ELLISON FOLK (State Bar No. 149232) ROBERT S. PERLMUTTER (State Bar No. 183333) SHUTE, MIHALY & WEINBERGER LLP 396 Hayes Street San Francisco, CA 94102 3 Telephone: (415) 552-7272 Facsimile: (415) 552-5816 Folk@smwlaw.com Perlmutter@smwlaw.com Attorneys for Plaintiff 6 AS YOU SOW 7 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA 9 COUNTY OF SAN FRANCISCO 10 11 As You Sow, a California Non-Profit Public Case No. CGC-12-519280 Benefit Corporation, 12 **SETTLEMENT PURSUANT TO § 664.6** Plaintiff, C.C.P. [PROPOSED] 13 V. 14 Ocean Bio-Chem, Inc., dba Star brite and Dept: 610 15 DOES 1 through 10, inclusive,, Complaint Filed: March 19, 2012 16 Defendants. 17 18 19 20 21 22 23 24 25 26 27 28 SETTLEMENT PURSUANT TO §64.6 C.C.P. [PROPOSED] CASE NO. CGC-12-519280

This Settlement Pursuant to Section 664.6 C.C.P. is entered into by and between Plaintiff AS YOU SOW("AYS") and Defendant OCEAN BIO-CHEM CORPORATION, doing business in California as Star brite ("Star brite") to resolve all claims raised in the plaintiff's complaint filed in the above-captioned action. This Settlement Pursuant to Section 664.6 C.C.P. shall be effective upon entry. AYS and Star brite (collectively "the Parties") agree to the terms and conditions set forth below.

1. <u>INTRODUCTION</u>

- 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 San Francisco, California and is incorporated under the laws of the State of California.
- 1.2 Star brite manufactures and distributes Star brite Liquid Electrical Tape ("Covered Product"), which AYS alleges contains ethylbenzene, a listed chemical set forth in 27 C.C.R. § 27001, and whose use exposes consumers to an amount that triggers a warning requirement pursuant to 27 C.C.R., Article 6.
- 1.3 On January 5, 2012 AYS sent a 60-day Notice of Violation to Star brite and to public enforcers as required by Health & Safety Code Section 25249.7, alleging that Star brite violated Proposition 65 by failing to provide clear and reasonable warning to users of the Covered Product as required by 27 C.C.R., Article 6.
- 1.4 On March 19, 2102 AYS filed a Complaint against Star brite in San Francisco County Superior Court, Case No. CGC-12-519280, alleging that Star brite violated Proposition 65 due to the alleged failure to provide clear and reasonable warning that users of the Covered Product were exposed to ethylbenzene, a chemical listed pursuant to 27 C.C.R. § 27001.
- 1.5 For purposes of this Settlement Pursuant to Section 664.6 C.C.P. only, the Parties stipulate that this Court has jurisdiction over Star brite as to the allegations contained in the Complaint, that venue is proper in San Francisco County, that this Court has jurisdiction to

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enter this Settlement Pursuant to Section 664.6 C.C.P. as a resolution of all claims that were alleged in the Complaint, and that the Court shall retain jurisdiction to implement the Settlement Pursuant to Section 664.6 C.C.P.

alleged in the complaint, and to avoid prolonged and costly litigation. By executing and complying with this agreement, neither Party admits any facts or conclusions of law including, but not limited to, any facts or conclusions of law regarding any alleged violation of Proposition 65, or any other statutory, common law or equitable claim or requirement relating to or arising from the sale of Covered Product in California. Neither shall this Settlement Pursuant to Section 664.6 C.C.P. be construed as an admission of any act alleged herein, or any failure to warning Covered Product required by Proposition 65 or any other statute, regulation, or common law requirement. Nothing in this Settlement Pursuant to Section 664.6 C.C.P. shall prejudice, waive, or impair any right, remedy, or defense that Plaintiff and Defendant may have in any other or in future legal proceedings unrelated to these proceedings. However, this paragraph shall not diminish or otherwise affect the obligation, responsibilities, and duties of the Parties under this Settlement Pursuant to Section 664.6 C.C.P.

1.7 The term "Effective Date" means the date of entry of this Settlement Pursuant to Section 664.6 C.C.P..

2. INJUNCTIVE RELIEF

2.1 The Covered Product distributed or sold by Star brite after the Effective Date 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."

