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AS YOU SOW
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11

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

13 Plaintiff,

14 v.
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16 ACTUANT CORPORATION, dba Gardner
Bender, and DOES 1 through 10, inclusive,

17 Defendants.
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Case No. RG12614554

CONSENT JUDGMENT [PROPOSED]

Action Filed: January 27, 2012

1 This Consent Judgment is entered into by and between Plaintiff AS YOU SOW("AYS")
2 and Defendant GB Tools & Supplies, LLC (sued herein as THE ACTUANT CORPORATION,
3 doing business in California as Gardner Bender) ("GB Tools") to resolve all claims raised in the
4 Plaintiff's complaint filed in the above-captioned action. This Consent Judgment shall be
5 effective upon entry. AYS and GB Tools (collectively "the Parties") agree to the terms and
6 conditions set forth below.

7 **1. INTRODUCTION**

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

12 1.2 GB Tools manufactures and/or distributes Liquid Electrical Tape – Green,
13 ("Covered Product"), which contains ethylbenzene, a chemical regulated by the State of
14 California as known to cause cancer pursuant to the Safe Drinking Water and Toxic
15 Enforcement Act of 1986 ("Proposition 65"), California Health and Safety Code §25249.5 et
16 seq.

17 1.3 On November 3, 2011 AYS sent a 60-day Notice of Violation to GB Tools and to
18 public enforcers as required by Health & Safety Code Section 25249.7, alleging that these
19 entities violated Proposition 65 by failing to provide clear and reasonable warning before
20 exposing users to ethylbenzene in the Covered Product.

21 1.4 On January 27, 2011 AYS filed a Complaint against GB Tools in Alameda County
22 Superior Court, Case No. RG1261455, alleging that GB Tools violated Proposition 65 due to the
23 alleged failure to provide clear and reasonable warning that users of the Covered Product were
24 exposed to ethylbenzene, a chemical known to the state of California to cause cancer.

25 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court
26 has jurisdiction over GB Tools as to the allegations contained in the Complaint, that venue is
27 proper in Alameda County, that this Court has jurisdiction to enter this Consent Judgment as a
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1 resolution of all claims that were alleged in the Complaint, and that the Court shall retain
2 jurisdiction to implement the Consent Judgment.

3 1.6 The Parties enter into this agreement to settle certain disputed claims as alleged in
4 the complaint, and to avoid prolonged and costly litigation. By executing and complying with
5 this agreement, neither Party admits any facts or conclusions of law including, but not limited
6 to, any facts or conclusions of law regarding any violations of Proposition 65, or any other
7 statutory, common law or equitable claim or requirement relating to or arising from the sale of
8 Covered Products in California. Neither shall this Consent Judgment be construed as an
9 admission that any act provided for herein, or any warnings regarding exposure to ethylbenzene
10 from Covered Products are required under Proposition 65 or any other statute, regulation, or
11 common law requirement. Nothing in this Consent Judgment shall prejudice, waive, or impair
12 any right, remedy, or defense that Plaintiff and Defendant may have in any other or in future
13 legal proceedings unrelated to these proceedings. However, this paragraph shall not diminish or
14 otherwise affect the obligation, responsibilities, and duties of the Parties under this Consent
15 Judgment.

16 1.7 The term "Effective Date" means the date of entry of this Consent Judgment.

17 **2. INJUNCTIVE RELIEF**

18 2.1 Covered Products distributed or sold by GB Tools after the Effective Date for sale
19 or use in the State of California shall provide the following warning statement:

20 "WARNING: This product contains a chemical known to the State
21 of California to cause cancer and birth defects or other reproductive
22 harm."

23 2.2 The warning statement required in Section 2.1 shall be prominently affixed to or
24 printed on the Covered Product's packaging and labeling by GB Tools and shall be displayed
25 with such conspicuousness, as compared with other words, statements, designs, or devices on
26 the Covered Product, or its packaging or labeling, as to render it likely to be read and understood
27 by an ordinary individual under customary conditions of purchase or use.

28 **3. SETTLEMENT PAYMENTS**

3.1 Within 30 days of the Effective Date, GB Tools shall pay \$22,000 in the form of a

1 check made payable to the Shute, Mihaly & Weinberger trust account as reimbursement for
2 plaintiff's attorneys fees, investigation costs, and other reasonable litigation costs and expenses.

