

1 **CONFIDENTIAL SETTLEMENT CORRESPONDENCE**

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11 Attorneys for Plaintiff:
12 AS YOU SOW

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

15 AS YOU SOW)

Case No. CGC 09-485923

16 Plaintiff,)

CONSENT JUDGMENT

17 vs.)

18 PETCO ANIMAL SUPPLIES, INC./PETCO)
19 ANIMAL SUPPLIES STORES, INC.;)
20 PETSTAGES, INC.; COOPSPORT)
21 INTERNATIONAL LP; and DOES 1 through)
22 100, inclusive,)

23 Defendants.)
24 _____ /

25 This Consent Judgment is entered into by and between Plaintiff AS YOU SOW and
26 Defendants COOPSPORT INTERNATIONAL LP and PETSTAGES, INC. ("Defendants") to resolve
27 the claims raised in Plaintiff's Complaint filed in the above-captioned action. This Consent Judgment
28 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:
Coosport International LP
8 ATTN: _____
9 _____

10 Petstages, Inc.
11 ATTN: _____
12 _____

12 With a copy to:
13 Lisa Halko
Sarah Asplins
14 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.

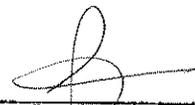
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APPROVED AS TO FORM:

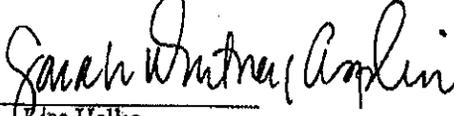
Dated: 2/4/10

LIPPE GAFFNEY WAGNER LLP

By: 
Jennifer Naegele
Attorney for Plaintiff

Dated: 1/29/10

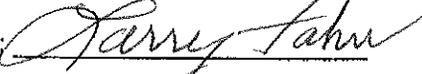
GREENBERG TRAURIG

By: 
Lisa Halko
Sarah Asplin
Attorney for Defendant

IT IS SO STIPULATED:

Dated: 2/1/2010

AS YOU SOW

By: 
Its: Executive Director

Dated: 1/24/10

COOPSPORT INTERNATIONAL LP

By: 
Its: Siobhain Cooper

Dated: _____

PETSTAGES, INC.

By: _____
Its: _____

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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: *Torjus Lundevall*
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: _____

JUDGE OF THE SUPERIOR COURT