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12 J.R. CARLSON LABORATORIES, INC.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN FRANCISCO

16 AS YOU SOW,

17 Plaintiff,

18 v.

19 J.R. CARLSON LABORATORIES, INC.,

20 Defendant.

Case No.: CGC-14-543102

~~[PROPOSED]~~ CONSENT JUDGMENT

ENDORSED
FILED
San Francisco County Superior Court
JUN 17 2015
CLERK OF THE COURT
BY: KAREN LIU
Deputy Clerk

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[PROPOSED] CONSENT JUDGMENT
CGC-14-543102

1 This Consent Judgment is entered into by and between AS YOU SOW, INC. (“AYS”), on
2 behalf of AYS and the general public, and J. R. CARLSON LABORATORIES, INC. (“CARLSON
3 LABS”), with AYS and CARLSON LABS referred to individually as a “Party” and collectively as
4 the “Parties,” to resolve all claims raised in AYS’ April 25, 2014 Notice of Violation letter to
5 CARLSON LABS (“Notice”) and December 8, 2014 Complaint (“Complaint”). This Consent
6 Judgment shall be effective upon entry by the Court.

7 **1. INTRODUCTION**

8 1.1 AYS is a non-profit corporation dedicated to, among other causes, the protection of
9 the environment, the promotion of human health, the improvement of worker and consumer rights,
10 environmental education, and corporate accountability. AYS is based in Oakland, California and is
11 incorporated under the laws of the State of California.

12 1.2 CARLSON LABS manufactures, distributes, markets and/or sells Carlson Vitamin
13 A 15,000 IU Palmitate Soft Gels and Carlson Vitamin A 25,000 IU Natural Soft Gels (collectively,
14 “Covered Products”), both of which contain retinol/retinyl esters (specifically, retinyl palmitate) in
15 daily dosages in excess of 10,000 International Units (“IU”).

16 1.3 “Retinol/retinyl esters, when taken in daily dosages in excess of 10,000 IU”
17 (referred to herein as “Retinol/Retinyl Esters”) is a chemical known to the State of California to
18 cause reproductive toxicity pursuant to the Safe Drinking Water and Toxic Enforcement Act of
19 1986 (“Proposition 65”), California Health and Safety Code section 25249.5 *et seq.*

20 1.4 On April 25, 2014, AYS sent a 60-day Notice of Violation to CARLSON LABS
21 and to public enforcers as required by Health and Safety Code section 25249.7, alleging that
22 CARLSON LABS violated Proposition 65 by failing to provide a clear and reasonable warning
23 before exposing users to Retinol/Retinyl Esters in the Covered Products.

24 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
25 jurisdiction over CARLSON LABS as to the allegations contained in the Complaint, that venue is
26 proper in San Francisco County, that this Court has jurisdiction to enter this Consent Judgment as a
27 resolution of all claims that were alleged in the Complaint, and that the Court shall retain
28 jurisdiction to implement the Consent Judgment.

1 1.6 For the purpose of avoiding prolonged and costly litigation, the Parties enter into
2 this Consent Judgment as a full settlement of the claims alleged in the Notice and the claims that
3 were raised in the Complaint based on the facts alleged therein. By executing and complying with
4 this agreement, neither Party admits any facts or conclusions of law including, but not limited to,
5 any facts or conclusions of law regarding any alleged violations of Proposition 65 or any other
6 statutory, common law, or equitable claim or requirement relating to or arising from the sale of
7 Covered Products in California. Nothing in this Consent Judgment shall prejudice, waive, or impair
8 any right, remedy, or defense that the Parties may have in any other or in future legal proceedings
9 unrelated to these proceedings. However, this paragraph shall not diminish or otherwise affect the
10 obligation, responsibilities, and duties of the Parties under this Consent Judgment.

11 1.7 The term “Effective Date” means the date of the Court’s entry of this Consent
12 Judgment.

13 **2. INJUNCTIVE RELIEF**

14 2.1 CARLSON LABS agrees that it will display the following warning on the Covered
15 Products that it sells in California or distributes for sale in California after the Effective Date:

16 WARNING: The recommended daily serving of this product contains more than 10,000 IU
17 of Vitamin A from retinol. Taking Vitamin A from retinol in quantities of 10,000 IU or
18 more is known to cause birth defects or other reproductive harm.

19 2.2 The Product Warning specified in section 2 shall be placed with such
20 conspicuousness as compared with other words, statements, designs and/or devices on the labeling
21 or packaging as to render it likely to be read and understood by an ordinary individual under
22 customary conditions of use or purchase. In addition, if the Product Warning is displayed on the
23 product container or labeling, the warning shall be at least the same size as the largest of any other
24 health or safety warnings on the container or labeling, and the word 'warning' shall be in all capital
25 letters and in bold print. If printed on the labeling itself, the Product Warning shall be contained in
26 the same section of the labeling that states other safety warnings concerning the use of the Product.

