

1 DANIELLE R. FUGERE (State Bar No. 1z60873)

2 AS YOU SOW

3 Main Post Office

4 P.O. Box 751

5 Berkeley, CA 94701

6 Telephone: (510) 735-8158

7 Email: DFugere@asyousow.org

8 Attorney for Plaintiff

9 AS YOU SOW

10 WILLIS WAGNER (State Bar No. 310900)

11 ARNOLD & PORTER

12 Three Embarcadero Center | 10th Floor

13 San Francisco, CA 94111

14 Telephone (415) 471-3110

15 Email: Will.Wagner@arnoldporter.com

16 Attorneys for Defendant

17 FRONTIER COOPERATIVE

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 FOR THE COUNTY OF ALAMEDA

20 AS YOU SOW,

21 Plaintiff,

22 v.

23 FRONTIER COOPERATIVE,

24 Defendant.

CASE NO. 22CV017226

**NOTICE OF ERRATA RE: MOTION
FOR ENTRY OF PROPOSED
CONSENT JUDGMENT**

Unlimited Civil Case

1 PLEASE TAKE NOTICE that Plaintiff As You Sow ("Plaintiff") hereby requests the Court take
2 notice of the following errata:

3 On October 4, 2023, Plaintiff filed moving papers in support of a motion to approve a
4 Stipulated Consent Judgment entered into between As You Sow and Frontier Cooperative
5 ("Defendant").

6 On October 6, 2023, the California Attorney General's Office contacted Plaintiff's counsel
7 regarding certain requested changes to the parties' Proposed Consent Judgment. Supplemental
8 Declaration of Danielle Fugere, ¶ 2 ("Fugere Decl."). In response, the parties met and conferred,
9 and agreed to the following modifications to the Proposed Consent Judgment, which were provided
10 to the Attorney General's office.

- 11 - Section 2.8. was revised to clarify the serving size of 4 grams;
- 12 - Section 4.3.2. was revised to clarify that any stipulated modification
13 must be approved by the court and the AG must have 45 days to
14 review;
- 15 - Section 7.1. was revised to state that any edits to the Consent
16 Judgment would require the parties to provide 45 days notice to the
17 Attorney General's office and written approval from the court.

18 *Id.*, ¶ 3. An Amended Proposed Consent Judgment with these redlined changes is attached hereto as
19 Exhibit A.

20 On November 3, 2023, the Attorney General's office confirmed receipt of the signed
21 Amended Consent Judgment. The Amended Consent Judgment meets all changes requested by the
22 Attorney General's office, thereby obviating the need for a 45-day review period. *Id.*, ¶ 4. Plaintiff
23 therefore does not need to reset the approval hearing slated for November 28, 2023.

24 The parties therefore respectfully request that the Court execute the [Proposed] Amended
25 Consent Judgment, which is submitted with this Motion for Entry of Consent Judgment and is
26 attached hereto as Exhibit B.

27 ///

28 ///

///

///

1 Dated: November 7, 2023

2 **AS YOU SOW**

3 

4 By

5 _____
6 DANIELLE R. FUGERE
7 Attorney for Plaintiff
8 AS YOU SOW
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Exhibit A
Redlined [PROPOSED] Stipulated
Consent Judgment

DANIELLE R. FUGERE (State Bar
No. 1z60873) AS YOU SOW
Main Post Office
P.O. Box 751
Berkeley, CA 94701
Telephone: (510) 735-8158
Email: DFugere@asyousow.org

Attorney for Plaintiff
AS YOU SOW

WILLIS WAGNER (State Bar No. 310900)
ARNOLD & PORTER
Three Embarcadero Center | 10th Floor
San Francisco, CA 94111
Telephone (415) 471-3110
Email: Will.Wagner@arnoldporter.com

Attorneys for Defendant
FRONTIER COOPERATIVE

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

AS YOU SOW,
Plaintiff,

v.

FRONTIER COOPERATIVE,
Defendant.

CASE NO. 22CV017226

**[PROPOSED]
AMENDED STIPULATED
CONSENT JUDGMENT**

Unlimited Civil Case

1 This Consent Judgment is entered into by and between Plaintiff *As You Sow* (“*As You*
2 *Sow*” or “Plaintiff”) and Defendant Frontier Cooperative (“Frontier” or “Defendant”), to
3 resolve claims raised against Defendant in the Complaint in the above-captioned action. This
4 Consent Judgment shall be effective upon entry. *As You Sow* and Defendant (collectively “the
5 Parties”) agree to the terms and conditions set forth below.

6 1.1. *As You Sow* is a non-profit corporation dedicated to, among other causes, the
7 protection of the environment, the promotion of human health, the improvement of worker and
8 consumer rights, environmental education, and corporate accountability. *As You Sow* is based
9 in Berkeley, California and is incorporated under the laws of the State of California.

10 1.2. Defendant currently produces, distributes, and/or sells spinach products
11 containing lead, including but not limited to, “Frontier Co-Op Spinach Flakes Certified
12 Organic” and “Frontier Co-Op Spinach Powder Certified Organic” (the “Covered Products”).
13 Defendant produces, distributes, and/or sells the Covered Products in retail stores or at physical
14 locations, via catalogues, and/or online through its own website, <https://frontiercoop.com> (the
15 “Frontier website”), and the internet retail seller Amazon.com, <https://www.amazon.com> (the
16 “Amazon website”).

17 1.3. *As You Sow* alleges in the Complaint that the Covered Products contain lead.
18 Lead is listed by the State of California as known to cause cancer and birth defects or other
19 reproductive harm under the Safe Drinking Water and Toxic Enforcement Act of 1986 (the
20 “Act”), California Health and Safety Code §25249.5 et seq. On August 19, 2020, *As You Sow*
21 sent a 60-day Notice of Violation (the “Notice”) to Defendant and to public enforcers as
22 required by Health and Safety Code section 25249.7, alleging that Defendant violated the Act
23 by failing to provide clear and reasonable warnings before exposing persons to lead contained
24 in the Covered Products.

25 1.4. The Parties have agreed to enter into this Consent Judgment to settle Plaintiff’s
26 claims with regard to the Covered Products and to avoid prolonged and costly litigation.

27 1.5. Nothing in this Consent Judgment is or shall be construed as an admission by
28 the Parties of any fact, conclusion of law, issue of law, or violation of law.

