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10 Attorneys for Plaintiff
11 AS YOU SOW

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

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

16 Plaintiff,

17 v.

18 Ocean Bio-Chem, Inc., dba Star brite and
19 DOES 1 through 10, inclusive, ,

20 Defendants.

Case No. CGC-12-519280

**SETTLEMENT PURSUANT TO § 664.6
C.C.P. [PROPOSED]**

Dept: 610

Complaint Filed: March 19, 2012

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

7 **1. INTRODUCTION**

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

12 1.2 Star brite manufactures and distributes Star brite Liquid Electrical Tape
13 (“Covered Product”), which AYS alleges contains ethylbenzene, a listed chemical set forth in 27
14 C.C.R. § 27001, and whose use exposes consumers to an amount that triggers a warning
15 requirement pursuant to 27 C.C.R., Article 6.

16 1.3 On January 5, 2012 AYS sent a 60-day Notice of Violation to Star brite and
17 to public enforcers as required by Health & Safety Code Section 25249.7, alleging that Star brite
18 violated Proposition 65 by failing to provide clear and reasonable warning to users of the
19 Covered Product as required by 27 C.C.R., Article 6.

20 1.4 On March 19, 2102 AYS filed a Complaint against Star brite in San
21 Francisco County Superior Court, Case No. CGC-12-519280, alleging that Star brite violated
22 Proposition 65 due to the alleged failure to provide clear and reasonable warning that users of
23 the Covered Product were exposed to ethylbenzene, a chemical listed pursuant to 27 C.C.R. §
24 27001.

25 1.5 For purposes of this Settlement Pursuant to Section 664.6 C.C.P. only, the
26 Parties stipulate that this Court has jurisdiction over Star brite as to the allegations contained in
27 the Complaint, that venue is proper in San Francisco County, that this Court has jurisdiction to

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

3 5.2 As to the Covered Product, compliance with the terms of this Settlement
4 Pursuant to Section 664.6 C.C.P. by Star brite resolves any issue from the date of entry of this
5 Settlement Pursuant to Section 664.6 C.C.P. into the future concerning compliance by Star brite,
6 Defendant Releasees, and Downstream Defendant Releasees with regard to Proposition 65 as to
7 the presence of, or exposure to, ethylbenzene in the Covered Product.

8 5.3 Upon entry of the Settlement Pursuant to Section 664.6 C.C.P., the Parties
9 waive their respective rights to a hearing or trial on the allegations of the complaint.

10 **6. GOVERNING LAW AND CONSTRUCTION**

11 6.1 This agreement shall be governed by, and construed in accordance with, the
12 laws of the State of California.

13 6.2 The Parties, including their counsel, have participated in the preparation of
14 this Settlement Pursuant to Section 664.6 C.C.P. and this Settlement Pursuant to Section 664.6
15 C.C.P. is the result of the joint efforts of the Parties. This Settlement Pursuant to Section 664.6
16 C.C.P. was subject to revision and modification by the Parties and has been accepted and
17 approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
18 ambiguity existing in this Settlement Pursuant to Section 664.6 C.C.P. shall not be interpreted
19 against any Party as a result of the manner of the preparation of this Settlement Pursuant to
20 Section 664.6 C.C.P.. Each Party to this Settlement Pursuant to Section 664.6 C.C.P. agrees that
21 any statute or rule of construction providing that ambiguities are to be resolved against the
22 drafting Party should not be employed in the interpretation of this Settlement Pursuant to
23 Section 664.6 C.C.P. and, in this regard, the Parties hereby waive California Civil Code section
24 1654.

25 **7. MODIFICATION OF SETTLEMENT PURSUANT TO SECTION 664.6**
26 **C.C.P.**

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

3 **10. APPLICATION OF SETTLEMENT PURSUANT TO SECTION 664.6**
4 **C.C.P.**

5 10.1 This Settlement Pursuant to Section 664.6 C.C.P. shall apply to and be
6 binding upon the Parties hereto, their divisions, subdivisions and subsidiaries, and the successors
7 or assigns of any of them.

8 10.2 The terms of this Settlement Pursuant to Section 664.6 C.C.P. shall not
9 apply to Covered Product manufactured, distributed, or sold by Star brite for use outside of
10 California.

11 **11. ATTORNEYS' FEES**

12 11.1 Except as specifically provided in this Settlement Pursuant to Section 664.6
13 C.C.P., each Party shall bear its own attorneys' fees and costs incurred in connection with the
14 60-day Notice and Plaintiff's complaint and the proceedings arising therefrom.

15 **12. COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7.**

16 12.1 Plaintiff shall comply with the reporting requirements referred to in Health
17 and Safety Code section 25249.7(f) (and established in Title 11 of the California Code of
18 Regulations sections 3000-3008), and shall move for approval of this Settlement Pursuant to
19 Section 664.6 C.C.P. pursuant to the terms thereof.

20 **13. PROVISION OF NOTICE**

21 13.1 All correspondence and notices required by this Settlement Pursuant to
22 Section 664.6 C.C.P. to the Parties shall be sent:

23 To Plaintiff As You Sow
24 As You Sow Foundation
25 Attn: Danielle Fugere
1611 Telegraph Ave, Suite 1450
26 Oakland, CA 94612

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 To Star brite
2 Peter G. Dornau
3 Ocean Bio-Chem Inc.
4 4041 SW 47th Ave.
5 Davie, 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 DATED: June 4, 2013

AS YOU SOW

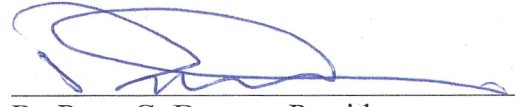
20 
21 By Andrew Behar
22 Executive Director

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DATED: June 5, 2013

OCEAN BIO-CHEM CORPORATION



By Peter G. Dornau, President
For Ocean Bio-Chem, Inc.

IT IS SO ORDERED, ADJUDGED AND DECREED:

The Court hereby incorporates the terms of the Settlement Pursuant to Section 664.6 C.C.P. into this Order. If a Party violates the provisions of this Settlement Pursuant to Section 664.6 C.C.P., this Court retains jurisdiction over this matter.

DATED: _____, 2013 BY: _____
JUDGE OF THE SUPERIOR COURT

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