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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

AS YOU SOW, a California Non-Profit Public
Benefit Corporation,

 Plaintiff,

 v.

THE VALSPAR CORPORATION, and DOES
1 through 10, inclusive,

 Defendants.

Case No. CGC 11-514882

CONSENT JUDGMENT [PROPOSED]

This Consent Judgment is entered into by and between Plaintiff AS YOU SOW (“AYS”) and Defendant THE VALSPAR CORPORATION (“Valspar”) 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 Valspar (collectively “the Parties”) agree to the terms and conditions set forth below.

1. INTRODUCTION

1.1 AYS is a non-profit corporation 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 is incorporated under the laws of the State of California.

1 1.2 Valspar manufactures and distributes varnishes, including McCloskey Man-O-War
2 Spar Varnish Semi-Gloss 7557, McCloskey Man-O-War Spar Varnish Gloss 7559, and
3 McCloskey Man-O-War Spar Varnish Satin 7555 (“Covered Products”), all of which contain
4 ethylbenzene, a chemical regulated by the State of California as known to cause cancer pursuant
5 to the Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), California
6 Health and Safety Code §25249.5 et seq.

7 1.3 On June 7, 2011 AYS sent a 60-day Notice of Violation to Valspar and to public
8 enforcers as required by Health & Safety Code Section 25249.7, alleging that these entities
9 violated Proposition 65 by failing to provide clear and reasonable warning before exposing users
10 to ethylbenzene in Covered Products.

11 1.4 On October 5, 2011 AYS filed a Complaint against Valspar in San Francisco
12 Superior Court, No. CGC 11-514882, alleging that Valspar violated Proposition 65 due to the
13 alleged failure to provide clear and reasonable warning that users of Covered Products were
14 exposed to ethylbenzene, a chemical known to the state of California to cause cancer.

15 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court
16 has jurisdiction over Valspar as to the allegations contained in the Complaint, that venue is proper
17 in San Francisco County, that this Court has jurisdiction to enter this Consent Judgment as a
18 resolution of all claims that were alleged in the Complaint, and that the Court shall retain
19 jurisdiction to implement the Consent Judgment.

20 1.6 The Parties enter into this agreement to settle certain disputed claims as alleged in
21 the complaint, and to avoid prolonged and costly litigation. By executing and complying with
22 this agreement, neither Party admits any facts or conclusions of law including, but not limited to,
23 any facts or conclusions of law regarding any violations of Proposition 65, or any other statutory,
24 common law or equitable claim or requirement relating to or arising from the sale of Covered
25 Products in California. Neither shall this Consent Judgment be construed as an admission that
26 any act provided for herein, or any warnings regarding exposure to ethylbenzene from Covered
27 Products are required under Proposition 65 or any other statute, regulation, or common law
28 requirement. Nothing in this Consent Judgment shall prejudice, waive, or impair any right,

1 remedy, or defense that Plaintiff and Defendant may have in any other or in future legal
2 proceedings unrelated to these proceedings. However, this paragraph shall not diminish or
3 otherwise affect the obligation, responsibilities, and duties of the Parties under this Consent
4 Judgment.

5 1.7 The term "Effective Date" means the date of entry of this Consent Judgment.

6 **2. INJUNCTIVE RELIEF**

7 2.1 Covered Products distributed or sold by Valspar after the Effective Date for sale or
8 use in the State of California shall provide the following warning statement:

9
10 "WARNING: This product contains chemicals known to the State of California to
11 cause cancer and birth defects or other reproductive harm."

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

22 **3. SETTLEMENT PAYMENTS**

23 3.1 Within 15 days of the Effective Date, Valspar shall pay \$28,700 in the form of a
24 check made payable to the Shute, Mihaly & Weinberger trust account as reimbursement for
25 plaintiff's attorneys fees, investigation costs, and other reasonable litigation costs and expenses.

26 3.2 Within 10 days of the Effective Date, Valspar shall pay \$12,000.00 in the form of
27 a check made payable to As You Sow as a civil penalty pursuant to Health and Safety Code
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1 Section 25249.7(b). As You Sow shall remit 75% of this amount to the State of California
2 pursuant to Health and Safety Code Section 25249.12(b).

3 3.3 Additional In Lieu Payments: Additionally, within 10 days of the Effective Date,
4 Valspar shall pay \$39,300 in the form of a check made payable to As You Sow as a payment in
5 lieu of additional civil penalties. These funds shall be used by As You Sow to reduce or
6 remediate exposures to toxic chemicals and to increase consumer, worker and community
7 awareness of the health hazards posed by toxic chemicals in California via its program work, but
8 primarily through grants to other 501(c)(3) non-profit organizations working in toxics reduction,
9 remediation and/or environmental education. In deciding among the grantee proposals, the As
10 You Sow Board of Directors ("Board") takes into consideration a number of important factors,
11 including: (1) the nexus between the harm done in the underlying case(s), and the grant program
12 work; (2) the potential for toxics reduction, prevention, remediation or education benefits to
13 California citizens from the proposal; (3) the budget requirements of the proposed grantee and the
14 alternate funding sources available to it for its project; and (4) the Board's assessment of the
15 grantee's chances for success in its program work. AYS shall ensure that all funds will be
16 disbursed and used in accordance with AYS' mission statement, articles of incorporation, and
17 bylaws and applicable state and federal laws and regulations. These payments shall not be
18 construed as a credit against the personal claims of absent third parties for restitution against
19 Defendant.