1 1.6. By executing and complying with this Consent Judgment, neither Party admits
2 the existence of any other statutory, common law, or equitable claim, requirement, or defense
3 relating to or arising from the production, sale, or distribution of the Covered Products in
4 California. Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
5 remedy, or defense that *As You Sow* and Defendant may have in any other, or in future, legal
6 proceedings unrelated to this action. This Paragraph shall not diminish or otherwise affect the
7 obligations, responsibilities, and duties of the Parties under this Consent Judgment.

8 **2. DEFINITIONS.**

9 2.1. "Effective Date" is the date *As You Sow* serves notice of entry of this Consent
10 Judgment.

11 2.2. "Compliance Date" is six months from the Effective Date.

12 2.3. "Covered Product(s)" are the products covered by this Consent Judgment, which
13 are identified in Paragraph 1.2.

14 2.4. "Lot" means all units of a Covered Product bearing the same lot number
15 and/or best-by or sell-by date.

16 2.5. "Retailer" or "Retail seller" is a person or business that sells or otherwise
17 provides consumer products directly to consumers by any means, including Amazon.com.

18 2.6. "Warning Statement" is the statement in content and form as shown in
19 Paragraph 4.2.

20 2.7. "Written Notice" is the written notice described in Title 27, Article 6, §
21 25600.2(b) of the California Code of Regulations, in the content and form as specified in Title
22 27, Article 6, § 25603 of the California Code of Regulations.

23 2.8. A "Serving" as used in this agreement shall be the labeled serving size for the
24 Covered Product(s). If the Covered Product is labeled as a food, its serving size shall be set
25 according to the federal Reference Amounts Customarily Consumed (RACC) category called
26 "Vegetables primarily used for garnish or flavor" (4 grams). If the covered Product is sold as a
27 supplement, its serving size shall be set according to the RACC category for dietary
28 supplements. A Covered Product sold as a supplement must also be labeled as a dietary

1 supplement; that is, the Covered Product label must include the term "dietary supplement" or
2 equivalent, pursuant to the Dietary Supplement Health and Education Act (DSHEA). Each
3 Covered Product sold as a supplement must either be labeled in quarter, half, or full teaspoon
4 increments or the product must include a spoon for the applicable serving size set according to
5 this Section. Should either RACC category be eliminated or modified in the future, Frontier
6 may use the closest analogous category, subject to thirty day's written notice to *As You Sow*.


7 **3. JURISDICTION AND VENUE.**

8 3.1. For purposes of this Consent Judgment only, the Parties stipulate that this Court
9 has jurisdiction over the allegations contained in the Complaint and personal jurisdiction over
10 Defendant; venue is proper in Alameda County; the Court has jurisdiction to enter this Consent
11 Judgment as a full and final resolution of all claims under the Act up through and including the
12 Effective Date which were, or could have been, asserted in this action based on the facts
13 alleged in Plaintiff's Notice and Complaint. The Court shall retain jurisdiction to enforce this
14 Consent Judgment.

15 **4. INJUNCTIVE RELIEF.**

16 4.1. Beginning no later than the Compliance Date, Defendant shall not produce,
17 distribute, and/or sell in California any Covered Product containing more than 0.5 micrograms
18 per Serving of lead without first providing the warning statement as specified in Paragraph 4.3,
19 pursuant to the methods specified in Paragraphs 4.4 - 4.9 below.

20 4.2. **Warning Statement.** Beginning no later than the Compliance Date, all Covered
21 Products produced, distributed, and/or sold by Defendant in the State of California shall use the
22 following "Warning Statement:"

23  **WARNING:** Consuming this product can expose you to chemicals including lead,
24 which is known to the State of California to cause birth defects or other reproductive
harm. For more information go to www.P65Warnings.ca.gov/food.

25
26 Consistent with Title 27, Article 6, § 25603 of the California Code of Regulations, in all
27 instances where the Warning Statement appears, the warning text shall be displayed in at least
28 the same type size as the surrounding text for other consumer information concerning the

1 Covered Products and accompanied by a symbol consisting of a black exclamation point in a
2 yellow equilateral triangle with a bold black outline (“Warning Symbol”). Consistent with
3 Title 27, Article 6, § 25607.1, where the warning is provided on the food product label, it must
4 be set off from other surrounding information, enclosed in a box. The Warning Symbol shall
5 be placed to the left of the text of the warning, in a size no smaller than the height of the word
6 “WARNING.”

7 4.3. **Internet Sales; Frontier Website.** Beginning no later than the Compliance
8 Date, Defendant shall ensure that, for all Covered Products sold to customers located in
9 California via the Frontier Website, Defendant shall prominently display the Warning
10 Statement set forth in Paragraph 4.2 to purchasers before completion of purchase(s). The
11 Warning Statement set forth in Paragraph 4.2 shall be displayed (a) using a clearly marked
12 hyperlink with the word “**WARNING**” on the product display page as set forth in 27 CCR §
13 25602(b); (b) on the product display page without requiring the purchaser to seek out the
14 warning by scrolling as set forth in 27 CCR § 25602(a)(2); or (c) by prominently displaying the
15 warning to the purchaser prior to completing the purchase as set forth in 27 CCR § 25602(b).

16 4.3.1. Defendants shall not include any information with the Warning Statement that
17 contradicts, obfuscates, or minimizes the meaning of the Warning Statement.

18 4.3.2 Any changes to the text, format, or placement of the statements that do not
19 comply with this Section 4 shall be made only after a written request for approval from
20 Plaintiff. Plaintiff shall respond to such request for approval within thirty days. Any dispute
21 arising with respect to whether Defendant’s changes comply with Section 4 of the Consent
22 Judgment shall be subject to the provisions of Section 8 of this Consent Judgment. Any agreed
23 upon modifications shall be made pursuant to paragraph 7 below.

24 4.4. **Internet Sales; Online Marketplace.** Beginning no later than the Effective
25 Date, Defendant shall, for all Covered Products sold to customers located in California via the
26 Amazon Website or any other internet marketplace or retail platform, provide the Warning
27 Statement in Paragraph 4.2, directly on the initial product display page or by hyperlink such
28

1 that the Warning Statement is visible on the initial product display screen without scrolling on a
2 full screen monitor or by providing the warning otherwise prior to purchase.

