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6 Attorneys for Plaintiff
AS YOU SOW

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO
10

11 As You Sow, a California Non-Profit Public
12 Benefit Corporation,

13 Plaintiff,

14 v.

15 Awesome Products, Inc., and DOES 1
16 through 10, inclusive,

17 Defendants.

Case No. CGC-12-517675

[PROPOSED] CONSENT JUDGMENT]

California Health and Safety Code § 25249.5
et seq.

Filed: January 26, 2012

1 **1. INTRODUCTION**

2 1.1 On January 26, 2012, Plaintiff As You Sow (“AYS”) filed a Complaint for
3 civil penalties and injunctive relief against Defendant Awesome Products, Inc. (“Defendant”) in
4 this Court. The Complaint alleges, in part, Defendant violated the Safe Drinking Water and
5 Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5, *et seq.*
6 (“Proposition 65”) by selling shampoos that contain 1,4-dioxane, chemicals known to the State
7 of California to cause cancer, without providing a clear and reasonable warning.

8 1.2 The alleged violations addressed in the Complaint were described in AYS’s
9 Notice of Violation dated October 19, 2011 served on the California Attorney General, other
10 public enforcers, and Defendant. The alleged violations at issue in this action arise from alleged
11 exposure to 1, 4-dioxane that is found in shampoos, including Salon Formula Fruitamin
12 Shampoo, Salon Formula Fruitamin 2 in 1 Shampoo Plus Conditioner, Hairvitalize Balsam and
13 Protein Shampoo, and Hairvitalize Horse Shampoo, manufactured, packaged, distributed,
14 marketed, and/or sold by Defendant (“Covered Products”).

15 1.3 Defendant is a business entity employing more than 10 employees that
16 manufactures, distributes, markets, and/or sells Shampoo Products. .

17 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this
18 Court has jurisdiction over the allegations of violations contained in the Complaint and personal
19 jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper in the
20 County of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment.

21 1.5 Nothing in this Consent Judgment is or shall be construed as an admission
22 by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall
23 compliance with the Consent Judgment constitute or be construed as an admission by the Parties
24 of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent
25 Judgment shall prejudice, waive or impair any right, remedy, argument or defense the Parties
26 may have in any other legal proceeding. This Consent Judgment is the product of negotiation
27 and compromise and is accepted by the Parties for purposes of settling, compromising and
28 resolving issues disputed in this action.

1 1.6 The “Effective Date” is the date on which this Consent Judgment is entered
2 by the Court.

3 2. **INJUNCTIVE RELIEF**

4 Defendant agrees, with respect to all Covered Products, to the following injunctive
5 relief.

6 2.1 As of the Effective Date, Defendant shall not manufacture for sale in
7 California or manufacture for sale to a third party for retail sale in California any Covered
8 Product that contains more than 10 parts per million (ppm) of 1,4-dioxane allowing for normal
9 analytical variability as defined by the quality control methodology set forth in Exhibit A
10 attached hereto.

11 2.2 No later than 30 days after the last signature on this agreement, Defendant
12 agrees to provide As You Sow with 5 ounces of any shampoo base used by Defendant to
13 produce the Covered Products, the name and address of the manufacturer of the shampoo base,
14 and a chain of custody in the form set forth in Exhibit B.

15 2.3 A Covered Product manufactured, distributed, or sold by Defendant may,
16 as an alternative to meeting the reformulation standards in Section 2.1 above or discontinuing
17 distribution for sale in California pursuant to Section 2.2 above, be sold or offered for retail sale
18 in California after the Effective Date, with a Clear and Reasonable Warning that states:

19 WARNING: This product contains 1,4-dioxane, a chemical known
20 to the State of California to cause cancer.

21 This statement shall be prominently displayed on the Covered Product or the
22 packaging of the Covered Product with such conspicuousness, as compared with other words,
23 statements or designs, as to render it likely to be read and understood by an ordinary individual
24 prior to sale. For internet, catalog or any other sale where the consumer is not physically present
25 and cannot see a warning displayed on the covered Product or the packaging of the Covered
26 Product prior to purchase or payment, the warning statement shall be displayed in such a manner
27 that it is likely to be read and understood prior to the authorization of or actual payment.
28

1 3. PAYMENT

2 3.1 Within twenty-one (21) days after entry of this Consent Judgment by the
3 Court, Defendant shall make a total payment of \$25,000 to AYS as follows:

4 (a) Defendant shall pay \$3,000 in civil penalties to be distributed to the
5 State of California.

