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

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

12 Plaintiff,

13 v.

14 The Procter & Gamble Manufacturing
15 Company, and DOES 1 through 10, inclusive,

16 Defendants.

Case No. CGC-12-517674

[PROPOSED] CONSENT JUDGMENT

California Health and Safety Code § 25249.5
et seq.

1 **1. INTRODUCTION**

2 1.1 On January 26, 2012, Plaintiff As You Sow (“AYS”) filed a Complaint for civil
3 penalties and injunctive relief against Defendant Procter and Gamble (“Defendant”) in this
4 Court. The Complaint alleges, in part, that 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 laundry products that contain 1,4-dioxane, a chemical known to
7 the State of California to cause cancer, without providing a clear and reasonable warning.

8 1.2 Defendant The Procter & Gamble Manufacturing Company is a business entity
9 employing more than 10 employees that manufactures, distributes, markets, and/or sells liquid
10 laundry detergents.

11 1.3 The alleged violations addressed in the Complaint were described in AYS’ Notice
12 of Violation dated November 11, 2011 served on the California Attorney General, other public
13 enforcers, and the Procter & Gamble Company (noticed as “Procter & Gamble Company”). The
14 alleged violations at issue in this action arise from alleged exposure to 1, 4-dioxane that is found
15 in laundry detergents, including Tide Original Scent Liquid Detergent, Tide Free & Gentle
16 Liquid Detergent, Tide HE Original Scent Liquid Detergent, Gain HE Original Liquid
17 Detergent, Tide for Coldwater Fresh Scent Liquid Detergent, Cheer HE Fresh Clean Scent
18 Liquid Detergent, Dreft HE 2X Ultra Liquid Detergent, Era Active Stainfighter HE 2X Ultra
19 Liquid Detergent, and Ivory Snow Gentle Care 2X Ultra Liquid Detergent, manufactured,
20 packaged, distributed, marketed, and/or sold by Defendant (“Covered Products”).

21 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court
22 has jurisdiction over the allegations of violations contained in the Complaint and personal
23 jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper in the
24 County of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment.

25 1.5 Nothing in this Consent Judgment is or shall be construed as an admission by the
26 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with
27 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
28 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall

1 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in any
2 other legal proceeding. This Consent Judgment is the product of negotiation and compromise
3 and is accepted by the Parties for purposes of settling, compromising and resolving issues
4 disputed in this action.

5 1.6 The "Effective Date" is the date on which this Consent Judgment is entered by the
6 Court.

7 **2. INJUNCTIVE RELIEF**

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

9 2.1 Defendant agrees to effect various modifications to the manufacturing protocol for
10 the Covered Products so as to reduce the presence of 1,4 dioxane below a level of 25 parts per
11 million ("ppm"). Such modifications will focus on lowering the temperature at which the
12 surfactant paste is produced, improving equipment maintenance procedures, reducing SO3
13 concentrations, reducing residence times of the acid surfactant paste, or other measures to
14 reduce the levels of 1,4 dioxane in the surfactants and are targeted for completion no later than
15 September 30, 2013.

16 **3. PAYMENT**

17 3.1 Within fifteen (15) days after entry of this Consent Judgment by the Court,
18 Defendant shall make a total payment of \$55,000 to AYS as follows:

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

21 (b) Defendant shall pay \$7,000 in lieu of additional civil penalties in the form
22 of a check made payable to "Shute, Mihaly & Weinberger LLP, Attorney Client Trust Account"
23 with this amount to be used by AYS for grants to California non-profit organizations and by
24 AYS Foundation Environmental Enforcement Fund. These funds shall be used to reduce
25 exposures to toxic chemicals and to increase consumer, worker and community awareness of the
26 health hazards posed by toxic chemicals in California. In deciding among the grantee proposals,
27 the AYS Board of Directors ("Board") takes into consideration a number of important factors,
28 including: (1) the nexus between the harm done in the underlying case(s), and the grant program

1 work; (2) the potential for toxics reduction, prevention, remediation or education benefits to
2 California citizens from the proposal; (3) the budget requirements of the proposed grantee and
3 the alternate funding sources available to it for its project; and (4) the Board's assessment of the
4 grantee's chances for success in its program work. AYS shall ensure that all funds will be
5 disbursed and used in accordance with AYS's mission statement, articles of incorporation, and
6 bylaws and applicable state and federal laws and regulations. The check shall be delivered by
7 overnight delivery to Ellison Folk, Shute, Mihaly & Weinberger LLP, 396 Hayes Street, San
8 Francisco, CA 94102.

9 (c) Defendant shall pay \$45,000 in the form of a check made payable to
10 "Shute, Mihaly & Weinberger LLP, Attorney Client Trust Account" as reimbursement for the
11 investigation fees and costs, testing costs, attorneys' fees and other litigation costs and expenses.
12 The check shall be delivered by overnight delivery to Ellison Folk, Shute, Mihaly & Weinberger
13 LLP, 396 Hayes Street, San Francisco, CA 94102.

14 **4. MODIFICATION**

15 4.1 This Consent Judgment may be modified by express written agreement of the
16 Parties with the approval of the Court, or by an order of the Court upon motion and in
17 accordance with law.

18 **5. CLAIMS COVERED AND RELEASED**

19 5.1 This Consent Judgment is a full, final and binding resolution between AYS on
20 behalf of itself and the public interest, Defendant and its parents, subsidiaries, directors, officers,
21 employees, and attorneys, and each entity to whom it directly or indirectly distributes or sells
22 Covered Products, including but not limited to distributors, wholesalers, customers, retailers,
23 franchisees, cooperative members, licensors, and licensees of any violation of Proposition 65
24 that was or could have been asserted in the Complaint against Defendant based on failure to
25 warn about the alleged exposure to 1,4-dioxane contained in the Covered Products.