27 2.3 After the Effective Date, for internet sales of the Covered Products by CARLSON
28 LABS to consumers with a California shipping address, the warning language required under this
Consent Judgment shall be displayed in the same type size as the surrounding, non-heading text,

1 either: (a) on the same page as the order form for the Product; (b) on the same page containing the
2 description of the Covered Product and the price for the Covered Product; or (c) in a dialogue box
3 which appears and is visible without scrolling when a California address for delivery is provided by
4 the consumer, so long as the dialogue box appears prior to the completion of the internet sale and
5 requires the consumer to affirmatively accept receipt of the warning set forth in the dialogue box
6 (the warning language in the dialogue box shall be displayed in the same type size as the
7 surrounding, non-heading text on the screen at the time of the appearance of the dialogue box), as a
8 condition precedent to completing the sale.

9 **3. MONETARY RELIEF**

10 3.1 Within 15 days of the Effective Date, CARLSON LABS shall pay \$25,000 (twenty-
11 five thousand dollars) in the form of a check made payable to the Shute, Mihaly & Weinberger LLP
12 trust account as reimbursement for AYS' attorneys' fees, investigative costs, and other reasonable
13 litigation costs and expenses.

14 3.2 Within 15 days of the Effective Date, CARLSON LABS shall pay \$10,000 (ten
15 thousand dollars) in the form of a check made payable to As You Sow as a civil penalty pursuant to
16 Health and Safety Code section 25249.7(b). AYS shall remit 75% of this amount to the State of
17 California pursuant to Health and Safety Code section 25249.12(b).

18 3.3 Additionally, within 15 days of the Effective Date, CARLSON LABS shall pay
19 \$10,000 (ten thousand dollars) in the form of a check made payable to As You Sow as a payment in
20 lieu of additional civil penalties, with this amount to be used by AYS for grants to California non-
21 profit organizations and by the AYS Environmental Enforcement Fund. These funds shall be used
22 to reduce or remediate exposures to toxic chemicals and to increase consumer, worker, and
23 community awareness of the health hazards posed by toxic chemicals in California via AYS'
24 program work. In deciding among grantee proposals, the AYS Board of Directors ("Board") will
25 take into consideration a number of important factors, including: (1) the nexus between the harm
26 done in the underlying case and the grant program work; (2) the potential for toxics reduction,
27 prevention, remediation, or education benefits to California citizens from the proposal; (3) the
28 budget requirements of the proposed grantee and the alternate funding sources available to it for its

1 project; and (4) the Board's assessment of the grantee's chances for success in its program work.
2 AYS shall ensure that all funds will be disbursed and used in accordance with AYS' mission
3 statement, articles of incorporation, and bylaws and applicable state and federal laws and
4 regulations.

5 3.4 Except as provided in Section 5 below, the payments made pursuant to Section 3.1
6 through 3.3 shall be the only monetary obligation of CARLSON LABS with respect to this Consent
7 Judgment, including as to any fees, costs, or expenses AYS has incurred.

8 **4. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

9 AYS agrees to comply with the reporting requirements referenced in California Health and
10 Safety Code section 25249.7(f). Pursuant to the regulations promulgated under that section, AYS
11 shall present this Consent Judgment to the California Attorney General's Office within two days
12 after receipt of all necessary signatures. The Parties acknowledge that, pursuant to Health and
13 Safety Code section 25249.7, a noticed motion must be filed to obtain judicial approval of the
14 Consent Judgment. Accordingly, a motion for approval of the Consent Judgment shall be prepared
15 and filed by AYS within a reasonable period of time after the date this Consent Judgment is signed
16 by all Parties.

17 **5. ENFORCEMENT OF CONSENT JUDGMENT**

18 In the event that a dispute arises with respect to any provisions of this Consent Judgment,
19 the Parties shall meet and confer within 30 days of receiving written notice of the alleged violation
20 from another party. No enforcement action or proceeding may be filed until after the Parties have
21 met and conferred. If AYS claims that CARLSON LABS has failed to comply with the provisions
22 of Section 2 of this Consent Judgment, the Parties shall meet and confer in good faith regarding the
23 basis of AYS's claim in an attempt to resolve it informally; in the event of such an informal
24 resolution, neither Party shall recover its attorneys' fees and costs. In the event that the Parties are
25 unable to resolve their dispute through the meet and confer process, this Consent Judgment may be
26 enforced using any available provision of law. If AYS is the prevailing Party in any dispute
27 regarding compliance with the terms of this Consent Judgment, it may seek any fines, costs,
28 penalties, or remedies provided by law for failure to comply with California Health and Safety Code

1 section 25249.5 et seq. The Parties agree that the prevailing Party in such a dispute regarding
2 compliance with the terms of this Consent Judgment may seek an award of its reasonable attorneys'
3 fees and costs incurred in any such motion or proceeding pursuant to the requirements of Code of
4 Civil Procedure section 1021.5.