3 3.2 Within 30 days of the Effective Date, GB Tools shall pay \$10,000.00 in the form
4 of a check made payable to As You Sow as a civil penalty pursuant to Health and Safety Code
5 Section 25249.7(b). As You Sow shall remit 75% of this amount to the State of California
6 pursuant to Health and Safety Code Section 25249.12(b).

7 3.3 Additional In Lieu Payments: Additionally, within 30 days of the Effective Date,
8 GB Tools shall pay \$32,000 in the form of a check made payable to As You Sow as a payment
9 in lieu of additional civil penalties. These funds shall be used by As You Sow to reduce or
10 remediate exposures to toxic chemicals and to increase consumer, worker and community
11 awareness of the health hazards posed by toxic chemicals in California via its program work, but
12 primarily through grants to other 501(c)(3) non-profit organizations working in toxics reduction,
13 remediation and/or environmental education. In deciding among the grantee proposals, the As
14 You Sow Board of Directors ("Board") takes into consideration a number of important factors,
15 including: (1) the nexus between the harm done in the underlying case(s), and the grant program
16 work; (2) the potential for toxics reduction, prevention, remediation or education benefits to
17 California citizens from the proposal; (3) the budget requirements of the proposed grantee and
18 the alternate funding sources available to it for its project; and (4) the Board's assessment of the
19 grantee's chances for success in its program work. AYS shall ensure that all funds will be
20 disbursed and used in accordance with AYS' mission statement, articles of incorporation, and
21 bylaws and applicable state and federal laws and regulations. These payments shall not be
22 construed as a credit against the personal claims of absent third parties for restitution against
23 Defendant.

24 **4. ENFORCEMENT OF CONSENT JUDGMENT**

25 4.1 The Parties may, by motion or order to show cause before the Superior Court of
26 the County of Alameda, enforce the terms and conditions of this Consent Judgment. In the event
27 that a dispute arises with respect to any of the provisions of this Consent Judgment, the Parties
28 shall meet and confer within 10 days after either Party receives written notice of an alleged

1 violation of this Agreement. The prevailing Party in any dispute regarding compliance with the
2 terms of this Consent Judgment shall be awarded any fines, costs, penalties, or remedies
3 provided by law. Additionally, the prevailing Party shall be awarded its reasonable attorney's
4 fees and costs.

5 **5. CLAIMS COVERED AND RELEASE**

6 5.1 As to the Covered Product, this Consent Judgment is a full, final, and binding
7 resolution between AYS and GB Tools and its parents, subsidiary and related entities and their
8 shareholders, officers, directors, employees, agents, insurers and representatives, and their
9 successors and assigns ("Defendant Releasees"), and Plasti Dip International, Inc., from whom
10 they purchased Covered Product ("Upstream Defendant Releasees"), and all entities to whom
11 they distribute or sell Covered Products, including but not limited to distributors, wholesalers,
12 customers, retailers, franchisees, cooperative members, and licensees, ("Downstream Defendant
13 Releasees"), of any actual and potential claims that were or could have been brought by AYS for
14 the alleged failure to provide clear, reasonable, and lawful warnings of exposure to ethylbenzene
15 used or contained in the Covered Product distributed or sold by GB Tools before the Effective
16 Date.

17 5.2 As to the Covered Products, compliance with the terms of this Consent Judgment
18 by GB Tools resolves any issue from the date of entry of this Consent Judgment into the future
19 concerning compliance by GB Tools, Defendant Releasees, Upstream Defendant Releasees, and
20 Downstream Defendant Releasees with regard to Proposition 65 as to the presence of, or
21 exposure to, ethylbenzene in the Covered Products.

22 5.3 Upon entry of the Consent Judgment, the Parties waive their respective rights to a
23 hearing or trial on the allegations of the complaint.

24 **6. GOVERNING LAW AND CONSTRUCTION**

25 6.1 This agreement shall be governed by, and construed in accordance with, the laws
26 of the State of California.

27 6.2 The Parties, including their counsel, have participated in the preparation of this
28 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.

1 This Consent Judgment was subject to revision and modification by the Parties and has been
2 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
3 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any
4 Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this
5 Consent Judgment agrees that any statute or rule of construction providing that ambiguities are
6 to be resolved against the drafting Party should not be employed in the interpretation of this
7 Consent Judgment and, in this regard, the Parties hereby waive California Civil Code section
8 1654.

