

1 SHUTE, MIHALY & WEINBERGER LLP
Ellison Folk
2 396 Hayes Street
San Francisco, CA 94102
3 Telephone: (415) 552-7272
Facsimile: (415) 552-5816
4 folk@smwlaw.com

5 Attorneys for Plaintiff
AS YOU SOW

6 ARNOLD & PORTER LLP
7 Trenton H. Norris (No. 164781)
Sarah Esmaili (No. 206053)
8 Three Embarcadero Center, 10th Floor
San Francisco, CA 94111-4024
9 Telephone: (415) 471-3100
Facsimile: (415) 471-3400
10 trent.norris@aporter.com
sarah.esmaili@aporter.com

11 Attorneys for Defendant
12 J.R. CARLSON LABORATORIES, INC.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN FRANCISCO

16 AS YOU SOW,

17 Plaintiff,

18 v.

19 J.R. CARLSON LABORATORIES, INC.,

20 Defendant.

Case No.: CGC-14-543102

[PROPOSED] CONSENT JUDGMENT

1 This Consent Judgment is entered into by and between AS YOU SOW, INC. (“AYS”), on
2 behalf of AYS and the general public, and J. R. CARLSON LABORATORIES, INC. (“CARLSON
3 LABS”), with AYS and CARLSON LABS referred to individually as a “Party” and collectively as
4 the “Parties,” to resolve all claims raised in AYS’ April 25, 2014 Notice of Violation letter to
5 CARLSON LABS (“Notice”) and December 8, 2014 Complaint (“Complaint”). This Consent
6 Judgment shall be effective upon entry by the Court.

7 **1. INTRODUCTION**

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

12 1.2 CARLSON LABS manufactures, distributes, markets and/or sells Carlson Vitamin
13 A 15,000 IU Palmitate Soft Gels and Carlson Vitamin A 25,000 IU Natural Soft Gels (collectively,
14 “Covered Products”), both of which contain retinol/retinyl esters (specifically, retinyl palmitate) in
15 daily dosages in excess of 10,000 International Units (“IU”).

16 1.3 “Retinol/retinyl esters, when taken in daily dosages in excess of 10,000 IU”
17 (referred to herein as “Retinol/Retinyl Esters”) is a chemical known to the State of California to
18 cause reproductive toxicity pursuant to the Safe Drinking Water and Toxic Enforcement Act of
19 1986 (“Proposition 65”), California Health and Safety Code section 25249.5 *et seq.*

20 1.4 On April 25, 2014, AYS sent a 60-day Notice of Violation to CARLSON LABS
21 and to public enforcers as required by Health and Safety Code section 25249.7, alleging that
22 CARLSON LABS violated Proposition 65 by failing to provide a clear and reasonable warning
23 before exposing users to Retinol/Retinyl Esters in the Covered Products.

24 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
25 jurisdiction over CARLSON LABS as to the allegations contained in the Complaint, that venue is
26 proper in San Francisco County, that this Court has jurisdiction to enter this Consent Judgment as a
27 resolution of all claims that were alleged in the Complaint, and that the Court shall retain
28 jurisdiction to implement the Consent Judgment.

1 1.6 For the purpose of avoiding prolonged and costly litigation, the Parties enter into
2 this Consent Judgment as a full settlement of the claims alleged in the Notice and the claims that
3 were raised in the Complaint based on the facts alleged therein. By executing and complying with
4 this agreement, neither Party admits any facts or conclusions of law including, but not limited to,
5 any facts or conclusions of law regarding any alleged violations of Proposition 65 or any other
6 statutory, common law, or equitable claim or requirement relating to or arising from the sale of
7 Covered Products in California. Nothing in this Consent Judgment shall prejudice, waive, or impair
8 any right, remedy, or defense that the Parties may have in any other or in future legal proceedings
9 unrelated to these proceedings. However, this paragraph shall not diminish or otherwise affect the
10 obligation, responsibilities, and duties of the Parties under this Consent Judgment.

11 1.7 The term “Effective Date” means the date of the Court’s entry of this Consent
12 Judgment.

13 **2. INJUNCTIVE RELIEF**

14 CARLSON LABS agrees that it will display the following warning on the Covered Products
15 that it sells in California or distributes for sale in California after the Effective Date:

16 WARNING: The recommended daily serving of this product contains more than 10,000 IU
17 of Vitamin A from retinol. Taking Vitamin A from retinol in quantities of 10,000 IU or
18 more is known to cause birth defects or other reproductive harm.

19 **3. MONETARY RELIEF**

20 3.1 Within 15 days of the Effective Date, CARLSON LABS shall pay \$25,000 (twenty-
21 five thousand dollars) in the form of a check made payable to the Shute, Mihaly & Weinberger LLP
22 trust account as reimbursement for AYS’ attorneys’ fees, investigative costs, and other reasonable
23 litigation costs and expenses.