5 **6. CLAIMS COVERED AND RELEASE**

6 6.1 This Consent Judgment is a full, final, and binding resolution between AYS, on
7 behalf of itself and in the public interest, and CARLSON LABS, of any alleged violation of
8 Proposition 65 for failure to provide Proposition 65 warnings of exposure to Retinol/Retinyl Esters
9 in the Covered Products distributed or sold by CARLSON LABS prior to the Effective Date. AYS,
10 on behalf of itself, its agents, officers, employees, representatives, attorneys, successors and/or
11 assignees, and on behalf of the general public in the public interest, hereby waives all rights to
12 institute any form of legal action and releases and discharges: (a) CARLSON LABS and its parent
13 companies, subsidiaries, affiliates, and divisions; (b) each of their joint venturers, partners, vendors,
14 manufacturers, packagers, and contractors; (c) distributors, wholesalers, and retailers of the Covered
15 Products; and (d) each of the respective officers, directors, shareholders, employees, and agents of
16 the persons and entities identified in (a) through (c) (the persons and entities identified in (a)
17 through (d), above, including the predecessors, successors and assigns of any of them, are
18 collectively referred to as the "Released Parties") from any and all claims, actions, causes of action,
19 suits, demands, liabilities, damages, penalties, fees (including but not limited to investigation fees,
20 attorneys' fees, and expert fees), costs, and expenses (collectively, "Claims") as to any alleged
21 violation of Proposition 65 arising from the failure to provide Proposition 65 warnings regarding
22 alleged exposures to Retinol/Retinyl esters in the Covered Products manufactured, distributed, or
23 sold before the Effective Date.

24 6.2 CARLSON LABS hereby releases AYS, and its agents, Directors, officers,
25 representatives, attorneys, successors and/or assignees (collectively, "AYS Releasees") from, and
26 waives any claims against, AYS Releasees for injunctive relief or damages, penalties, fines,
27 sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses, or any
28

1 other sum incurred or claimed or which could have been claimed for matters related to the Notice or
2 Complaint.

3 6.3 Compliance with the terms of this Consent Judgment shall be deemed to constitute
4 compliance by any Released Party with Proposition 65 regarding alleged exposures to
5 Retinol/Retinol Esters in the Covered Products. Notwithstanding the foregoing, if the Office of
6 Environmental Health Hazard Assessment (“OEHHA”) amends the level for which exposure to
7 Vitamin A from retinol or retinol esters is listed as known to the State of California to cause
8 reproductive toxicity, or amends the level for which exposure to Vitamin A from retinol or retinol
9 esters requires a warning under Proposition 65, then the Parties shall meet and confer to determine
10 whether the warning language in this Agreement complies with the new standard and will modify
11 this Agreement to reflect OEHHA’s amendment as it relates to the Covered Products.

12 6.4 Nothing in this Section 6 shall affect or limit any Party’s right to seek to enforce the
13 terms of this Consent Judgment.

14 6.5 This Consent Judgment shall apply to and be binding upon the Parties hereto and, to
15 the extent allowable by law, on the general public.

16 **7. RETENTION OF JURISDICTION**

17 This Court shall retain jurisdiction of this matter to implement this Consent Judgment.

18 **8. GOVERNING LAW AND CONSTRUCTION**

19 8.1 This Consent Judgment shall be governed by, and construed in accordance with, the
20 laws of the State of California.

21 8.2 The Parties, including their counsel, have participated in the preparation of this
22 Consent Judgment, and this Consent Judgment is the result of the joint efforts of the Parties. This
23 Consent Judgment was subject to revision and modification by the Parties and has been accepted
24 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
25 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of
26 the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
27 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
28 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in this

1 regard, the Parties hereby waive California Civil Code section 1654.

2 **9. MODIFICATION OF CONSENT JUDGMENT**

3 This Consent Judgment may be modified by: (1) written agreement among the Parties and
4 upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of AYS or
5 CARLSON LABS as provided by law and upon entry of a modified Consent Judgment by the Court
6 thereon. All Parties and the California Attorney General’s Office shall be served with notice of any
7 proposed modification to this Consent Judgment at least 15 days in advance of its consideration by
8 the Court.

