

1 1.3 Plaintiff and Defendants will be referred to collectively as the "Parties" or
2 individually as a "Party".

3 2. **Background.**

4 2.1 Plaintiff AYS is a non-profit California corporation dedicated to, among other causes,
5 the protection of the environment, the promotion of human health, the improvement of worker and
6 consumer rights, environmental education and corporate accountability. AYS is based in Oakland,
7 California and is incorporated under the laws of the State of California. AYS represents the public
8 interest under Proposition 65 in this matter.

9 2.2 Defendant is a Utah corporation in good standing.

10 2.3 Defendant manufactures, distributes, and sells topical creams containing
11 Progesterone.

12 2.4 On or about March 20, 2012 Plaintiff sent Defendant a notice letter alleging a
13 violation of Proposition 65 due to the failure to warn regarding progesterone in "Pro G Yam" (the
14 "Notice"). The Parties met and conferred through counsel after receipt of this Notice.

15 2.5 Upon execution of this Consent Judgment, Plaintiff intends to file this Consent
16 Judgment and a complaint styled *As You Sow v. Nature's Sunshine Products, Inc., et al.*, in the Los
17 Angeles County Superior Court (the "Complaint").

18 2.6 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over the allegations of the violations contained in the Notice and the Complaint and
20 personal jurisdiction over Defendant as to the acts or omissions alleged in the Complaint; that venue
21 is proper in the County of Los Angeles and that this Court has jurisdiction to enter this Consent
22 Judgment.

23 2.7 Defendant denies that the Products have been or are in violation of any law, and
24 further contends that all Products have been and are safe for use as directed. Defendant expressly
25 denies any violation under Proposition 65. The Parties desire to resolve this matter (including the
26 Notice, Complaint and all related matters as set forth herein) without further litigation or cost.

27 2.8 The Parties enter into this Consent Judgment to settle certain disputed claims as
28

1 alleged in the Notice and the Complaint, to avoid prolonged and costly litigation, and to promote the
2 public interest. By executing and complying with this Consent Judgment, no Party admits any facts,
3 any violations of law, or any conclusions of law including, but not limited to, any facts or
4 conclusions of law regarding any violations of Proposition 65, or any other statutory, common law
5 or equitable claim or requirement relating to or arising from Defendant's Products. This Consent
6 Judgment shall not be construed as an admission by Defendants as to any of the allegations in the
7 Notice or the Complaint.

8 **3. Injunctive Relief.**

9 **3.1 Sale of Products Requires a Warning.** Effective when, in the ordinary course of
10 business, new labels for the Products are printed, or after March 1, 2013, whichever is the earlier,
11 Defendant shall place the following warning prominently on the label of each of Defendant's
12 Products sold to, or offered for sale to, California consumers:

13 "WARNING: This product contains Progesterone, a chemical known
14 to the State of California to cause cancer. [Consult with your
15 physician before using this product.]"

16 The text in [brackets] is optional in Defendant's sole discretion.

17 **3.2** No warning shall be required for the Products which are not sold to California
18 consumers. If Defendant permanently ceases to manufacture, distribute or sell the Products to
19 California consumers, this Consent Judgment shall terminate. Defendant need not apply the warning
20 text in Section 3.1 to Products which already have left Defendant's possession and thus are in the
21 stream of commerce prior to the date of entry of this Consent Judgment, or to Products sold before
22 the new labels for those Products are printed and the Parties agree Plaintiff's release of claims in
23 Section 5 below encompasses such Products.

24 **3.3** By March 1, 2013 Defendant agrees to amend its "Nature's Sunshine Policies and
25 Procedures" to add the following text: "Certain NSP products may not be sold to California
26 consumers unless NSP has labeled the product for the California market. Due to the complexity and
27 uniqueness of California laws, such as Proposition 65, the Company urges all Members to allow the
28

1 Company to fulfill orders destined for California. If a Member instead elects to sell any NSP
2 product in California, or directly to a California consumer, that Member is responsible for meeting
3 all legal standards, and the Member will indemnify NSP against any claims or liabilities arising from
4 such sale. Any questions regarding whether a NSP product is labeled for the California market
5 should be referred to the NSP Legal Department before making any sale or shipment. Orders by
6 California consumers that are fulfilled by the Company will remain the Company's responsibility."
7 Defendant may modify for clarity or accuracy in detail this proposed text prior to use by March 1,
8 2013, but any such proposed modifications shall be provided to Plaintiff for review before January
9 31, 2013. Defendant may amend its policies and procedures from time to time, but the foregoing
10 text (unless modified with Plaintiff's consent prior to March 1, 2013) shall remain in the "Nature's
11 Sunshine Policies and Procedures" until at least January 1, 2015. Thereafter, Defendant may modify
12 the text from time to time, so long as substantially similar text with regard to Proposition 65 labeling
13 requirements remain in the "Nature's Sunshine Policies and Procedures" while this Consent
14 Judgment remains in effect.

15 **3.4** Compliance with this Consent Judgment shall constitute compliance with Proposition
16 65 regarding Progesterone in the Products.