20 **4. ENFORCEMENT OF CONSENT JUDGMENT**

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

1 **5. CLAIMS COVERED AND RELEASE**

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

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

16 5.3 Upon entry of the Consent Judgment, the Parties waive their respective rights to a
17 hearing or trial on the allegations of the complaint.

18 **6. GOVERNING LAW AND CONSTRUCTION**

19 6.1 This agreement shall be governed by, and construed in accordance with, the laws
20 of the State of California.

21 6.2 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
26 of 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
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1 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
2 this regard, the Parties hereby waive California Civil Code section 1654.

3 **7. MODIFICATION OF CONSENT JUDGMENT**

4 7.1 This Consent Judgment may be modified only upon written agreement of the
5 Parties, with approval of the Court, or pursuant to court order issued upon noticed motion of a
6 Party for good cause shown, and upon entry of a modified Consent Judgment by this Court. Any
7 Party seeking to modify this Consent Judgment shall meet and confer with all affected Parties
8 prior to filing a motion to modify the Consent Judgment in a good faith to attempt to resolve any
9 differences.

10 **8. COURT APPROVAL**

11 8.1 The Court shall either approve or disapprove of this Consent Judgment in its
12 entirety, without alteration, deletion or amendment, unless otherwise so stipulated by the Parties
13 and their counsel. Defendant agrees not to oppose this Consent Judgment.

14 8.2 In the event that the Court fails to approve and order entry of the Consent
15 Judgment without any change whatsoever (unless otherwise so stipulated by the Parties), this
16 Consent Judgment shall become null and void upon the election of either Party and upon written
17 notice to all of the Parties to the Action pursuant to the notice provisions herein, and shall not be
18 introduced into evidence or otherwise used in any proceeding for any purpose.

19 **9. ENTIRE AGREEMENT**

20 9.1 The Parties declare and represent that no promise, inducement or other agreement
21 has been made conferring any benefit upon any Party except those contained herein and that this
22 agreement contains the entire agreement pertaining to the subject matter hereof. This agreement
23 supersedes any prior or contemporaneous negotiations, representations, agreements and
24 understandings of the Parties with respect to such matters, whether written or oral. Parol
25 evidence shall be inadmissible to show agreement by, between, or among the Parties to any term
26 or condition contrary to or in addition to the terms and conditions contained in this Consent
27 Judgment. The Parties acknowledge that each has not relied on any promise, representation or
28 warranty, expressed or implied, not contained in this agreement.

1 **10. APPLICATION OF CONSENT JUDGMENT**

2 10.1 This Consent Judgment shall apply to and be binding upon the Parties hereto, their
3 divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

4 10.2 The terms of this Consent Judgment shall not apply to Covered Products
5 manufactured, distributed, or sold by Valspar for use outside of California.

6 **11. ATTORNEYS' FEES**

7 11.1 Except as specifically provided in this Consent Judgment, each Party shall bear its
8 own attorneys' fees and costs incurred in connection with the 60-day Notice and Plaintiff's
9 complaint.

10 **12. COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7.**

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

15 **13. PROVISION OF NOTICE**

16 All correspondence and notices required by this Consent Judgment to the Parties shall be
17 sent:

18 To Plaintiff As You Sow

19 As You Sow Foundation
20 Attn: Kara Buchner / Larry Fahn
21 311 California Street, Suite 510
22 San Francisco, CA 94104

With a copy to:

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

23 To Valspar

24 XXXXXXXXXXXXXXXXXX
25 Valspar Corporation
26 1101 S. Third St.
27 Minneapolis, Minnesota 55415

With a copy to:

Jeffrey B. Margulies, Esq.
Fulbright & Jaworski L.L.P.
555 S. Flower Street, 41st Floor
Los Angeles, California 90071
Tel: (213) 892-8986
Fax: (213) 892-9494
E-mail: jmargulies@fulbright.com

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14. EXECUTION AND COUNTERPARTS


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


15. AUTHORIZATION

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

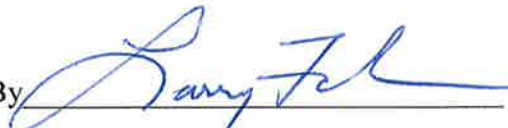
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APPROVED AS TO FORM:

<p>Dated: <u>1/9/2012</u></p>	<p>SHUTE, MIHALY & WEINBERGER</p> <p>By <u></u> ELLISON FOLK Attorneys for Plaintiff AS YOU SOW.</p>
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<p>Dated: <u>Jan 17, 2012</u></p>	<p>FULBRIGHT & JAWORSKI L.L.P.</p> <p>By <u></u> JEFFREY B. MARGULIES Attorneys for Defendant THE VALSPAR CORPORATION</p>
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IT IS SO STIPULATED:

<p>Dated: <u>1/6/2012</u></p>	<p>AS YOU SOW</p> <p>By <u></u> Name <u>Larry Fahn</u> Title <u>President</u></p>
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<p>Dated: <u>January 20, 2012</u></p>	<p>THE VALSPAR CORPORATION</p> <p>By <u></u> Name <u>Rolf Engh</u> Title <u>Exec. VP, Secretary & Gen. Counsel</u></p>
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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