

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between As You Sow ("AYS") and IMS Trading, LLC ("IMS") to resolve claims against IMS raised in the 60-day Notices of Violation sent by AYS to IMS, Dollar Tree Stores, Inc., Dollar Tree Distribution, Inc., 99 Cent Only Stores LLC, and public enforcers pursuant to Health and Safety Code §25249.7. AYS and IMS (collectively, "the Parties") agree to the terms and conditions set forth below.

1. PARTIES AND NOTICES

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 Oakland, California and is incorporated under the laws of the State of California.

1.2 IMS manufactures, distributes and/or sells moth balls ("IMS Moth Balls"). IMS Moth Balls is a product registered with the federal Environmental Protection Agency pursuant to Registration No. 81433-2. IMS Trading has fewer than ten employees and thus, pursuant to California Health and Safety Code §§25249.6, 25249.11(b), is not subject to the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), *id.* §25249.5, *et seq.*; IMS, however, has agreements with the Dollar Tree Stores, Inc., Dollar Tree Distribution, Inc., and 99 Cent Only Stores LLC ("Retailers") that make it legally responsible for any violation of Proposition 65.

1.3 The Retailers distribute and/or sell IMS Moth Balls, have distributed and/or sold IMS Moth Balls, and/or intend to distribute and/or sell IMS Moth Balls in the future.

1.4 IMS Moth Balls contain *p*-dichlorobenzene (also referred to as 1,4-dichlorobenzene or *para*-dichlorobenzene), which is a chemical listed by the State of California as known to cause cancer pursuant to Proposition 65.

1.5 On April 15, 2014, AYS sent 60-day Notices of Violation to IMS, the Retailers, and public enforcers, as required by Health and Safety Code §25249.7, regarding the listed chemical contained in IMS Moth Balls. The Notices of Violation alleged that IMS and the

Retailers violated Proposition 65 by failing to provide clear and reasonable warnings before exposing persons to *p*-dichlorobenzene contained in IMS Moth Balls, including because animal-based warnings are insufficient and misleading to consumers. IMS alleges that it has provided clear and reasonable warnings of the carcinogenic hazards associated with *p*-dichlorobenzene on the IMS Moth Balls' packages. Nevertheless, the Parties have agreed to resolve their differences as set forth herein.

1.7 By executing and complying with this Settlement Agreement, neither Party admits any facts or conclusions of law alleged in the Notices of Violation, or the existence of any other statutory, common law, or equitable claim or requirement relating to or arising from the sale or distribution of IMS Moth Balls by IMS and the Retailers in California.

2. EFFECTIVE DATE

2.1 The "Effective Date" shall be the date when all Parties have signed this Settlement Agreement. This Settlement Agreement shall be in effect for five years, beginning on the Effective Date, and after that time will cease to have any legal effect.

3. INJUNCTIVE RELIEF

3.1 Beginning on the Effective Date of this Settlement Agreement, all packaging for IMS Moth Balls manufactured for sale or use in the State of California shall provide the following warning statement:

WARNING: This product contains a chemical known to the State of California to cause cancer.

3.2 The warning statement required in paragraph 3.1 shall be prominently affixed to or printed on the IMS Moth Balls' packaging and shall be displayed with such conspicuousness, as compared with other words, statements, designs, or devices on the IMS Moth Balls, or their packaging or labeling, as to render the warning statement likely to be read and understood by an ordinary individual under customary conditions of purchase and use.

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3.3 The Parties agree that the content and the placement of the warning statement as shown in Attachment A hereto meets the requirements of paragraphs 3.1 and 3.2 of this Settlement Agreement.

3.4 On or prior to the Effective Date, IMS will inform the Retailers that in the event the Retailers intend to sell any Existing Inventory of IMS Moth Balls to California consumers, for the Release in paragraph 6.1 to be effective as to the Retailers, such inventory must be sold with a Proposition 65 shelf warning placed so as to refer to the IMS Moth Balls, which reads: "WARNING: These moth balls contain a chemical known to the State of California to cause cancer." IMS understands that the Retailers intend to sell their existing inventory with a Proposition 65 shelf warning. "Existing inventory" is defined as any inventory that has been shipped to the retailer prior to the Effective Date.