17 **4. Financial Settlement and Attorney's Fee Payments.**

18 **4.1** As consideration for the matters resolved herein, Defendant shall pay to AYS the sum
19 of \$3,000.00 as a civil penalty, and \$20,500.00 in full resolution of Plaintiff's attorney's fees and
20 costs in this matter. The payment in full shall be delivered to Gideon Kracov within fifteen (15)
21 calendar days after the date of notice of entry of this Consent Judgment. AYS shall be responsible
22 for compliance with Health & Safety Code Section 25249.12(d).

23 **5. Claims Covered and Released.**

24 This Consent Judgment includes the resolution of actual and potential claims that were
25 considered or could have been brought by Plaintiff on its own behalf, and on behalf of the public
26 interest, regarding the alleged failure to provide clear, reasonable and lawful warnings of exposure to
27 Progesterone in Defendant's Products. This Consent Judgment is a final and binding resolution
28

1 between Plaintiff and Defendant of any and all alleged violations of Proposition 65 that was or could
2 have been asserted by Plaintiff on its own behalf and on behalf of the public interest arising from or
3 related to Defendant's Products up through the date of entry of this Consent Judgment, including,
4 but not limited to any claims for attorneys' fees and costs. Plaintiff accordingly hereby releases
5 Defendant and Defendant's predecessors, successors, affiliates, assigns, suppliers, distributors,
6 contract manufacturers, retailers, members and the officers, directors, employees, shareholders, and
7 counsel of each of them, from and against the claims described in this paragraph or the extent such
8 claims do, did, or could arise from or relate to Defendant's Products and, for avoidance of doubt,
9 Plaintiff's release of claims includes sales to California consumers of those Products referenced in
10 the final sentence of Section 3.2. Defendant hereby releases AYS from and against any and all
11 claims arising out of AYS' filing or prosecution of this action. Each Party respectively waives any
12 right to appeal or other review of this Consent Judgment, except as expressly provided in this
13 Consent Judgment.

14 **6. Covenant Not to Sue.** Plaintiff and Defendant covenant and agree that with regard to those
15 matters the Parties have herein released and that are described above, neither AYS nor Defendant will
16 ever institute a lawsuit or administrative proceedings against the other, nor shall AYS or Defendant
17 assert any claim of any nature against any person or entity hereby released with regard to any such
18 matters which have been released. However, nothing in this paragraph shall be interpreted to
19 preclude enforcement of this Consent Judgment pursuant to Section 7 below.

20 **7. Enforcement of Consent Judgment.** Any Party may, by noticed motion or order to show
21 cause before the Superior Court of Los Angeles, enforce this Consent Judgment. To enforce this
22 Consent Judgment any Party must first give written notice of any violation of this Consent Judgment
23 alleged to have occurred, to the Party alleged to be in violation. The Parties shall meet and confer in
24 good faith and attempt to resolve the alleged violation. If a resolution is not reached within thirty
25 (30) days of the date of the notice, the aggrieved Party may move the Court to hear and resolve the
26 dispute. The prevailing Party in any proceeding brought to enforce this Consent Judgment shall be
27 entitled to recover from the other Party the prevailing party's reasonable attorneys' fees and costs
28

1 incurred in the investigation and prosecution of such an enforcement proceeding.

2 8. **Application of Consent Judgment.** Section 3, 5 and 6 of this Consent Judgment shall apply
3 to, be binding upon, and inure to the benefit of the Parties and their divisions, subdivisions,
4 subsidiaries, affiliates, successors, predecessors and assigns, and the directors, officers, employees,
5 legal counsel, and agents of each of them, as applicable, and will inure to the benefit of the Parties'
6 parent companies, all suppliers, distributors, wholesalers, retailers and contract manufacturers of
7 Defendant's Products, and all of their respective directors, officers, employees, legal counsel, and
8 agents.

9 9. **Modification/Termination of Consent Judgment.** This Consent Judgment may be modified
10 or terminated upon written agreement of Defendant and AYS, with approval of the Court, or upon
11 noticed motion for good cause shown. If this Consent Judgment is not approved by the Court within
12 120 days of execution by all Parties, it shall be void *ab initio* and of no force or effect, unless
13 otherwise agreed to in writing by the Parties. Any Party may withdraw from this Consent Judgment
14 before it is entered by the Court if the Office of Attorney General objects in writing to any term
15 herein and the Parties do not mutually agree to resolve said objection to the satisfaction of the
16 Attorney General prior to approval of this Consent Judgment by the Court; upon such withdrawal,
17 this Consent Judgment shall be void *ab initio* and of no force or effect.

18 10. **Governing Law.** This Consent Judgment shall be governed by, and construed in accordance
19 with, the laws of the State of California. AYS shall comply with the obligations under Proposition
20 65 to lodge this settlement with the Office of the Attorney General.