24 3.2 Within 15 days of the Effective Date, CARLSON LABS shall pay \$10,000 (ten
25 thousand dollars) in the form of a check made payable to As You Sow as a civil penalty pursuant to
26 Health and Safety Code section 25249.7(b). AYS shall remit 75% of this amount to the State of
27 California pursuant to Health and Safety Code section 25249.12(b).

1 3.3 Additionally, within 15 days of the Effective Date, CARLSON LABS shall pay
2 \$10,000 (ten thousand dollars) in the form of a check made payable to As You Sow as a payment in
3 lieu of additional civil penalties, with this amount to be used by AYS for grants to California non-
4 profit organizations and by the AYS Environmental Enforcement Fund. These funds shall be used
5 to reduce or remediate exposures to toxic chemicals and to increase consumer, worker, and
6 community awareness of the health hazards posed by toxic chemicals in California via AYS'
7 program work. In deciding among grantee proposals, the AYS Board of Directors ("Board") will
8 take into consideration a number of important factors, including: (1) the nexus between the harm
9 done in the underlying case and the grant program work; (2) the potential for toxics reduction,
10 prevention, remediation, or education benefits to California citizens from the proposal; (3) the
11 budget requirements of the proposed grantee and the alternate funding sources available to it for its
12 project; and (4) the Board's assessment of the grantee's chances for success in its program work.
13 AYS shall ensure that all funds will be disbursed and used in accordance with AYS' mission
14 statement, articles of incorporation, and bylaws and applicable state and federal laws and
15 regulations.

16 3.4 Except as provided in Section 5 below, the payments made pursuant to Section 3.1
17 through 3.3 shall be the only monetary obligation of CARLSON LABS with respect to this Consent
18 Judgment, including as to any fees, costs, or expenses AYS has incurred.

19 **4. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

20 AYS agrees to comply with the reporting requirements referenced in California Health and
21 Safety Code section 25249.7(f). Pursuant to the regulations promulgated under that section, AYS
22 shall present this Consent Judgment to the California Attorney General's Office within two days
23 after receipt of all necessary signatures. The Parties acknowledge that, pursuant to Health and
24 Safety Code section 25249.7, a noticed motion must be filed to obtain judicial approval of the
25 Consent Judgment. Accordingly, a motion for approval of the Consent Judgment shall be prepared
26 and filed by AYS within a reasonable period of time after the date this Consent Judgment is signed
27 by all Parties.
28

1 **5. ENFORCEMENT OF CONSENT JUDGMENT**

2 In the event that a dispute arises with respect to any provisions of this Consent Judgment,
3 the Parties shall meet and confer within 30 days of receiving written notice of the alleged violation
4 from another party. No enforcement action or proceeding may be filed until after the Parties have
5 met and conferred. If AYS claims that CARLSON LABS has failed to comply with the provisions
6 of Section 2 of this Consent Judgment, the Parties shall meet and confer in good faith regarding the
7 basis of AYS's claim in an attempt to resolve it informally; in the event of such an informal
8 resolution, neither Party shall recover its attorneys' fees and costs. In the event that the Parties are
9 unable to resolve their dispute through the meet and confer process, this Consent Judgment may be
10 enforced using any available provision of law. If AYS is the prevailing Party in any dispute
11 regarding compliance with the terms of this Consent Judgment, it may seek any fines, costs,
12 penalties, or remedies provided by law for failure to comply with California Health and Safety Code
13 section 25249.5 et seq. The Parties agree that the prevailing Party in such a dispute regarding
14 compliance with the terms of this Consent Judgment may seek an award of its reasonable attorneys'
15 fees and costs incurred in any such motion or proceeding pursuant to the requirements of Code of
16 Civil Procedure section 1021.5.

17 **6. CLAIMS COVERED AND RELEASE**

18 6.1 This Consent Judgment is a full, final, and binding resolution between AYS, on
19 behalf of itself and in the public interest, and CARLSON LABS, of any alleged violation of
20 Proposition 65 for failure to provide Proposition 65 warnings of exposure to Retinol/Retinyl Esters
21 in the Covered Products distributed or sold by CARLSON LABS prior to the Effective Date. AYS,
22 on behalf of itself, its agents, officers, employees, representatives, attorneys, successors and/or
23 assignees, and on behalf of the general public in the public interest, hereby waives all rights to
24 institute any form of legal action and releases and discharges: (a) CARLSON LABS and its parent
25 companies, subsidiaries, affiliates, and divisions; (b) each of their joint venturers, partners, vendors,
26 manufacturers, packagers, and contractors; (c) distributors, wholesalers, and retailers of the Covered
27 Products; and (d) each of the respective officers, directors, shareholders, employees, and agents of
28 the persons and entities identified in (a) through (c) (the persons and entities identified in (a)

1 through (d), above, including the predecessors, successors and assigns of any of them, are
2 collectively referred to as the “Released Parties”) from any and all claims, actions, causes of action,
3 suits, demands, liabilities, damages, penalties, fees (including but not limited to investigation fees,
4 attorneys’ fees, and expert fees), costs, and expenses (collectively, “Claims”) as to any alleged
5 violation of Proposition 65 arising from the failure to provide Proposition 65 warnings regarding
6 alleged exposures to Retinol/Retinyl esters in the Covered Products manufactured, distributed, or
7 sold before the Effective Date.