2.2 The warning statement shall comply with the requirements of 27 C.C.R.,

3. SETTLEMENT PAYMENTS

- Within 15 days of the Effective Date, Star brite shall pay \$28,000 in the 3.1 form of a check made payable to the Shute, Mihaly & Weinberger trust account as reimbursement for plaintiff's attorneys fees, investigation costs, and other reasonable litigation costs and expenses, as provided by § 1021.5 C.C.P.
- 3.2 Within 10 days of the Effective Date, Star brite shall pay \$2,000 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). As You Sow shall thereafter remit 75% of this amount to the State of California pursuant to Health and Safety Code Section 25249.12(b).

4. **ENFORCEMENT OF SETTLEMENT PURSUANT TO SECTION 664.6** C.C.P.

4.1 The Parties may, by motion or order to show cause before the Superior Court of the County of San Francisco, enforce the terms and conditions of this Settlement Pursuant to Section 664.6 C.C.P.. In the event that a dispute arises with respect to any of the provisions of this Settlement Pursuant to Section 664.6 C.C.P., the Parties shall meet and confer within 10 days after either Party receives written notice of an alleged violation of this Agreement. The prevailing Party in any dispute regarding compliance with the terms of this Settlement Pursuant to Section 664.6 C.C.P. shall be awarded any such remedies as are provided by law. Additionally, the prevailing Party shall be awarded its reasonable attorney's fees and costs, as provided in § 1021.5 C.C.P.

5. **CLAIMS COVERED AND RELEASE**

5.1 As to the Covered Product, this Settlement Pursuant to Section 664.6 C.C.P. is a full, final, and binding resolution between (a) AYS and (b)Star brite and its parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies and their successors and assigns ("Defendant Releasees"), all entities to whom they distribute or sell the Covered Product, including but not limited to distributors, wholesalers, customers, and retailers, franchisees, cooperative members, and licensees ("Downstream Defendant Releasees") of any actual and potential claims that were or could have been brought by AYS for the alleged failure

27

to provide clear, reasonable, and lawful warnings of exposure to ethylbenzene used or contained in the Covered Product distributed or sold by Star brite before the Effective Date.

- 5.2 As to the Covered Product, compliance with the terms of this Settlement Pursuant to Section 664.6 C.C.P. by Star brite resolves any issue from the date of entry of this Settlement Pursuant to Section 664.6 C.C.P. into the future concerning compliance by Star brite, Defendant Releasees, and Downstream Defendant Releasees with regard to Proposition 65 as to the presence of, or exposure to, ethylbenzene in the Covered Product.
- 5.3 Upon entry of the Settlement Pursuant to Section 664.6 C.C.P., the Parties waive their respective rights to a hearing or trial on the allegations of the complaint.

6. GOVERNING LAW AND CONSTRUCTION

- 6.1 This agreement shall be governed by, and construed in accordance with, the laws of the State of California.
- 6.2 The Parties, including their counsel, have participated in the preparation of this Settlement Pursuant to Section 664.6 C.C.P. and this Settlement Pursuant to Section 664.6 C.C.P. is the result of the joint efforts of the Parties. This Settlement Pursuant to Section 664.6 C.C.P. was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Settlement Pursuant to Section 664.6 C.C.P. shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Pursuant to Section 664.6 C.C.P. Each Party to this Settlement Pursuant to Section 664.6 C.C.P. agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Settlement Pursuant to Section 664.6 C.C.P. and, in this regard, the Parties hereby waive California Civil Code section 1654.

7. MODIFICATION OF SETTLEMENT PURSUANT TO SECTION 664.6 C.C.P.

7.1 This Settlement Pursuant to Section 664.6 C.C.P. may be modified only upon written agreement of the Parties, with approval of the Court, or pursuant to court order issued upon noticed motion of a Party for good cause shown, and upon entry of a modified Settlement Pursuant to Section 664.6 C.C.P. by this Court. Any Party seeking to modify this Settlement Pursuant to Section 664.6 C.C.P. shall meet and confer with all affected Parties prior to filing a motion to modify the Settlement Pursuant to Section 664.6 C.C.P. in a good faith to attempt to resolve any differences.