6 (b) Defendant shall pay \$7,000 in lieu of additional civil penalties in the
7 form of a check made payable to “Shute, Mihaly & Weinberger LLP, Attorney Client Trust
8 Account” with this amount to be used by AYS for grants to California non-profit organizations
9 and by AYS Foundation Environmental Enforcement Fund. These funds shall be used to
10 reduce exposures to toxic chemicals and to increase consumer, worker and community
11 awareness of the health hazards posed by toxic chemicals in California. In deciding among the
12 grantee proposals, the AYS Board of Directors (“Board”) takes into consideration a number of
13 important factors, including: (1) the nexus between the harm done in the underlying case(s), and
14 the grant program work; (2) the potential for toxics reduction, prevention, remediation or
15 education benefits to California citizens from the proposal; (3) the budget requirements of the
16 proposed grantee and the alternate funding sources available to it for its project; and (4) the
17 Board’s assessment of the grantee’s chances for success in its program work. AYS shall ensure
18 that all funds will be disbursed and used in accordance with AYS’s mission statement, articles of
19 incorporation, and bylaws and applicable state and federal laws and regulations. The check shall
20 be delivered by overnight delivery to Ellison Folk, Shute, Mihaly & Weinberger LLP, 396
21 Hayes Street, San Francisco, CA 94102.

22 (c) Defendant shall pay \$15,000 in the form of a check made payable to
23 “Shute, Mihaly & Weinberger LLP, Attorney Client Trust Account” as reimbursement for the
24 investigation fees and costs, testing costs, attorneys’ fees and other litigation costs and expenses.
25 The check shall be delivered by overnight delivery to Ellison Folk, Shute, Mihaly & Weinberger
26 LLP, 396 Hayes Street, San Francisco, CA 94102.

1 4. **MODIFICATION**

2 4.1 This Consent Judgment may be amended pursuant to the procedure set
3 forth in the Order for Entry of Judgment, Opt-In Procedure and Future Amendment.

4 4.2 This Consent Judgment may also be modified by express written agreement
5 of the Parties with the approval of the Court, or by an order of the Court upon motion and in
6 accordance with law.

7 5. **CLAIMS COVERED AND RELEASED**

8 5.1 This Consent Judgment is a full, final and binding resolution between AYS
9 on behalf of itself and the public interest, Defendant and its parents, subsidiaries, directors,
10 officers, employees, and attorneys, and each entity to whom it directly or indirectly distributes
11 or sells Covered Products, including but not limited to distributors, wholesalers, customers,
12 retailers, franchisees, cooperative members, licensors, and licensees of any violation of
13 Proposition 65 that was or could have been asserted in the Complaint against Defendant based
14 on failure to warn about the alleged exposure to 1,4-dioxane contained in the Covered Products.

15 6. **NOTICE**

16 6.1 When any Party is entitled to receive any notice under this Consent
17 Judgment, the notice shall be sent by either (i) first-class, registered, certified mail, return receipt
18 requested, (ii) overnight courier, or (iii) personal messenger to the following:

19 **FOR AS YOU SOW:**

20 Andrew Behar, Chief Executive Officer
21 Danielle Fugere, Staff Attorney
22 As You Sow
23 1611 Telegraph Ave., Suite 1450
24 Oakland, CA 94612

25 **With a copy to:**

26 Ellison Folk
27 Shute, Mihaly & Weinberger LLP
28 396 Hayes Street
 San Francisco, CA 94102
 Telephone: (415) 552-7272

1 Facsimile: (415) 552- 5816

2 **FOR AWESOME PRODUCTS**

3 Richard Haskin
4 Gibbs, Giden, Locher, Turner & Senet, LLP
5 1880 Century Park East, 12th Floor
6 Los Angeles, CA 90067
7 Telephone: (310) 552-3400
8 Facsimile: (310) 552-8500

7 **7. COURT APPROVAL**

8 7.1 This Consent Judgment shall become effective upon entry by the Court.
9 AYS shall prepare and file a Motion for Approval of this Consent Judgment, consistent with
10 Health and Safety Code section 25249.7(f), and Defendant shall support entry of this Consent
11 Judgment.

12 7.2 If this Consent Judgment is not entered by the Court in its entirety, without
13 alteration, deletion, or amendment, unless otherwise so stipulated by the Parties, it shall be of no
14 force or effect and shall never be introduced or otherwise used in any proceeding for any
15 purpose other than to allow the Court to determine if there was a material breach of Section 7.1.

16 7.3 If the Court enters this Consent Judgment, AYS shall, within ten (10)
17 business days after the Effective Date, electronically provide or otherwise serve a copy of it and
18 the report required pursuant to 11 Cal. Code Regs. Section 3004 to and/or on the California
19 Attorney General's Office.

20 **8. ENFORCEMENT OF CONSENT JUDGMENT**

21 8.1 The Parties may, by motion or order to show cause before this Court, and
22 upon notice having been given to all Parties in accordance with Section 7 above, enforce the
23 terms and conditions of this Consent Judgment and seek whatever fines, costs, penalties, or
24 remedies are provided by law.

25 8.2 The Parties may enforce the terms of this Consent Judgment pursuant to
26 Section 8.1 only after the complaining party has first given thirty (30) days notice to the Party
27

1 allegedly failing to comply with the terms and conditions of the Consent Judgment and has
2 attempted, in an open and good faith manner, to resolve such Party's alleged failure to comply.

3 9. **OTHER TERMS**

4 9.1 The terms of this Consent Judgment shall be governed by the laws of the
5 State of California.