3 4.5. **Mail Order /Catalogue Sales:** If Defendant sells the Covered Products via mail
4 order to customers located in California, Defendant shall prominently display the Warning
5 Statement (set forth in Paragraph 4.2) in the mail order catalogue in compliance with California
6 Code of Regulations, Title 27, Article 6 § 25602(c), either on the same page as a Covered
7 Product is displayed, or on the same page upon which any of the Covered Products' prices are
8 listed, in the same type size as the surrounding, non-heading text. The Warning Statement shall
9 be added no later than in the first print run of the mail order catalogue on or after the Effective
10 Date.

11 4.6. **In-Store Retail Sales:** If Defendant sells the Covered Products via stores or
12 other physical outlets, Defendant shall prominently affix the Warning Statement (set forth in
13 Paragraph 4.2) on the Covered Product's label.

14 4.6.1. The Warning Statement shall be displayed with such conspicuousness, as
15 compared with other words, statements, designs, or devices on the individual labeling of the
16 Covered Products, so as to render the Warning Statement likely to be read and understood by
17 an ordinary individual under customary conditions of purchase and use.

18 4.7. **Other Sales:** Should Defendant become aware of any Retailer or retail Seller
19 selling the Covered Products through in-store retail outlets, mail catalogues, and/or the internet
20 without a Warning Statement compliant with Section 4.2, and 4.4.3 if applicable, Defendant
21 shall, in writing, require that the seller comply with all applicable requirements of this Section
22 4 within sixty (60) days of receiving notice.

23 5. **SETTLEMENT PAYMENTS.**

24 5.1. **Civil Penalty:** Within thirty (30) days of the Effective Date, Defendant shall pay
25 \$10,000 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). *As You Sow* shall remit seventy-five percent (75%)
27 of this amount to the State of California pursuant to Health and Safety Code section
28 25249.12(b).

1 **5.2. Additional Settlement Payment:** Within thirty (30) days of the Effective Date,
2 Defendant shall pay \$7,500 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 *As You Sow* for grants to
4 California 501(c)(3) non-profit organizations and by the *As You Sow* Environmental
5 Enforcement Fund. These funds shall be used to educate and/or reduce or remediate consumer
6 exposures to lead in California, particularly in consumer products, and to promote enforcement
7 of warnings about, or reductions of lead in, food products sold in California. In deciding among
8 grant proposals that contain the above required nexus, the *As You Sow* Board of Directors
9 (“Board”) also takes into consideration a number of important factors, including: (1) the
10 likelihood of lead reduction, prevention, remediation, or educational benefits to California
11 citizens from the proposal; (2) the budget requirements of the proposed grantee and the
12 alternate funding sources available to it for its project; and, (3) the Board’s assessment of the
13 proposed grantee’s ability to perform the funded activities. *As You Sow* shall ensure that all
14 funds will be disbursed and used in accordance with this paragraph, as well as *As You Sow*’s
15 mission statement, articles of incorporation, bylaws, and applicable state and federal laws and
16 regulations. *As You Sow* shall obtain reports from grantees and maintain adequate records to
17 document that the funds are spent on the activities described in this paragraph, and shall
18 provide to the Attorney General, within thirty days of any request, copies of all documentation
19 demonstrating how such funds have been spent.

20 **5.2.1.** The *As You Sow* Enforcement Fund works to ensure that consumers are
21 receiving the warnings required by law when products they purchase contain listed chemicals.
22 These warnings help consumers make informed decisions about the products they bring into
23 their homes and their families. The Enforcement fund supports research into and investigation
24 of products sold into California, research on toxic chemicals and their health impacts, testing of
25 products likely to contain listed chemicals, consumer education about listed chemicals, legal
26 enforcement actions, and work with companies to reformulate their products to end or
27 significantly reduce consumer exposure to listed chemicals where feasible.
28

1 5.2.2. No Party to this Consent Judgment, or independent counsel of record, or spouse
2 or dependent children thereof, has an economic interest in any individual or entity, besides
3 itself that will receive all or part of an Additional Settlement Payment. As a party receiving
4 ASP funds, *As You Sow*'s in-house counsel may receive some portion of the ASP funds through
5 their fixed salaries, which are not dependent on receipt of ASP funds.

6 5.3. Within thirty (30) days of the Effective Date, Defendant shall pay \$32,500 in the
7 form of a check made payable to *As You Sow*, as reimbursement for Plaintiff's attorneys' fees,
8 investigation costs, and other reasonable litigation costs and expenses.

9 **6. PRODUCT TESTING AND REFORMULATION.**

10 6.1. The provisions of this section apply only in the event Defendant reformulates
11 any of the Covered Products ("Reformulated Covered Product") to reduce consumer exposure
12 to less than 0.5 micrograms of lead per Serving and seeks to remove the Warning Statement
13 required under Paragraph 4.2. If Defendant provides a warning on a Covered Product, no
14 testing is required for such product and the paragraphs of Paragraph 6 are not applicable.

15 6.2. In the event Defendant reformulates any of the Covered Products by the
16 Compliance Date and/or relies on product testing to substantiate that the Warning Statement is
17 not required, as set forth in Paragraph 6.1, after the Compliance Date, testing for lead content
18 shall be conducted on at least three (3) samples of the Covered Product (in the form intended
19 for sale to the end-user) from two (2) different lots (or from the maximum number of lots
20 available for testing if there are fewer than two (2) lots available). Testing for lead content
21 shall be conducted using EPA Methods 6020, 6020a, AOAC 993.14, AOAC 2015.01, or an
22 equivalent methodology intended to quantify heavy metal content in foods that is accredited by
23 a national or international testing body, via inductively coupled plasma mass spectrometry
24 ("ICP-MS"). The sample preparation method must use a microwave- or heat-assisted acid
25 digestion method for the above methods and if appropriate for any other agreed on
26 methodology.

27 As of the Compliance Date, Defendant shall not produce any Covered Product for sale
28 in California unless they are Reformulated Covered Products pursuant to Section 6.1 above, or

1 unless Defendant provides the Warning Statement as specified in Paragraph 4.2, in compliance
2 with Paragraphs 4.3-4.7. Any dispute as to whether a Reformulated Covered Product complies
3 with Section 6 shall be subject to the provisions of Section 8 of this Agreement.