9 **10. COURT APPROVAL**

10 10.1 The Court shall either approve or disapprove of this Consent Judgment in its entirety,
11 without alteration, deletion, or amendment, unless otherwise so stipulated by the Parties and their
12 counsel. CARLSON LABS agrees not to oppose this Consent Judgment.

13 10.2 In the event that the Court fails to approve and order entry of the Consent Judgment
14 without change (unless otherwise so stipulated by the Parties), this Consent Judgment shall become
15 null and void upon the election of either Party and upon written notice to all of the Parties to the
16 Action pursuant to the notice provisions herein and shall not be introduced into evidence or
17 otherwise used in any proceeding for any purpose.

18 **11. ENTIRE AGREEMENT**

19 This Consent Judgment contains the sole and entire agreement and understanding of the
20 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
21 negotiations, commitments, and understandings related hereto. No representations, oral or
22 otherwise, express or implied, other than those contained herein have been made by any Party
23 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
24 to exist or to bind any of the Parties.

25 **12. APPLICATION OF CONSENT JUDGMENT**

26 This Consent Judgment shall apply to and be binding upon AYS and CARLSON LABS;
27 their respective officers, directors, and shareholders; and the predecessors, successors, or assigns of
28 each of them.

1 **13. ATTORNEYS' FEES**

2 Except as specifically provided in this Consent Judgment, each Party shall bear its own
3 attorneys' fees and costs incurred in connection with the AYS' Notice and Complaint and this
4 Consent Judgment.

5 **14. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7**

6 AYS shall comply with the reporting requirements referred to in Health and Safety Code
7 section 25249.7(f) (and established in Title 11 of the California Code of Regulations sections 3000-
8 3008) and shall move for approval of this Consent Judgment pursuant to the terms thereof.

9 **15. PROVISION OF NOTICE**

10 All correspondence and notices required to be provided pursuant to this Consent Judgment
11 shall be in writing and personally delivered or sent by: (a) first-class, registered, certified return
12 receipt requested or (b) by overnight courier on AYS or CARLSON LABS by the other at the
13 addresses set forth below. Either AYS or CARLSON LABS may specify in writing to the other
14 Party a change of address to which all notices and other communications shall be sent.

15 To: As You Sow

16 As You Sow Foundation
17 Attn: Danielle Fugere
18 1611 Telegraph Ave., Suite 1450
19 Oakland, CA 94612

With a copy to:

Ellison Folk
Shute, Mihaly & Weinberger LLP
396 Hayes St.
San Francisco, CA 94102
Tel: (415) 552-7272
E-mail: folk@smwlaw.com

20 To: J. R. Carlson Laboratories, Inc.

21 J. R. Carlson Laboratories, Inc.
22 Attn: Carilyn Anderson
23 600 W. University Dr.
24 Arlington Heights, IL 60004

With a copy to:

Jacqueline Kuler
Gronek & Associates
233 S. Wacker Dr.
93rd Floor – Willis Tower
Chicago, IL 60606

25 and

26 Trenton H. Norris
27 Arnold & Porter LLP
28 3 Embarcadero Center, Suite 1000
San Francisco, CA 94111
Email: trent.norris@aporter.com

1 **16. EXECUTION AND COUNTERPARTS**

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

5 **17. AUTHORIZATION**

6 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the
7 Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the
8 Consent Judgment on behalf of the Party represented and legally bind that Party. The undersigned
9 have read, understand, and agree to all of the terms and conditions of this Consent Judgment. ¶

10 **18. SEVERABILITY¶**

11 If, subsequent to court approval of this Consent Judgment, any of the provisions of this
12 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
13 remaining shall not be adversely affected.¶

14 IT IS SO STIPULATED:

15 Dated: 6/11/15, 2015

16 **AS YOU SOW**
By: 
Andrew Behar
Chief Executive Officer

17
18 Dated: _____, 2015

J. R. CARLSON LABORATORIES, INC.
By: _____
Name _____
Title _____

19
20
21
22 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED.

23
24 Dated: _____, 2015

JUDGE OF THE SUPERIOR COURT

25
26
27 686894.1

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13 remaining shall not be adversely affected.¶

14 IT IS SO STIPULATED:

15 Dated: _____, 2015

AS YOU SOW

By: _____

Andrew Behar
Chief Executive Officer

17
18 Dated: 6/12/, 2015

J. R. CARLSON LABORATORIES, INC.

By: Carilyn Anderson

Name Carilyn Anderson

Title President

21
22 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED.

23
24 Dated: _____, 2015

JUDGE OF THE SUPERIOR COURT

25
26
27 686894.1