3.5 Within 30 days of the Effective Date of this Settlement Agreement, IMS will facilitate meetings between representatives of the Retailers and AYS to discuss the Retailers' Proposition 65 compliance procedures.

4. SETTLEMENT PAYMENTS

4.1 Within 30 days of the Effective Date, IMS shall pay \$2,500 in the form of a check made payable to As You Sow as a civil penalty pursuant to Health and Safety Code Section 25249.7(b). AYS shall remit seventy-five percent (75%) of this amount to the State of California pursuant to Health and Safety Code §25249.12(b).

4.2 Within 30 days of the Effective Date, IMS shall remit \$3,000 in the form of a check made payable to As You Sow as an in-lieu payment to be used as set forth in paragraph 4.5 below.

4.3 Within 60 days of the Effective Date, IMS shall pay \$11,750 in the form of a check made payable to Altshuler Berzon LLP Attorney-Client Trust Account, which shall be used as set forth in paragraph 4.6 below.

4.4 IMS shall thereafter make at least monthly payments, in the amount of \$3,000 per month, in the form of a check made payable to Altshuler Berzon LLP Attorney-Client Trust

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Account, which shall be used as set forth in paragraph 4.6 below, with a final payment of \$2,750 due on June 30, 2016. The payments provided for in this paragraph shall total \$11,750.

4.5 In Lieu Payments: The \$3,000 settlement payment provided for in paragraphs 4.2 shall be provided for deposit in the AYS Environmental Enforcement Fund for the purpose of making grants to California non-profit organizations and use by the AYS Environmental Enforcement Fund. The funds shall be used to reduce or remediate exposures to toxic chemicals and to increase consumer, worker and community awareness of the health hazards posed by toxic chemicals in California. In deciding among grant proposals, the AYS Board of Directors ("Board") takes into consideration a number of important factors, including: (1) a nexus between the harm done in the underlying case(s), and the grant program work; (2) the potential for toxics reduction, prevention, remediation, or education benefits to California citizens from the proposal; (3) the budget requirements of the proposed grantee and the alternate funding sources available to it for its project; and (4) the Board's assessment of the proposed grantee's chances for success in its program work. AYS shall ensure that all funds will be disbursed and used in accordance with AYS' mission statement, articles of incorporation, and bylaws and applicable state and federal laws and regulations to promote awareness of and responses to the health hazards posed by toxic chemicals in California. These payments shall not be construed as a credit against the personal claims of absent third parties for restitution against IMS.

4.6 Attorneys' Fees and Costs: The \$23,500 settlement payment provided for in paragraphs 4.3 and 4.4 shall be used to reimburse AYS' attorneys' fees, investigation costs, and other reasonable costs and expenses.

5. ENFORCEMENT OF SETTLEMENT AGREEMENT

5.1 Prior to the filing of any action related to this Settlement Agreement, in the event a dispute arises with respect to any of the provisions of this Settlement Agreement, a Party must provide written notice of any alleged violation. The Parties shall meet and confer in good faith within 10 days after any Party receives written notice of an alleged violation of this Agreement.

If AYS is successful in enforcing this Settlement Agreement, it shall be entitled to recover its costs and reasonable attorneys' fees.

6. **WAIVER AND RELEASE OF CLAIMS & COVENANT NOT TO SUE**

6.1 Waiver and Release of Claims Against IMS and the Retailers: Upon the Effective Date of this Settlement Agreement and subject to its provisions, as to those matters raised in AYS' Notices of Violation, AYS releases IMS and all entities to whom they distribute or sell IMS Moth Balls, including but not limited to its Retailers, distributors, wholesalers, customers, and franchisees (collectively "Releasees") and waives any and all claims against IMS for injunctive relief or damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed, for the alleged failure of IMS and its Releasees to provide clear and reasonable warnings under Proposition 65 about exposure to *p*-dichlorobenzene arising from the sale, distribution, or use of any IMS Moth Balls sold, manufactured or distributed by IMS in California prior to the Effective Date. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 for purposes of exposures to *p*-dichlorobenzene in IMS Moth Balls.

6.2 IMS's Waiver and Release of AYS: Upon the Effective Date of this Settlement Agreement, IMS releases AYS from and waives any claims against AYS for injunctive relief or damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses, or any other sum incurred or claimed, or which could have been claimed for matters related to this action, including the Notices of Violation.