4 **7. MODIFICATION.**

5 7.1. This Consent Judgment may be modified by written agreement and stipulation
6 of the Parties, with 45 days notice to the Attorney General and by written approval of the
7 Court. If either Party seeks to modify the Consent Judgment, it shall provide written notice to
8 the other Party of the modification sought. The parties shall meet and confer within thirty (30)
9 days of receipt of such meet and confer notice. Neither Party shall unreasonably withhold
10 agreement to any modification requested by the other Party that is based on an amendment to
11 the Act or its supporting regulations or a change in the law. If despite their meet-and-confer
12 efforts, the Parties are unable to reach agreement on a stipulated modification, either Party may
13 file a noticed motion for modification with the Court for good cause shown, provided a copy of
14 the motion is also served on the other Party and the Office of the California Attorney General.

15 7.2. If the parties reach agreement as to modification of the Consent Judgment, such
16 stipulation shall be reported to the Office of the California Attorney General at least twenty-one
17 (21) days in advance of its submission to the Court for approval.

18 **8. DISPUTE RESOLUTION AND ENFORCEMENT.**

19 8.1. Only Plaintiff may attempt to enforce this Consent Judgment. If Plaintiff alleges
20 that Defendant has failed to meet an obligation set forth in this Consent Judgment, Plaintiff
21 shall inform Defendant in a reasonably prompt manner. As long as Defendant cures such
22 alleged violations within thirty (30) days of receipt of the written notice, then there shall be
23 deemed no material violation. For alleged violations that are not cured within thirty days,
24 Plaintiff shall have the right to bring an enforcement motion under this Consent Judgment.

25 8.2. A party who prevails in a contested enforcement motion arising with respect to
26 any of the provisions of this Consent Judgment is entitled to seek recovery of its reasonable
27 attorneys' fees and costs incurred in any such motion or proceeding pursuant to California
28 Code of Civil Procedure, including but not limited to § 1021.5, unless the unsuccessful party

1 has acted with substantial justification. For purposes of this Consent Judgment, the term
2 substantial justification shall carry the same meaning as used in the Civil Discovery Act of
3 1986, Code of Civil Procedure. Notwithstanding any language to the contrary in Section 6, or
4 otherwise herein, a Party may disclose test results received from the other Party in a court filing
5 in support of any motion to enforce this Consent Judgment provided that an opportunity to
6 make a motion for leave to seal such data has been provided to the other Party.

7 **9. CLAIMS COVERED AND RELEASE.**

8 9.1 This Consent Judgment is a full, final, and binding resolution between *As You*
9 *Sow*, on behalf of itself and in the public interest, as well as its parents, subsidiaries, officers,
10 directors, employees, agents, insurers, representatives, successors, and assigns (“*As You Sow*
11 *Releasees*”) and Defendant and its respective officers, directors, shareholders, employees,
12 agents, parent companies, and divisions, and the predecessors, successors, and assigns of any of
13 them (collectively, “Frontier Releasees”). No upstream grower to Defendant is protected by or
14 a party to this agreement except as to the Covered Products released herein.

15 9.2. Plaintiff hereby fully releases and discharges Frontier’s Releasees and
16 Defendant’s suppliers, and all entities to which Defendant directly or indirectly distributes or
17 sells Covered Products, including but not limited to distributors, wholesalers, customers,
18 retailers, franchisees, licensors, and licensees (“Additional Defendant Releasees”) from any and
19 all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees
20 (including fees of attorneys, experts, and others), costs, and expenses asserted, or that could
21 have been asserted, as to any alleged violation of the Act or its implementing regulations
22 arising from the failure to provide lead warnings required by the Act on Covered Products
23 produced prior to the Effective Date.

24 9.3. Defendant hereby releases *As You Sow* from, and waives any claims against *As*
25 *You Sow* and *As You Sow*’s Releasees for injunctive relief or damages, penalties, fines,
26 sanctions, mitigation, fees (including fees of attorneys, experts and others), costs, expenses, or
27 any other sums or causes incurred or claimed, or which could have been claimed, for matters
28 related to the Notice of Violation or Complaint.

1 Compliance with the terms of this Consent Judgment by Defendant shall constitute
2 compliance with the Act by Defendant, the Frontier Releasees and its Additional Defendant
3 Releasees with respect to any alleged failure to warn about lead in Covered Products after the
4 Effective Date.

5 **10. GOVERNING LAW AND CONSTRUCTION.**

6 This Consent Judgment shall be governed by, and construed in accordance with, the
7 laws of the State of California.

8 **11. COURT APPROVAL.**

9 11.1. Unless otherwise stipulated by the Parties, if the Court fails to approve and order
10 entry of the Consent Judgment without any alteration, deletion or amendment, this Consent
11 Judgment shall become null and void upon the election of either Party, and shall not be
12 introduced into evidence or otherwise used in any proceeding for any purpose.

13 11.2. Defendant agrees not to oppose Court approval of this Consent Judgment.

14 **12. APPLICATION OF CONSENT JUDGMENT.**

15 This Consent Judgment shall apply to and be binding upon As You Sow and Frontier
16 and their respective officers, directors, and shareholders and the predecessors, successors or
17 assigns of each of them.

18 **13. ENTIRE AGREEMENT.**

19 The Parties declare and represent that no promise, inducement or other agreement has
20 been made conferring any benefit upon any Party except those contained herein and that this
21 agreement contains the entire agreement pertaining to the subject matter hereof.

22 **14. DURATION OF CONSENT JUDGMENT.**

23 This Consent Judgment shall terminate five years from the Effective Date unless the
24 term of this Consent Judgment is extended. This Consent Judgment shall be extended only by a
25 stipulation of the Parties that is entered by the Court.

26 **15. ATTORNEYS' FEES.**

27

28

1 Except as specifically provided in this Consent Judgment, each Party shall bear its own
2 attorneys' fees and costs incurred in connection with the 60-day Notice of Violation and
3 Plaintiff's Complaint.

4 **16. COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7.**

5 16.1. Plaintiff shall comply with the reporting requirements referred to in Health and
6 Safety Code section 25249.7(f) (and established in Title 11 of the California Code of
7 Regulations sections 3000-3008), and shall move for approval of this Consent Judgment
8 pursuant to the terms thereof.

9 16.2. The Parties shall use their best efforts to support entry of this Consent Judgment.
10 If the California Attorney General objects to any term in this Consent Judgment, the Parties
11 shall use their best efforts to resolve the concern in a timely manner, and if possible, prior to the
12 hearing on the motion to approve this Consent Judgment.

