

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement agreement is entered into by and between Plaintiff AS YOU SOW("AYS") and Defendant DYNAMIC BRIDGE, a corporation doing business in California, to resolve all claims raised in Plaintiff's complaint filed in the above-captioned action. This Settlement Agreement shall be effective upon the last date of signing of this Agreement by either party. AYS and Dynamic Bridge request that the Court retain jurisdiction to enforce the terms of this agreement, which are set forth.

### **1. INTRODUCTION**

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 On February 7, 2012 AYS sent a 60-day Notice of Violation to Dynamic Bridge and to public enforcers as required by Health & Safety Code Section 25249.7, alleging that these entities violated Proposition 65 by failing to provide clear and reasonable warning before exposing users to lead in Baby Butt Aid ("the Covered Product.")

1.3 On April 26, 2012 AYS filed a Complaint against Dynamic Bridge in San Francisco County Superior Court, Case No. CGC 12-520319, alleging that Dynamic Bridge violated Proposition 65 due to the alleged failure to provide clear and reasonable warning that users of the Covered Product were exposed to lead, a chemical known to the state of California to cause cancer and reproductive harm.

1.4 For purposes of this Agreement only, the Parties stipulate that this Court has jurisdiction over Dynamic Bridge as to the allegations contained in the Complaint, that venue is proper in San Francisco County, that this Court has jurisdiction to enter this Agreement as a resolution of all claims that were alleged in the Complaint, and that the Court shall retain jurisdiction to implement the Agreement.

1.5 The Parties enter into this agreement to settle certain disputed claims as 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 violations of Proposition 65, or any other statutory, common law or equitable claim or requirement relating to or arising from the sale of Covered Products in California. Neither shall this Agreement be construed as an admission that any act provided for herein, or any warnings regarding exposure to lead from Covered Products are required under Proposition 65 or any other statute, regulation, or common law requirement. Nothing in this Agreement 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 Agreement.

1.6 The term "Effective Date" means the date of entry of this Agreement.

**2. INJUNCTIVE RELIEF**

2.1 Dynamic Bridge agrees that it will immediately cease distribution of the Covered Product and will not distribute or sell the Covered Product or any product named Baby Butt Aid or within the Baby Butt Aid line of products.

**3. SETTLEMENT PAYMENTS**

1.3 No later than August 15, 2012, Dynamic Bridge shall pay \$5,000 in attorneys' fees and costs according to by a check delivered by overnight delivery to Ellison Folk, Shute, Mihaly & Weinberger LLP, 396 Hayes Street, San Francisco, CA 94102 or by wire to:

Bank: Wells Fargo Bank, NA

Account Name: Shute, Mihaly & Weinberger LLP Legal Services Trust

Account Number: 0006134134

Wire Routing Number 121000248

Reference: AYS.DYNAMIC

**4. DISMISSAL OF THE LITIGATION**

4.1 Within 10 days of the Effective Date, As You Sow will file a motion for entry of this Agreement and a Stipulation for Dismissal of the action. The Parties agree that this Court shall retain jurisdiction to enforce the terms of this Agreement pursuant to Code of Civil

Procedure section 664.6.

**5. ENFORCEMENT OF AGREEMENT**

5.1 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 Agreement. In the event that a dispute arises with respect to any of the provisions of this Agreement, 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 Agreement shall be awarded any fines, costs, penalties, or remedies provided by law. Additionally, the prevailing Party shall be awarded its reasonable attorney's fees and costs.

**6. CLAIMS COVERED AND RELEASE**

6.1 As to the five units of the Covered Product sold by Dynamic Bridge on (7/12/2012 and 12/5/2011), this Agreement is a full, final, and binding resolution between AYS and Dynamic Bridge and its parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies and their successors and assigns and, compliance with the terms of this Agreement by Dynamic Bridge resolves any issue from the Effective Date into the future with regard to Proposition 65 as to the presence of, or exposure to, lead in the three units of the Covered Product .

6.2 Upon entry of the stipulated dismissal, the Parties waive their respective rights to a hearing or trial on the allegations of the complaint.

**7. GOVERNING LAW AND CONSTRUCTION**

7.1 This 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 Agreement and this Agreement is the result of the joint efforts of the Parties. This Agreement 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 Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Agreement. Each Party to this Agreement 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 Agreement and, in this regard, the Parties hereby waive California Civil Code section 1654.

**8. ENTIRE AGREEMENT**

8.1 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.

**9. APPLICATION OF AGREEMENT**

9.1 This 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.

**10. ATTORNEYS' FEES**

10.1 Except as specifically provided in this Agreement, each Party shall bear its own attorneys' fees and costs incurred in connection with the 60-day Notice and Plaintiff's complaint.

**11. PROVISION OF NOTICE**

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

To Plaintiff As You Sow

As You Sow Foundation  
Attn: Danielle Fugere, Chief Counsel  
311 California Street, Suite 510  
San Francisco, CA 94104

With a copy to:

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

To Dynamic Bridge

With a copy to:

**12. EXECUTION AND COUNTERPARTS**

12.1 This 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.

**13. AUTHORIZATION**

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

IT IS SO ORDERED, ADJUDGED, AND DECREED:

The Court hereby incorporates the terms of the Agreement into this Order. If a Party violates the provisions of this Agreement, this Court retains jurisdiction over this matter.

Dated: June 27, 2012

**SHUTE, MIHALY & WEINBERGER**

By  \_\_\_\_\_  
ELLISON FOLK  
Attorneys for Plaintiff AS YOU SOW.

Dated: June 27, 2012

By  \_\_\_\_\_  
DYNAMIC BRIDGE

IT IS SO STIPULATED:

Dated:

**AS YOU SOW**

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Dated:

**DYNAMIC BRIDGE**

one document.

**13. AUTHORIZATION**

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

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Dated: June 27, 2012

**SHUTE, MIHALY & WEINBERGER**

By \_\_\_\_\_  
ELLISON FOLK  
Attorneys for Plaintiff AS YOU SOW.


Dated: June 27, 2012

By \_\_\_\_\_  
DYNAMIC BRIDGE

**IT IS SO STIPULATED:**

Dated:

**AS YOU SOW**

By  \_\_\_\_\_  
Name ANDREW BENAR  
Title CEO

Dated:

**DYNAMIC BRIDGE**

By 

Name STEPHEN KWAN

Title Owner/President

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