8 6.2 CARLSON LABS hereby releases AYS, and its agents, Directors, officers,
9 representatives, attorneys, successors and/or assignees (collectively, “AYS Releasees”) from, and
10 waives any claims against, AYS Releasees for injunctive relief or damages, penalties, fines,
11 sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses, or any
12 other sum incurred or claimed or which could have been claimed for matters related to the Notice or
13 Complaint.

14 6.3 Compliance with the terms of this Consent Judgment shall be deemed to constitute
15 compliance by any Released Party with Proposition 65 regarding alleged exposures to
16 Retinol/Retinol Esters in the Covered Products. Notwithstanding the foregoing, if the Office of
17 Environmental Health Hazard Assessment (“OEHHA”) amends the level for which exposure to
18 Vitamin A from retinol or retinol esters is listed as known to the State of California to cause
19 reproductive toxicity, or amends the level for which exposure to Vitamin A from retinol or retinol
20 esters requires a warning under Proposition 65, then the Parties shall meet and confer to determine
21 whether the warning language in this Agreement complies with the new standard and will modify
22 this Agreement to reflect OEHHA’s amendment as it relates to the Covered Products.

23 6.4 Nothing in this Section 6 shall affect or limit any Party’s right to seek to enforce the
24 terms of this Consent Judgment.

25 6.5 This Consent Judgment shall apply to and be binding upon the Parties hereto and, to
26 the extent allowable by law, on the general public.

27 **7. RETENTION OF JURISDICTION**

28 This Court shall retain jurisdiction of this matter to implement this Consent Judgment.

1 **8. GOVERNING LAW AND CONSTRUCTION**

2 8.1 This Consent Judgment shall be governed by, and construed in accordance with, the
3 laws of the State of California.

4 8.2 The Parties, including their counsel, have participated in the preparation of this
5 Consent Judgment, and this Consent Judgment is the result of the joint efforts of the Parties. This
6 Consent Judgment was subject to revision and modification by the Parties and has been accepted
7 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
8 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of
9 the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
10 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
11 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in this
12 regard, the Parties hereby waive California Civil Code section 1654.

13 **9. MODIFICATION OF CONSENT JUDGMENT**

14 This Consent Judgment may be modified by: (1) written agreement among the Parties and
15 upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of AYS or
16 CARLSON LABS as provided by law and upon entry of a modified Consent Judgment by the Court
17 thereon. All Parties and the California Attorney General's Office shall be served with notice of any
18 proposed modification to this Consent Judgment at least 15 days in advance of its consideration by
19 the Court.

20 **10. COURT APPROVAL**

21 10.1 The Court shall either approve or disapprove of this Consent Judgment in its entirety,
22 without alteration, deletion, or amendment, unless otherwise so stipulated by the Parties and their
23 counsel. CARLSON LABS agrees not to oppose this Consent Judgment.

24 10.2 In the event that the Court fails to approve and order entry of the Consent Judgment
25 without change (unless otherwise so stipulated by the Parties), this Consent Judgment shall become
26 null and void upon the election of either Party and upon written notice to all of the Parties to the
27 Action pursuant to the notice provisions herein and shall not be introduced into evidence or
28 otherwise used in any proceeding for any purpose.

1 **11. ENTIRE AGREEMENT**

2 This Consent Judgment contains the sole and entire agreement and understanding of the
3 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
4 negotiations, commitments, and understandings related hereto. No representations, oral or
5 otherwise, express or implied, other than those contained herein have been made by any Party
6 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
7 to exist or to bind any of the Parties.

8 **12. APPLICATION OF CONSENT JUDGMENT**

9 This Consent Judgment shall apply to and be binding upon AYS and CARLSON LABS;
10 their respective officers, directors, and shareholders; and the predecessors, successors, or assigns of
11 each of them.

12 **13. ATTORNEYS' FEES**

13 Except as specifically provided in this Consent Judgment, each Party shall bear its own
14 attorneys' fees and costs incurred in connection with the AYS' Notice and Complaint and this
15 Consent Judgment.

16 **14. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7**

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

20 **14. PROVISION OF NOTICE**

21 All correspondence and notices required to be provided pursuant to this Consent Judgment
22 shall be in writing and personally delivered or sent by: (a) first-class, registered, certified return
23 receipt requested or (b) by overnight courier on AYS or CARLSON LABS by the other at the
24 addresses set forth below. Either AYS or CARLSON LABS may specify in writing to the other
25 Party a change of address to which all notices and other communications shall be sent.
26
27
28

IT IS SO STIPULATED:

Dated: 3/13/15

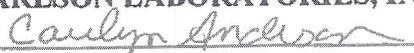
AS YOU SOW

By: 

Andrew Behar
Chief Executive Officer

Dated: 3/13/15

J. R. CARLSON LABORATORIES, INC.

By: 

Name Carylyn Anderson

Title President

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