13 **17. PROVISION OF NOTICE.**

14 All correspondence and notices required by this Consent Judgment to the Parties shall
15 be sent to:

16 **Plaintiff As You Sow**

17 Danielle FugereAs You Sow
18 Main Post Office
19 P.O Box 751
Berkeley, CA 94701
Tel.: (510) 735-8158

20 **Defendant Frontier Cooperative**

21 Will Wagner
22 Arnold & Porter
Three Embarcadero Center | 10th Floor
San Francisco, CA 94111-4024
Telephone: (415) 471-3110
23 Attorney for Defendant Frontier Cooperative
24

25 **18. EXECUTION AND COUNTERPARTS.**

26 This Consent Judgment may be executed in one or more counterparts and by means of
27 facsimile or portable document format (.pdf), which taken together shall be deemed to
28 constitute one document.

19. **DRAFTING.**

The terms of this Consent Judgment have been reviewed by the respective counsel for each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn, and no provision of this Consent Judgment shall be construed against any Party, based on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated equally in the preparation and drafting of this Consent Judgment.

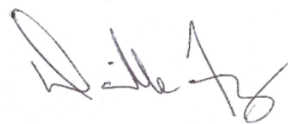
20. **AUTHORIZATION.**

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

APPROVED AS TO FORM AND CONTENT:

Dated: Sept. 2, 2023

AS YOU SOW

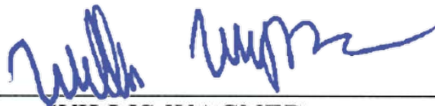


By _____
DANIELLE R. FUGERE
Attorney for Plaintiff
AS YOU SOW

1 Dated: 10/31, 2022

FRONTIER COOPERATIVE

2
3 By


WILLIS WAGNER
Arnold & Porter
Attorneys for Defendant
FRONTIER COOPERATIVE

6 **SO AGREED:**

8 Dated: 9/11, 2023

AS YOU SOW

10 By:

11 Name: Andrew Behar

12 Title: CEO

11 **REDLINED DATES**

13 Dated: 10/31/, ²⁰²³~~2022~~

FRONTIER COOPERATIVE

REDLINED SIGNATURES

15 By:

16 Name: RAVIN DONALD

17 Title: EVP OF OPERATIONS

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT B
[PROPOSED] Amended Stipulated
Consent Judgment

1 DANIELLE R. FUGERE (State Bar No. 1z60873)

2 AS YOU SOW

3 Main Post Office

4 P.O. Box 751

5 Berkeley, CA 94701

6 Telephone: (510) 735-8158

7 Email: DFugere@asyousow.org

8 Attorney for Plaintiff

9 AS YOU SOW

10 WILLIS WAGNER (State Bar No. 310900)

11 ARNOLD & PORTER

12 Three Embarcadero Center | 10th Floor

13 San Francisco, CA 94111

14 Telephone (415) 471-3110

15 Email: Will.Wagner@arnoldporter.com

16 Attorneys for Defendant

17 FRONTIER COOPERATIVE

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 FOR THE COUNTY OF ALAMEDA

20 AS YOU SOW,

21 Plaintiff,

22 v.

23 FRONTIER COOPERATIVE,

24 Defendant.

CASE NO. 22CV017226

**[PROPOSED] AMENDED
STIPULATED CONSENT
JUDGMENT**

Unlimited Civil Case

1 This Consent Judgment is entered into by and between Plaintiff *As You Sow* (“*As You*
2 *Sow*” or “Plaintiff”) and Defendant Frontier Cooperative (“Frontier” or “Defendant”), to
3 resolve claims raised against Defendant in the Complaint in the above-captioned action. This
4 Consent Judgment shall be effective upon entry. *As You Sow* and Defendant (collectively “the
5 Parties”) agree to the terms and conditions set forth below.

6 1.1. *As You Sow* is a non-profit corporation dedicated to, among other causes, the
7 protection of the environment, the promotion of human health, the improvement of worker and
8 consumer rights, environmental education, and corporate accountability. *As You Sow* is based
9 in Berkeley, California and is incorporated under the laws of the State of California.

10 1.2. Defendant currently produces, distributes, and/or sells spinach products
11 containing lead, including but not limited to, “Frontier Co-Op Spinach Flakes Certified
12 Organic” and “Frontier Co-Op Spinach Powder Certified Organic” (the “Covered Products”).
13 Defendant produces, distributes, and/or sells the Covered Products in retail stores or at physical
14 locations, via catalogues, and/or online through its own website, <https://frontiercoop.com> (the
15 “Frontier website”), and the internet retail seller Amazon.com, <https://www.amazon.com> (the
16 “Amazon website”).

17 1.3. *As You Sow* alleges in the Complaint that the Covered Products contain lead.
18 Lead is listed by the State of California as known to cause cancer and birth defects or other
19 reproductive harm under the Safe Drinking Water and Toxic Enforcement Act of 1986 (the
20 “Act”), California Health and Safety Code §25249.5 et seq. On August 19, 2020, *As You Sow*
21 sent a 60-day Notice of Violation (the “Notice”) to Defendant and to public enforcers as
22 required by Health and Safety Code section 25249.7, alleging that Defendant violated the Act
23 by failing to provide clear and reasonable warnings before exposing persons to lead contained
24 in the Covered Products.

25 1.4. The Parties have agreed to enter into this Consent Judgment to settle Plaintiff’s
26 claims with regard to the Covered Products and to avoid prolonged and costly litigation.

27 1.5. Nothing in this Consent Judgment is or shall be construed as an admission by
28 the Parties of any fact, conclusion of law, issue of law, or violation of law.

1 1.6. By executing and complying with this Consent Judgment, neither Party admits
2 the existence of any other statutory, common law, or equitable claim, requirement, or defense
3 relating to or arising from the production, sale, or distribution of the Covered Products in
4 California. Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
5 remedy, or defense that *As You Sow* and Defendant may have in any other, or in future, legal
6 proceedings unrelated to this action. This Paragraph shall not diminish or otherwise affect the
7 obligations, responsibilities, and duties of the Parties under this Consent Judgment.

8 **2. DEFINITIONS.**

9 2.1. “Effective Date” is the date *As You Sow* serves notice of entry of this Consent
10 Judgment.

11 2.2. “Compliance Date” is six months from the Effective Date.

12 2.3. “Covered Product(s)” are the products covered by this Consent Judgment, which
13 are identified in Paragraph 1.2.