9 **7. MODIFICATION OF CONSENT JUDGMENT**

10 7.1 This Consent Judgment may be modified only upon written agreement of the
11 Parties, with approval of the Court, or pursuant to court order issued upon noticed motion of a
12 Party for good cause shown, and upon entry of a modified Consent Judgment by this Court.
13 Any Party seeking to modify this Consent Judgment shall meet and confer with all affected
14 Parties prior to filing a motion to modify the Consent Judgment in a good faith to attempt to
15 resolve any differences.

16 **8. COURT APPROVAL**

17 8.1 The Court shall either approve or disapprove of this Consent Judgment in its
18 entirety, without alteration, deletion or amendment, unless otherwise so stipulated by the Parties
19 and their counsel. Defendant agrees not to oppose this Consent Judgment.

20 8.2 In the event that the Court fails to approve and order entry of the Consent
21 Judgment without any change whatsoever (unless otherwise so stipulated by the Parties), this
22 Consent Judgment shall become null and void upon the election of either Party and upon written
23 notice to all of the Parties to the Action pursuant to the notice provisions herein, and shall not be
24 introduced into evidence or otherwise used in any proceeding for any purpose.

25 **9. ENTIRE AGREEMENT**

26 9.1 The Parties declare and represent that no promise, inducement or other agreement
27 has been made conferring any benefit upon any Party except those contained herein and that this
28 agreement contains the entire agreement pertaining to the subject matter hereof. This agreement

1 supersedes any prior or contemporaneous negotiations, representations, agreements and
2 understandings of the Parties with respect to such matters, whether written or oral. Parol
3 evidence shall be inadmissible to show agreement by, between, or among the Parties to any term
4 or condition contrary to or in addition to the terms and conditions contained in this Consent
5 Judgment. The Parties acknowledge that each has not relied on any promise, representation or
6 warranty, expressed or implied, not contained in this agreement.

7 **10. APPLICATION OF CONSENT JUDGMENT**

8 10.1 This Consent Judgment shall apply to and be binding upon the Parties hereto, their
9 divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

10 10.2 The terms of this Consent Judgment shall not apply to Covered Products
11 manufactured, distributed, or sold by GB Tools for use outside of California.

12 **11. ATTORNEYS' FEES**

13 11.1 Except as specifically provided in this Consent Judgment, each Party shall bear its
14 own attorneys' fees and costs incurred in connection with the 60-day Notice and Plaintiff's
15 complaint.

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

17 12.1 Plaintiff shall comply with the reporting requirements referred to in Health and
18 Safety Code section 25249.7(f) (and established in Title 11 of the California Code of
19 Regulations sections 3000-3008), and shall move for approval of this consent judgment pursuant
20 to the terms thereof.

21 **13. PROVISION OF NOTICE**

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

24 To Plaintiff As You Sow

25 As You Sow Foundation
26 Attn: Larry Fahn, President
27 311 California Street, Suite 510
28 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

To GB Tools

Terry Braatz
GB Tools & Supplies, LLC
N86 W12500 Westbrook Crossing
Menomonee Falls, WI 53051

With a copy to:

Jennifer Taggart
Demetriou, Del Guercio, Springer &
Francis, LLP
700 South Flower Street, Suite 2325
Los Angeles, California 90017
Phone (213) 624-8407
Fax (213) 624-0174

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**

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.

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: May 14, 2012

SHUTE, MIHALY & WEINBERGER

By


ELLISON FOLK

Attorneys for Plaintiff AS YOU SOW

1 Dated: April 30, 2012

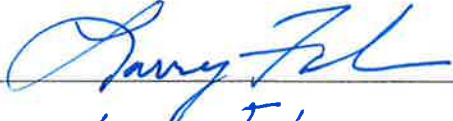
**DEMETRIOU, DEL GUERCIO,
SPRINGER & FRANCIS, LLP**

2
3
4 By  _____
5 JENNIFER TAGGART
6 Attorneys for Defendant GB Tools & Supplies
7 LLC

8 IT IS SO STIPULATED:

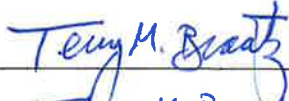
9 Dated: 5/10/2012

AS YOU SOW

10
11 By  _____
12 Name Larry Fahn
13 Title President

14 Dated: 5/5/2012

GB TOOLS & SUPPLIES, LLC

15
16
17 By  _____
18 Name Terry M. Braatz
19 Title Treasurer

20
21 IT IS SO ORDERED:

22
23
24 DATED: _____

By: _____
JUDGE OF THE SUPERIOR COURT

25 323860.1