21 11. **Entire Agreement.** The Parties declare and represent that no promise, inducement or other
22 agreement has been made conferring any benefit upon any party except those contained herein and
23 that Consent Judgment contains the entire agreement pertaining to the subject matter hereof. This
24 Consent Judgment supersedes any prior or contemporaneous negotiations, representations,
25 agreements and understandings of the Parties with respect to such matters, whether written or oral.
26 Parol evidence shall be inadmissible to show agreement by, between or among the Parties to any
27 term or condition contrary to or in addition to the terms and conditions contained in this Consent
28

1 Judgment. The Parties acknowledge that each has not relied on any promise, representation or
2 warranty, expressed or implied, not contained in this Consent Judgment.

3 **12. Challenges.** Subject to their rights to apply for a modification of this Consent Judgment for
4 good cause shown under Section 9 hereof, the Parties agree that they, individually or collectively,
5 will not seek to challenge or to have determined invalid, void or unenforceable any provision of this
6 Consent Judgment or this Consent Judgment itself. The Parties understand that this Consent
7 Judgment contains the relinquishment of legal rights and each Party has, as each has deemed
8 appropriate, sought the advice of legal counsel, which each of the Parties has encouraged the other to
9 seek. Further, no Party has reposed trust or confidence in any other Party so as to create a fiduciary,
10 agency or confidential relationship.

11 **13. Construction.** This Consent Judgment has been jointly negotiated and drafted. The language
12 of this Consent Judgment shall be construed as a whole according to this fair meaning and not
13 strictly for or against any Party.

14 **14. Authority to Stipulate to Consent Judgment.** Each signatory to this Consent Judgment
15 represents and warrants that each signatory has all requisite power, authority and legal right
16 necessary to execute and deliver this Consent Judgment and to perform and carry out the actions
17 contemplated by this Consent Judgment. Each signatory to this Consent Judgment represents that
18 each has been duly authorized to execute this Consent Judgment. No other or further authorization
19 or approval from any person will be required for the validity and enforceability of the provisions of
20 this Consent Judgment, except entry by the Court.

21 **15. Cooperation and Further Assurances.** The Parties hereby will execute such other
22 documents and take such other actions as may be necessary to further the purposes and fulfill the
23 terms of this Consent Judgment.

24 **16. Counterparts.** This Consent Judgment may be executed in counterparts and has the same
25 force and effect as if all the signatures were obtained in one document.

26 **17. Notices.**

27 **17.1** All correspondence and notices shall be delivered using an overnight delivery service
28

1 with a tracking system to verify signatures and receipt and shall be deemed delivered on the date of
2 receipt. A courtesy e-mail copy may also be provided, but shall not affect the date of receipt. All
3 correspondence and notices required by this Consent Judgment to Plaintiff shall be sent to:

4 As You Sow
5 1611 Telegraph Ave., Suite 1450
6 Oakland, CA 94612
7 Tel: (510) 735-8158
8 Fax: (510) 735-8143

With a copy to:
Danielle Fugere, Legal Director
801 South Grand Ave., 11th Floor
Los Angeles, CA 90017
Tel: (213) 629-2071
Fax: (213) 623-7755

9 **17.2** All correspondence and notices required by this Consent Judgment to Defendant shall
10 be sent to Defendant as follows:

11 Jamon Jarvis, Esq.
12 Nature's Sunshine Products, Inc.
13 2500 West Executive Parkway
14 Lehi, UT 84043

Tel: (801) 341-7304
Fax: (801) 723-1344
Email: jjarvis@natr.com

With a copy to:
Judith M. Praitis, Esq.
Sidley Austin, LLP
555 West Fifth Street, Suite 4000
Los Angeles, CA 90013
Tel: (213) 896-6000
Fax: (213) 896-6600
Email: jpraitis@sidley.com

15 **18. Entry of Stipulation For Entry of Consent Judgment Required.** This Consent Judgment
16 shall be null and void *ab initio*, and without any force or effect, unless fully approved as required by
17 law and entered by the Court. If the Court does not enter this Consent Judgment, the execution
18 thereof by Defendants or AYS shall not be construed as an admission by Defendant or AYS of any
19 fact, conclusion of law or violation of law.

20 **19. Jurisdiction.** This Court shall retain jurisdiction of this matter to implement this Consent
21 Judgment.

22 //

23 //

24 //

25 //

26 //

27 //

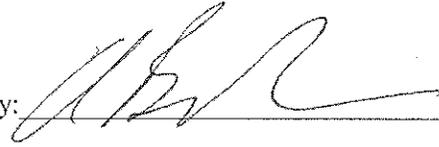
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO STIPULATED.

Date: 12/17, 2012

AS YOU SOW

By:  _____

Date: _____, 2012

NATURE'S SUNSHINE, INC.

By: _____

IT IS SO ORDERED, AND JUDGED, AND DECREED.

DATED: _____

JUDGE OF THE SUPERIOR COURT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS SO STIPULATED.

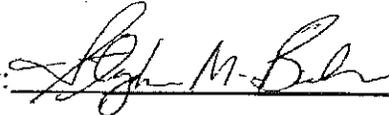
Date: _____, 2012

AS YOU SOW

By: _____

Date: December 17, 2012

NATURE'S SUNSHINE, INC.

By: 

IT IS SO ORDERED, AND JUDGED, AND DECREED.

DATED: _____

JUDGE OF THE SUPERIOR COURT