14 2.4. “Lot” means all units of a Covered Product bearing the same lot number
15 and/or best-by or sell-by date.

16 2.5. “Retailer” or “Retail seller” is a person or business that sells or otherwise
17 provides consumer products directly to consumers by any means, including Amazon.com.

18 2.6. “Warning Statement” is the statement in content and form as shown in
19 Paragraph 4.2.

20 2.7. “Written Notice” is the written notice described in Title 27, Article 6, §
21 25600.2(b) of the California Code of Regulations, in the content and form as specified in Title
22 27, Article 6, § 25603 of the California Code of Regulations.

23 2.8. A “Serving” as used in this agreement shall be the labeled serving size for the
24 Covered Product(s). If the Covered Product is labeled as a food, its serving size shall be set
25 according to the federal Reference Amounts Customarily Consumed (RACC) category called
26 “Vegetables primarily used for garnish or flavor” (4 grams). If the covered Product is sold as a
27 supplement, its serving size shall be set according to the RACC category for dietary
28 supplements. A Covered Product sold as a supplement must also be labeled as a dietary

1 supplement; that is, the Covered Product label must include the term "dietary supplement" or
2 equivalent, pursuant to the Dietary Supplement Health and Education Act (DSHEA). Each
3 Covered Product sold as a supplement must either be labeled in quarter, half, or full teaspoon
4 increments or the product must include a spoon for the applicable serving size set according to
5 this Section. Should either RACC category be eliminated or modified in the future, Frontier
6 may use the closest analogous category, subject to thirty day's written notice to *As You Sow*.


7 **3. JURISDICTION AND VENUE.**

8 3.1. For purposes of this Consent Judgment only, the Parties stipulate that this Court
9 has jurisdiction over the allegations contained in the Complaint and personal jurisdiction over
10 Defendant; venue is proper in Alameda County; the Court has jurisdiction to enter this Consent
11 Judgment as a full and final resolution of all claims under the Act up through and including the
12 Effective Date which were, or could have been, asserted in this action based on the facts
13 alleged in Plaintiff's Notice and Complaint. The Court shall retain jurisdiction to enforce this
14 Consent Judgment.

15 **4. INJUNCTIVE RELIEF.**

16 4.1. Beginning no later than the Compliance Date, Defendant shall not produce,
17 distribute, and/or sell in California any Covered Product containing more than 0.5 micrograms
18 per Serving of lead without first providing the warning statement as specified in Paragraph 4.3,
19 pursuant to the methods specified in Paragraphs 4.4 - 4.9 below.

20 4.2. **Warning Statement.** Beginning no later than the Compliance Date, all Covered
21 Products produced, distributed, and/or sold by Defendant in the State of California shall use the
22 following "Warning Statement:"

23  **WARNING:** Consuming this product can expose you to chemicals including lead,
24 which is known to the State of California to cause birth defects or other reproductive
harm. For more information go to www.P65Warnings.ca.gov/food.

25
26 Consistent with Title 27, Article 6, § 25603 of the California Code of Regulations, in all
27 instances where the Warning Statement appears, the warning text shall be displayed in at least
28 the same type size as the surrounding text for other consumer information concerning the

1 Covered Products and accompanied by a symbol consisting of a black exclamation point in a
2 yellow equilateral triangle with a bold black outline (“Warning Symbol”). Consistent with
3 Title 27, Article 6, § 25607.1, where the warning is provided on the food product label, it must
4 be set off from other surrounding information, enclosed in a box. The Warning Symbol shall
5 be placed to the left of the text of the warning, in a size no smaller than the height of the word
6 “WARNING.”

7 4.3. **Internet Sales; Frontier Website.** Beginning no later than the Compliance
8 Date, Defendant shall ensure that, for all Covered Products sold to customers located in
9 California via the Frontier Website, Defendant shall prominently display the Warning
10 Statement set forth in Paragraph 4.2 to purchasers before completion of purchase(s). The
11 Warning Statement set forth in Paragraph 4.2 shall be displayed (a) using a clearly marked
12 hyperlink with the word “**WARNING**” on the product display page as set forth in 27 CCR §
13 25602(b); (b) on the product display page without requiring the purchaser to seek out the
14 warning by scrolling as set forth in 27 CCR § 25602(a)(2); or (c) by prominently displaying the
15 warning to the purchaser prior to completing the purchase as set forth in 27 CCR § 25602(b).

16 4.3.1. Defendants shall not include any information with the Warning Statement that
17 contradicts, obfuscates, or minimizes the meaning of the Warning Statement.

18 4.3.2 Any changes to the text, format, or placement of the statements that do not
19 comply with this Section 4 shall be made only after a written request for approval from
20 Plaintiff. Plaintiff shall respond to such request for approval within thirty days. Any dispute
21 arising with respect to whether Defendant’s changes comply with Section 4 of the Consent
22 Judgment shall be subject to the provisions of Section 8 of this Consent Judgment. Any agreed
23 upon modifications shall be made pursuant to paragraph 7 below.

24 4.4. **Internet Sales; Online Marketplace.** Beginning no later than the Effective
25 Date, Defendant shall, for all Covered Products sold to customers located in California via the
26 Amazon Website or any other internet marketplace or retail platform, provide the Warning
27 Statement in Paragraph 4.2, directly on the initial product display page or by hyperlink such
28

1 that the Warning Statement is visible on the initial product display screen without scrolling on a
2 full screen monitor or by providing the warning otherwise prior to purchase.

3 4.5. **Mail Order /Catalogue Sales:** If Defendant sells the Covered Products via mail
4 order to customers located in California, Defendant shall prominently display the Warning
5 Statement (set forth in Paragraph 4.2) in the mail order catalogue in compliance with California
6 Code of Regulations, Title 27, Article 6 § 25602(c), either on the same page as a Covered
7 Product is displayed, or on the same page upon which any of the Covered Products' prices are
8 listed, in the same type size as the surrounding, non-heading text. The Warning Statement shall
9 be added no later than in the first print run of the mail order catalogue on or after the Effective
10 Date.

11 4.6. **In-Store Retail Sales:** If Defendant sells the Covered Products via stores or
12 other physical outlets, Defendant shall prominently affix the Warning Statement (set forth in
13 Paragraph 4.2) on the Covered Product's label.