8. COURT APPROVAL

- 8.1 The Court shall either approve or disapprove of this Settlement Pursuant to Section 664.6 C.C.P. in its entirety, without alteration, deletion or amendment, unless otherwise so stipulated by the Parties and their counsel. Defendant agrees not to oppose this Settlement Pursuant to Section 664.6 C.C.P.
- 8.2 In the event that the Court fails to approve and order entry of the Settlement Pursuant to Section 664.6 C.C.P. without any change whatsoever (unless otherwise so stipulated by the Parties), this Settlement Pursuant to Section 664.6 C.C.P. shall become null and void upon the election of either Party and upon written notice to all of the Parties to the Action pursuant to the notice provisions herein, and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

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 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. Parol evidence shall be inadmissible to show agreement by, between, or among the Parties to any term or condition contrary to or in addition to the terms and conditions contained in this Settlement Pursuant to Section 664.6 C.C.P. The Parties acknowledge that each has not relied

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on any promise, representation or warranty, expressed or implied, not contained in this agreement.

10. <u>APPLICATION OF SETTLEMENT PURSUANT TO SECTION 664.6</u> C.C.P.

- 10.1 This Settlement Pursuant to Section 664.6 C.C.P. shall apply to and be binding upon the Parties hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.
- 10.2 The terms of this Settlement Pursuant to Section 664.6 C.C.P. shall not apply to Covered Product manufactured, distributed, or sold by Star brite for use outside of California.

11. ATTORNEYS' FEES

11.1 Except as specifically provided in this Settlement Pursuant to Section 664.6 C.C.P., each Party shall bear its own attorneys' fees and costs incurred in connection with the 60-day Notice and Plaintiff's complaint and the proceedings arising therefrom.

12. COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7.

12.1 Plaintiff shall comply with the reporting requirements referred to in Health and Safety Code section 25249.7(f) (and established in Title 11 of the California Code of Regulations sections 3000-3008), and shall move for approval of this Settlement Pursuant to Section 664.6 C.C.P. pursuant to the terms thereof.

13. PROVISION OF NOTICE

13.1 All correspondence and notices required by this Settlement Pursuant to Section 664.6 C.C.P. to the Parties shall be sent:

With a copy to:
Ellison Folk
Shute, Mihaly & Weinberger LLC
396 Hayes St.
San Francisco, CA 94102
Tel: (415) 552-7272
E-mail: folk@smwlaw.com

1 2 3 4 5 6	Ocean 4041 S	G. Dornau Bio-Chem Inc. SW 47th Ave. FL 33314-4023	With a copy to: Thomas H. Clarke, Jr. RMKB San Francisco, CA 94105 1001 Marshall St., Ste. 500 Redwood City, CA 94063-2052 Tel: (415) 972-6387 E-Mail: tclarke@rmkb.com								
7	14.	EXECUTION AND COUNTERPARTS									
8		14.1 This Settlement Pursuant to Section 664.6 C.C.P. may be executed in one									
9	or more counterparts and by means of facsimile or portable document format (pdf), which taken										
10	together shall be deemed to constitute one document.										
11	15.	AUTHORIZATION									
12	15.1 Each signatory to this Settlement Pursuant to Section 664.6 C.C.P. certifies										
13	that he or she is fully authorized by the Party he or she represents to stipulate to this Settlement										
14	Pursuant to Section 664.6 C.C.P. and to enter into and execute the Settlement Pursuant to										
15	Section 664.6 C.C.P. on behalf of the Party represented and legally bind that Party. The										
16	undersigned have read, understand, and agree to all of the terms and conditions of this										
17	Settlement Pursuant to Section 664.6 C.C.P.										
18 19 20 21 22 23 24 25	DATED: // // // // // // // // //	June <u>4</u> , 2013	AS YOU SOW By Andrew Behar Executive Director								
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28	RC1/6533538.3/THC SETTLEMENT CASE NO. CGC-	PURSUANT TO §64.6 C.C.P. [PROPOSED] -12-519280	7								

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5	IT IS	SO OR	DERED	, ADJUDG	ED AN	ND DECR	EED:						
6	The C	Court hereby incorporates the terms of the Settlement Pursuant to Section 664.6											
7	C.C.P. into t	this Order. If a Party violates the provisions of this Settlement Pursuant to Section											
8		C.C.P., this Court retains jurisdiction over this matter.											
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