26 **6. NOTICE**

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1 6.1 When any Party is entitled to receive any notice under this Consent Judgment, the
2 notice shall be sent by either (i) first-class, registered, certified mail, return receipt requested, (ii)
3 overnight courier, or (iii) personal messenger to the following:

4 **FOR AS YOU SOW:**

5 Andrew Behar, Chief Executive Officer
6 Danielle Fugere, Staff Attorney
7 As You Sow
8 1611 Telegraph Ave., Suite 1450
9 Oakland, CA 94612

10 **With a copy to:**

11 Ellison Folk
12 Shute, Mihaly & Weinberger LLP
13 396 Hayes Street
14 San Francisco, CA 94102
15 Telephone: (415) 552-7272
16 Facsimile: (415) 552- 5816

17 **FOR THE PROCTER & GAMBLE MANUFACTURING COMPANY**

18 Joseph P. Suarez
19 Senior Legal Counsel
20 One P&G Plaza
21 Cincinnati, OH 45202-3313.

22 **With a copy to:**

23 Carolyn Collins
24 Nixon Peabody LLP
25 One Embarcadero Center, 18th Floor
26 San Francisco, CA 94111
27 Telephone: 415-984-8325
28 Facsimile: 415-984-8300

29 **7. COURT APPROVAL**

30 7.1 This Consent Judgment shall become effective upon entry by the Court. AYS
31 shall prepare and file a Motion for Approval of this Consent Judgment, consistent with Health
32 and Safety Code section 25249.7(f), and Defendant shall support entry of this Consent
33 Judgment.

1 7.2 If this Consent Judgment is not entered by the Court in its entirety, without
2 alteration, deletion, or amendment, unless otherwise so stipulated by the Parties, it shall be of no
3 force or effect and shall never be introduced or otherwise used in any proceeding for any
4 purpose other than to allow the Court to determine if there was a material breach of Section 7.1.

5 7.3 If the Court enters this Consent Judgment, AYS shall, within ten (10) business
6 days after the Effective Date, electronically provide or otherwise serve a copy of it and the
7 report required pursuant to 11 Cal. Code Regs. Section 3004 to and/or on the California
8 Attorney General's Office.

9 **8. ENFORCEMENT OF CONSENT JUDGMENT**

10 8.1 The Parties may, by motion or order to show cause before this Court, and upon
11 notice having been given to all Parties in accordance with Section 7 above, enforce the terms
12 and conditions of this Consent Judgment and seek whatever fines, costs, penalties, or remedies
13 are provided by law.

14 8.2 The Parties may enforce the terms of this Consent Judgment pursuant to Section
15 8.1 only after the complaining party has first given thirty (30) days notice to the Party allegedly
16 failing to comply with the terms and conditions of the Consent Judgment and has attempted, in
17 an open and good faith manner, to resolve such Party's alleged failure to comply.

18 **9. OTHER TERMS**

19 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of
20 California.

21 9.2 This Consent Judgment shall apply to and be binding upon AYS and Defendant,
22 and their respective divisions, subdivisions, and subsidiaries, and the successors or assigns of
23 any of them.

24 9.3 This Consent Judgment contains the sole and entire agreement and understanding
25 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
26 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
27 and therein. There are no warranties, representations, or other agreements between the Parties
28 except as expressly set forth herein. No representations, oral or otherwise, express or implied,

1 other than those specifically referred to in this Consent Judgment have been made by any Party
2 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
3 shall be deemed to exist or to bind any of the Parties hereto. No supplementation, modification,
4 waiver, or termination of this Consent Judgment shall be binding unless executed in writing by
5 the Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment
6 shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not
7 similar, nor shall such waiver constitute a continuing waiver.


8 9.4 The stipulations to this Consent Judgment may be executed in counterparts and by
9 means of facsimile or portable document format (pdf), which taken together shall be deemed to
10 constitute one document.


11 9.5 Each signatory to this Consent Judgment certifies that that he or she is fully
12 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter
13 into and execute the Consent Judgment on behalf of the party represented and legally to bind
14 that Party.

15 9.6 The parties, including their counsel, have participated in the preparation of this
16 Consent Judgment, which is the result of the joint efforts of the Parties. This Consent Judgment
17 was subject to revision and modification by the Parties and has been accepted and approved as
18 to its final form by all Parties and their counsel. Any uncertainty or ambiguity existing in this
19 Consent Judgment shall not be interpreted against any Party as a result of the manner of the
20 preparation of this Consent Judgment.

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

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Signature

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26 _____
Printed Name

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Title

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_____ Date

THE PROCTER & GAMBLE MANUFACTURING COMPANY



_____ Signature

R. ALEXANDRA KEITH

_____ Printed Name

VICE PRESIDENT / GENERAL MANAGER

_____ Title

11/30/12

_____ Date

IT IS SO ORDERED:

DATED: _____

By: _____


JUDGE OF THE SUPERIOR COURT

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APPROVED AS TO FORM:

DATED: 3 December, 2012

NIXON PEABODY LLP

By: 

CAROLYN COLLINS
Attorneys for Defendant
THE PROCTER & GAMBLE
MANUFACTURING COMPANY

APPROVED AS TO FORM

DATED: 12/4, 2012

SHUTE, MIHALY & WEINBERGER LLP

By: 

ELLISON FOLK
Attorneys for Plaintiff
AS YOU SOW

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