14 4.6.1. The Warning Statement shall be displayed with such conspicuousness, as
15 compared with other words, statements, designs, or devices on the individual labeling of the
16 Covered Products, so as to render the Warning Statement likely to be read and understood by
17 an ordinary individual under customary conditions of purchase and use.

18 4.7. **Other Sales:** Should Defendant become aware of any Retailer or retail Seller
19 selling the Covered Products through in-store retail outlets, mail catalogues, and/or the internet
20 without a Warning Statement compliant with Section 4.2, and 4.4.3 if applicable, Defendant
21 shall, in writing, require that the seller comply with all applicable requirements of this Section
22 4 within sixty (60) days of receiving notice.

23 5. **SETTLEMENT PAYMENTS.**

24 5.1. **Civil Penalty:** Within thirty (30) days of the Effective Date, Defendant shall pay
25 \$10,000 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). *As You Sow* shall remit seventy-five percent (75%)
27 of this amount to the State of California pursuant to Health and Safety Code section
28 25249.12(b).

1 **5.2. Additional Settlement Payment:** Within thirty (30) days of the Effective Date,
2 Defendant shall pay \$7,500 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 *As You Sow* for grants to
4 California 501(c)(3) non-profit organizations and by the *As You Sow* Environmental
5 Enforcement Fund. These funds shall be used to educate and/or reduce or remediate consumer
6 exposures to lead in California, particularly in consumer products, and to promote enforcement
7 of warnings about, or reductions of lead in, food products sold in California. In deciding among
8 grant proposals that contain the above required nexus, the *As You Sow* Board of Directors
9 (“Board”) also takes into consideration a number of important factors, including: (1) the
10 likelihood of lead reduction, prevention, remediation, or educational benefits to California
11 citizens from the proposal; (2) the budget requirements of the proposed grantee and the
12 alternate funding sources available to it for its project; and, (3) the Board’s assessment of the
13 proposed grantee’s ability to perform the funded activities. *As You Sow* shall ensure that all
14 funds will be disbursed and used in accordance with this paragraph, as well as *As You Sow*’s
15 mission statement, articles of incorporation, bylaws, and applicable state and federal laws and
16 regulations. *As You Sow* shall obtain reports from grantees and maintain adequate records to
17 document that the funds are spent on the activities described in this paragraph, and shall
18 provide to the Attorney General, within thirty days of any request, copies of all documentation
19 demonstrating how such funds have been spent.

20 **5.2.1.** The *As You Sow* Enforcement Fund works to ensure that consumers are
21 receiving the warnings required by law when products they purchase contain listed chemicals.
22 These warnings help consumers make informed decisions about the products they bring into
23 their homes and their families. The Enforcement fund supports research into and investigation
24 of products sold into California, research on toxic chemicals and their health impacts, testing of
25 products likely to contain listed chemicals, consumer education about listed chemicals, legal
26 enforcement actions, and work with companies to reformulate their products to end or
27 significantly reduce consumer exposure to listed chemicals where feasible.
28

1 5.2.2. No Party to this Consent Judgment, or independent counsel of record, or spouse
2 or dependent children thereof, has an economic interest in any individual or entity, besides
3 itself that will receive all or part of an Additional Settlement Payment. As a party receiving
4 ASP funds, *As You Sow*'s in-house counsel may receive some portion of the ASP funds through
5 their fixed salaries, which are not dependent on receipt of ASP funds.

6 5.3. Within thirty (30) days of the Effective Date, Defendant shall pay \$32,500 in the
7 form of a check made payable to *As You Sow*, as reimbursement for Plaintiff's attorneys' fees,
8 investigation costs, and other reasonable litigation costs and expenses.

9 **6. PRODUCT TESTING AND REFORMULATION.**

10 6.1. The provisions of this section apply only in the event Defendant reformulates
11 any of the Covered Products ("Reformulated Covered Product") to reduce consumer exposure
12 to less than 0.5 micrograms of lead per Serving and seeks to remove the Warning Statement
13 required under Paragraph 4.2. If Defendant provides a warning on a Covered Product, no
14 testing is required for such product and the paragraphs of Paragraph 6 are not applicable.

15 6.2. In the event Defendant reformulates any of the Covered Products by the
16 Compliance Date and/or relies on product testing to substantiate that the Warning Statement is
17 not required, as set forth in Paragraph 6.1, after the Compliance Date, testing for lead content
18 shall be conducted on at least three (3) samples of the Covered Product (in the form intended
19 for sale to the end-user) from two (2) different lots (or from the maximum number of lots
20 available for testing if there are fewer than two (2) lots available). Testing for lead content
21 shall be conducted using EPA Methods 6020, 6020a, AOAC 993.14, AOAC 2015.01, or an
22 equivalent methodology intended to quantify heavy metal content in foods that is accredited by
23 a national or international testing body, via inductively coupled plasma mass spectrometry
24 ("ICP-MS"). The sample preparation method must use a microwave- or heat-assisted acid
25 digestion method for the above methods and if appropriate for any other agreed on
26 methodology.

27 As of the Compliance Date, Defendant shall not produce any Covered Product for sale
28 in California unless they are Reformulated Covered Products pursuant to Section 6.1 above, or

1 unless Defendant provides the Warning Statement as specified in Paragraph 4.2, in compliance
2 with Paragraphs 4.3-4.7. Any dispute as to whether a Reformulated Covered Product complies
3 with Section 6 shall be subject to the provisions of Section 8 of this Agreement.

4 **7. MODIFICATION.**

5 7.1. This Consent Judgment may be modified by written agreement and stipulation
6 of the Parties, with 45 days notice to the Attorney General and by written approval of the
7 Court. If either Party seeks to modify the Consent Judgment, it shall provide written notice to
8 the other Party of the modification sought. The parties shall meet and confer within thirty (30)
9 days of receipt of such meet and confer notice. Neither Party shall unreasonably withhold
10 agreement to any modification requested by the other Party that is based on an amendment to
11 the Act or its supporting regulations or a change in the law. If despite their meet-and-confer
12 efforts, the Parties are unable to reach agreement on a stipulated modification, either Party may
13 file a noticed motion for modification with the Court for good cause shown, provided a copy of
14 the motion is also served on the other Party and the Office of the California Attorney General.

15 7.2. If the parties reach agreement as to modification of the Consent Judgment, such
16 stipulation shall be reported to the Office of the California Attorney General at least twenty-one
17 (21) days in advance of its submission to the Court for approval.