6 9.2 This Consent Judgment shall apply to and be binding upon AYS and
7 Defendant, and their respective divisions, subdivisions, and subsidiaries, and the successors or
8 assigns of any of them.

9 9.3 This Consent Judgment contains the sole and entire agreement and
10 understanding of the Parties with respect to the entire subject matter hereof, and any and all
11 prior discussions, negotiations, commitments, or understandings related thereto, if any, are
12 hereby merged herein and therein. There are no warranties, representations, or other agreements
13 between the Parties except as expressly set forth herein. No representations, oral or otherwise,
14 express or implied, other than those specifically referred to in this Consent Judgment have been
15 made by any Party hereto. No other agreements not specifically contained or referenced herein,
16 oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. No
17 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
18 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
19 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
20 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

21 9.4 The stipulations to this Consent Judgment may be executed in counterparts
22 and by means of facsimile or portable document format (pdf), which taken together shall be
23 deemed to constitute one document.

24 9.5 Each signatory to this Consent Judgment certifies that that he or she is fully
25 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter
26 into and execute the Consent Judgment on behalf of the party represented and legally to bind
27 that Party.


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9.6 The parties, including their counsel, have participated in the preparation of this Consent Judgment, which is the result of the joint efforts of the Parties. This Consent Judgment was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Any uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of the manner of the preparation of this Consent Judgment.

**IT IS SO STIPULATED:
AS YOU SOW**

Dated: _____
By: _____
Andrew Behar, Chief Executive Officer

AWESOME PRODUCTS, INC.

Dated: *Jan 2nd 2013*
By:  _____
L.D. Hardas, President

IT IS SO ORDERED:

DATED: _____

JUDGE OF THE SUPERIOR COURT

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APPROVED AS TO FORM:

DATED: January 10, 2013

GIBBS, GIDEN, LOCHER, TURNER & SENET, LLP

By:



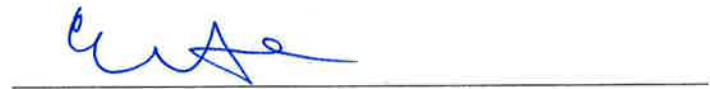
Bryan Gragg
Attorneys for Defendant
AWESOME PRODUCTS, INC.

APPROVED AS TO FORM:

DATED: January 11, 2013

SHUTE, MIHALY & WEINBERGER, LLP

By:



Ellison Folk
Attorneys for Plaintiff
AS YOU SOW

444787.2

Exhibit A

PROTOCOL

Summary of Method:

An aliquot of sample (~1 g) is accurately weighed into a vial with 5 mL water and 1 g of sodium sulfate. Internal standard (5 μ g 1,4-dioxane-d8) is added. The vial is capped and heated at 95 °C for 60 minutes. A 1 mL aliquot of the headspace over the sample is analyzed by direct injection using the following GC/MS conditions or equivalent.

GC/MS Conditions

Instrument: Agilent 5973N

Column: 25 m x 0.20 mm HP-624, 1.12 micron film

Column Temp: 40 °C (hold 3 min) to 100 °C at 10 °C/min, then to 180 °C at 25 °C/min (hold 5 min)

Injector Temp: 220 °C

Mass Range: Selected ion monitoring: masses 43, 58, and 88 (dioxane); 64 and 96 (dioxane-d8); 1.72 cycles per second

Quality control shall include at a minimum

1. Calibration using a blank and 4 standards over the range of 0.5 to 10 micrograms of 1,4-dioxane with a regression fit R squared >0.995.
2. A method blank analyzed just prior to the samples must be free of 1,4-dioxane (<1 ppm).
3. Continuing calibration standards should be analyzed after every 10 or fewer samples, and the result must be within 10% of the initial calibration.
4. With each batch of 20 or fewer samples, one of the samples must be analyzed in duplicate and as a spiked sample. QC limits for duplicates which exceed 5 ppm is <25% relative percent difference. QC limits for spiked samples is 75-125% recovery when the amount spiked is greater than or equal to the background in the unspiked sample.

Exhibit B



Analytical Sciences
 P.O. Box 750336, Petaluma, CA 94975-0336
 110 Liberty Street, Petaluma, CA 94952
 (707) 769-3128
 Fax (707) 769-8093

CHAIN OF CUSTODY

Lab Project Number: _____
 Client's Project Name: _____
 Client's Project Number: _____

CLIENT INFORMATION	
Company Name:	As You Sow (AYS)
Address:	1611 Telegraph Ave, Suite 1450 Oakland, CA 94612
Contact:	Eleanne van Vliet
Phone #:	510.735.8154
Fax #:	_____
e-mail:	evanvliet@asyousow.org

TURNAROUND TIME (check one)	
Same Day	_____
48 Hours	_____
24 Hours	_____
5 Days	_____
Normal	_____

Page 1 of 1

ANALYSIS														Comments	Lab Sample #
Item	Client Sample ID	Date Sampled	Time	Matrix	# Cont.	Presv. Y/N									
1															
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SIGNATURES			
Relinquished By:	Sampled By: _____	Received By:	_____
Signature _____	Date _____ Time _____	Signature _____	Date _____ Time _____