees  
23 with regard to Proposition 65 as to the presence of, or exposure to, DEHP and/or lead in the Covered  
24 Products manufactured, distributed, or sold by Defendants.

25           6.3       Upon entry of this Consent Judgment, the Parties waive their respective rights to a  
26 hearing or trial on the allegations of the Complaint. As You Sow shall dismiss with prejudice the  
27 Complaint referenced in section 1.5 against Defendants PETCO ANIMAL SUPPLIES, INC. and  
28 PETCO ANIMAL SUPPLIES STORES, INC.

1           6.4    Defendants are not relieved of their obligations under sections 3.1 through 4.4.3  
2 inclusive of this Consent Judgment by sale or assignment of the Covered Products product line.

3           **7.    GOVERNING LAW AND CONSTRUCTION**

4           7.1    This agreement shall be governed by, and construed in accordance with, the laws of  
5 the State of California.

6           7.2    The Parties, including their counsel, have participated in the preparation of this  
7 Consent Judgment, and this Consent Judgment is the result of the joint efforts of the Parties as  
8 achieved through informal settlement negotiations. This Consent Judgment was subject to revision  
9 and modification by the Parties and has been accepted and approved as to its final form by all Parties  
10 and their counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall  
11 not be interpreted against any Party as a result of the manner of the preparation of this Consent  
12 Judgment. Each Party to this Consent Judgment agrees that any statute or rule of construction  
13 providing that ambiguities are to be resolved against the drafting Party should not be employed in  
14 the interpretation of this Consent Judgment, and, in this regard, the Parties hereby waive the  
15 protections of California Civil Code section 1654.

16           **8.    MODIFICATION OF CONSENT JUDGMENT**

17           8.1    This Consent Judgment may be modified only upon written agreement of the Parties,  
18 with approval of the Court, or pursuant to Court order issued upon noticed motion of a Party for good  
19 cause shown, and upon entry of a modified Consent Judgment by this Court. Any Party seeking to  
20 modify this Consent Judgment shall meet and confer with all affected Parties prior to filing a motion  
21 to modify the Consent Judgment in a good faith to attempt to resolve any differences.

22           **9.    COURT APPROVAL**

23           9.1    The Court shall either approve or disapprove of this Consent Judgment in its entirety,  
24 without alteration, deletion, or amendment, unless otherwise so stipulated by the Parties and their  
25 counsel. Defendants agree not to oppose this Consent Judgment.

26           9.2    In the event that the Court fails to approve and order entry of the Consent Judgment  
27 without any change whatsoever (unless otherwise so stipulated by the Parties), this Consent Judgment  
28 shall become null and void upon the election of either Party and upon written notice to all of the

1 Parties to the Action pursuant to the notice provisions herein, and shall not be introduced into  
2 evidence or otherwise used in any proceeding for any purpose.

3 **10. ENTIRE AGREEMENT**

4 10.1 The Parties declare and represent that no promise, inducement, or other agreement has  
5 been made conferring any benefit upon any Party except those contained herein and that this  
6 agreement contains the entire agreement pertaining to the subject matter hereof. This agreement  
7 supersedes any prior or contemporaneous negotiations, representations, agreements, and  
8 understandings of the Parties with respect to such matters, whether written or oral. Parol evidence  
9 shall be inadmissible to show agreement by, between, or among the Parties to any term or condition  
10 contrary to or in addition to the terms and conditions contained in this Consent Judgment. The  
11 Parties acknowledge that each has not relied on any promise, representation, or warranty, expressed  
12 or implied, not contained in this agreement.

13 **11. APPLICATION OF CONSENT JUDGMENT**

14 11.1 This Consent Judgment, and compliance therewith, shall apply to and be binding upon  
15 the Parties hereto, their divisions, subdivisions, and subsidiaries, and the successors or assigns of any  
16 of them.

17 **12. ATTORNEYS FEES**

18 12.1 Except as specifically provided in this Consent Judgment, each Party shall bear its  
19 own attorneys fees and costs incurred in connection with the 60-day Notices of Violation and  
20 Plaintiff's Complaint.

21 **13. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7**

22 13.1 Plaintiff shall comply with the reporting requirements referred to in Health and Safety  
23 Code section 25249.7, subdivision (f) (and established in Title 11 of the California Code of  
24 Regulations, sections 3000 to 3008), and shall move for approval of this Consent Judgment pursuant  
25 to the terms thereof.

26 **14. PROVISION OF NOTICE**

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

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

4 With a copy to:  
Jennifer Naegele  
5 LIPPE GAFFNEY WAGNER LLP  
329 Bryant Street, Suite 3D  
6 San Francisco, CA 94107

7 To Defendants:  
Coopsport International LP  
8 ATTN: \_\_\_\_\_  
\_\_\_\_\_

9 \_\_\_\_\_

10 Petstages, Inc.  
11 ATTN: \_\_\_\_\_  
\_\_\_\_\_

12 \_\_\_\_\_

13 With a copy to:  
Lisa Halko  
14 Sarah Asplins  
Greenberg Traurig, LLP  
1201 K Street, Suite 1100  
15 Sacramento, CA 95814

16 **15. EXECUTION AND COUNTERPARTS**

17 15.1 This Consent Judgment may be executed in counterparts and by means of facsimile  
18 or portable document format (pdf), which taken together shall be deemed to constitute one document.

19 **16. AUTHORIZATION**

20 16.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by  
21 the party he or she represents to stipulate to this Consent Judgment and to enter into and execute the  
22 Consent Judgment on behalf of the party represented and legally bind that party. The undersigned  
23 have read, understand, and agree to all of the terms and conditions of this Consent Judgment.

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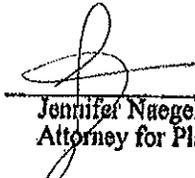
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1 APPROVED AS TO FORM:

2 Dated: 2/4/10

LIPPE GAFFNEY WAGNER LLP

3

By:   
Jennifer Naegele  
Attorney for Plaintiff

4

5 Dated: 1/24/10

GREENBERG TRAURIG

6

By:   
Lisa Halko  
Sarah Asplin  
Attorney for Defendant

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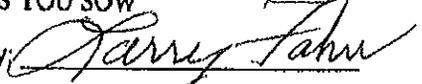
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12 IT IS SO STIPULATED:

13 Dated: 2/1/2010

AS YOU SOW

14

By: 

15

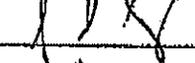
Its: Executive Director

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17 Dated: 1/24/10

COOSPORT INTERNATIONAL LP

18

By: 

19

Its: Siel Cooper

20

21

22 Dated: \_\_\_\_\_

PETSTAGES, INC.

23

By: \_\_\_\_\_

24

Its: \_\_\_\_\_

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LIPPE GAFFNEY  
WAGNER LLP  
230 Market Street  
San Francisco, CA 94102  
TEL: (415) 774-4000

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**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_

LIPPE GAFFNEY WAGNER LLP

By: \_\_\_\_\_  
Jennifer Naegele  
Attorney for Plaintiff

Dated: \_\_\_\_\_

GREENBERG TRAURIG

By: \_\_\_\_\_  
Lisa Halko  
Sarah Asplins  
Attorney for Defendant

**IT IS SO STIPULATED:**

Dated: \_\_\_\_\_

AS YOU SOW

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_

COOPSPORT INTERNATIONAL LP

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: 2-1-2010

PETSTAGES, INC.  
By: [Signature]  
Its: TORJUS LUNDEVALL

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**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: AUG 06 2010

PETER J. BUSCH

JUDGE OF THE SUPERIOR COURT

PETER J. BUSCH