6.3 For purposes of paragraphs 6.1 through 6.2, the terms *AYS* and *IMS* are defined as follows: The term *AYS* includes As You Sow and its successors, assigns, directors, privies and agents. The term *IMS* includes IMS Trading, LLC, and any corporate parents and subsidiaries, and their directors, officers, agents, attorneys, representatives, employees, licensors, licensees, partners, heirs, predecessors and successors.

7. GOVERNING LAW AND CONSTRUCTION

7.1 This Settlement Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

7.2 The Parties, including their counsel, have participated in the preparation of this Settlement Agreement which is the result of the joint efforts of the Parties. This Settlement Agreement was subject to revision and modification by the Parties and has been accepted and approved as to form by the Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement.

8. MODIFICATION OF SETTLEMENT AGREEMENT

8.1 This Settlement Agreement may be modified only upon written agreement of the Parties.

9. ENTIRE AGREEMENT

9.1 The Parties declare and represent that no promise, inducement or other agreement has been made conferring any benefit upon any Party except those contained or provided for herein and that this agreement contains the entire agreement pertaining to the subject matter hereof. This agreement supersedes any prior or contemporaneous negotiations, representations, agreements and understandings of the Parties with respect to such matters, whether written or oral. The Parties acknowledge that each has not relied on any promise, representation or warranty, expressed or implied, not contained or called for in this agreement.

10. APPLICATION OF SETTLEMENT AGREEMENT

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

11. ATTORNEYS' FEES

11.1 Except as specifically provided in this Settlement Agreement, each Party shall bear its own attorneys' fees and costs incurred in connection with AYS' 60-day Notices and claims regarding the IMS Moth Balls manufactured, distributed, and/or sold by IMS.

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12. COMPLIANCE WITH HEALTH AND SAFETY CODE §25249.7

12.1 AYS shall comply with the reporting requirements referred to in Health and Safety Code §25249.7(f).

13. PROVISION OF NOTICE

13.1 All correspondence and notices required by this Settlement Agreement to the Parties shall be sent:

To As You Sow:

As You Sow Foundation
Attn: Danielle Fugere, President and Chief Counsel
1611 Telegraph Street, Suite 1450
Oakland, CA 94612

With a copy to:

Barbara Chisholm
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA
Tel.: (415) 421-7151

To IMS:

Isaac Shapiro
IMS Trading, LLC
6010 Wilshire Blvd., #400
Los Angeles, CA 90036

With a copy to:

Peg Carew Toledo
Toledo Don LLP
3001 Douglas Blvd., #340
Roseville, CA 95661

14. EXECUTION IN COUNTERPARTS

14.1 This Settlement Agreement 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 Settlement Agreement certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Settlement Agreement and to enter into and execute the Settlement Agreement 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 Settlement Agreement.

APPROVED AS TO FORM:

Dated: January 22, 2015

ALTSHULER BERZON LLP

By



Barbara J. Chisholm

Attorneys for As You Sow

Dated: January __, 2015

TOLEDO DON LLP

By

Peg Carew Toledo

Attorneys for IMS Trading, LLC

SO AGREED:

Dated: January 22, 2015

AS YOU SOW

By:



Andrew Behar
Chief Executive Officer

Dated: _____, 2015

IMS TRADING, LLC

By: _____

Name: _____

Title: _____

15. AUTHORIZATION

15.1 Each signatory to this Settlement Agreement certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Settlement Agreement and to enter into and execute the Settlement Agreement 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 Settlement Agreement.

APPROVED AS TO FORM:

Dated: January __, 2015

ALTSHULER BERZON LLP

By

Barbara J. Chisholm

Attorneys for As You Sow

Dated: January 20, 2015

TOLEDO DON LLP

By



Peg Carow Toledo

Attorneys for IMS Trading, LLC

SO AGREED:

Dated: _____, 2015

AS YOU SOW

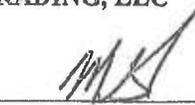
By:

Andrew Behar
Chief Executive Officer

Dated: 1/20, 2015

IMS TRADING, LLC

By:



Name: Michael Ghesser

Title: Chief Operating Officer

EXHIBIT A