18 **8. DISPUTE RESOLUTION AND ENFORCEMENT.**

19 8.1. Only Plaintiff may attempt to enforce this Consent Judgment. If Plaintiff alleges
20 that Defendant has failed to meet an obligation set forth in this Consent Judgment, Plaintiff
21 shall inform Defendant in a reasonably prompt manner. As long as Defendant cures such
22 alleged violations within thirty (30) days of receipt of the written notice, then there shall be
23 deemed no material violation. For alleged violations that are not cured within thirty days,
24 Plaintiff shall have the right to bring an enforcement motion under this Consent Judgment.

25 8.2. A party who prevails in a contested enforcement motion arising with respect to
26 any of the provisions of this Consent Judgment is entitled to seek recovery of its reasonable
27 attorneys' fees and costs incurred in any such motion or proceeding pursuant to California
28 Code of Civil Procedure, including but not limited to § 1021.5, unless the unsuccessful party

1 has acted with substantial justification. For purposes of this Consent Judgment, the term
2 substantial justification shall carry the same meaning as used in the Civil Discovery Act of
3 1986, Code of Civil Procedure. Notwithstanding any language to the contrary in Section 6, or
4 otherwise herein, a Party may disclose test results received from the other Party in a court filing
5 in support of any motion to enforce this Consent Judgment provided that an opportunity to
6 make a motion for leave to seal such data has been provided to the other Party.

7 **9. CLAIMS COVERED AND RELEASE.**

8 9.1 This Consent Judgment is a full, final, and binding resolution between *As You*
9 *Sow*, on behalf of itself and in the public interest, as well as its parents, subsidiaries, officers,
10 directors, employees, agents, insurers, representatives, successors, and assigns (“*As You Sow*
11 *Releasees*”) and Defendant and its respective officers, directors, shareholders, employees,
12 agents, parent companies, and divisions, and the predecessors, successors, and assigns of any of
13 them (collectively, “Frontier Releasees”). No upstream grower to Defendant is protected by or
14 a party to this agreement except as to the Covered Products released herein.

15 9.2. Plaintiff hereby fully releases and discharges Frontier’s Releasees and
16 Defendant’s suppliers, and all entities to which Defendant directly or indirectly distributes or
17 sells Covered Products, including but not limited to distributors, wholesalers, customers,
18 retailers, franchisees, licensors, and licensees (“Additional Defendant Releasees”) from any and
19 all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees
20 (including fees of attorneys, experts, and others), costs, and expenses asserted, or that could
21 have been asserted, as to any alleged violation of the Act or its implementing regulations
22 arising from the failure to provide lead warnings required by the Act on Covered Products
23 produced prior to the Effective Date.

24 9.3. Defendant hereby releases *As You Sow* from, and waives any claims against *As*
25 *You Sow* and *As You Sow*’s Releasees for injunctive relief or damages, penalties, fines,
26 sanctions, mitigation, fees (including fees of attorneys, experts and others), costs, expenses, or
27 any other sums or causes incurred or claimed, or which could have been claimed, for matters
28 related to the Notice of Violation or Complaint.

1 Compliance with the terms of this Consent Judgment by Defendant shall
2 constitute compliance with the Act by Defendant, the Frontier Releasees and its Additional
3 Defendant Releasees with respect to any alleged failure to warn about lead in Covered Products
4 after the Effective Date.

5 **10. GOVERNING LAW AND CONSTRUCTION.**

6 This Consent Judgment shall be governed by, and construed in accordance with, the
7 laws of the State of California.

8 **11. COURT APPROVAL.**

9 11.1. Unless otherwise stipulated by the Parties, if the Court fails to approve and order
10 entry of the Consent Judgment without any alteration, deletion or amendment, this Consent
11 Judgment shall become null and void upon the election of either Party, and shall not be
12 introduced into evidence or otherwise used in any proceeding for any purpose.

13 11.2. Defendant agrees not to oppose Court approval of this Consent Judgment.

14 **12. APPLICATION OF CONSENT JUDGMENT.**

15 This Consent Judgment shall apply to and be binding upon As You Sow and Frontier
16 and their respective officers, directors, and shareholders and the predecessors, successors or
17 assigns of each of them.

18 **13. ENTIRE AGREEMENT.**

19 The Parties declare and represent that no promise, inducement or other agreement has
20 been made conferring any benefit upon any Party except those contained herein and that this
21 agreement contains the entire agreement pertaining to the subject matter hereof.

22 **14. DURATION OF CONSENT JUDGMENT.**

23 This Consent Judgment shall terminate five years from the Effective Date unless the
24 term of this Consent Judgment is extended. This Consent Judgment shall be extended only by a
25 stipulation of the Parties that is entered by the Court.

26 **15. ATTORNEYS' FEES.**

27

28

1 Except as specifically provided in this Consent Judgment, each Party shall bear its own
2 attorneys' fees and costs incurred in connection with the 60-day Notice of Violation and
3 Plaintiff's Complaint.

4 **16. COMPLIANCE WITH HEALTH AND SAFETY CODE § 25249.7.**

5 16.1. Plaintiff shall comply with the reporting requirements referred to in Health and
6 Safety Code section 25249.7(f) (and established in Title 11 of the California Code of
7 Regulations sections 3000-3008), and shall move for approval of this Consent Judgment
8 pursuant to the terms thereof.

9 16.2. The Parties shall use their best efforts to support entry of this Consent Judgment.
10 If the California Attorney General objects to any term in this Consent Judgment, the Parties
11 shall use their best efforts to resolve the concern in a timely manner, and if possible, prior to the
12 hearing on the motion to approve this Consent Judgment.

13 **17. PROVISION OF NOTICE.**

14 All correspondence and notices required by this Consent Judgment to the Parties shall
15 be sent to:

16 **Plaintiff As You Sow**

17 Danielle FugereAs You Sow
18 Main Post Office
19 P.O Box 751
Berkeley, CA 94701
Tel.: (510) 735-8158

20 **Defendant Frontier Cooperative**

21 Will Wagner
22 Arnold & Porter
Three Embarcadero Center | 10th Floor
San Francisco, CA 94111-4024
Telephone: (415) 471-3110
23 Attorney for Defendant Frontier Cooperative
24

25 **18. EXECUTION AND COUNTERPARTS.**

26 This Consent Judgment may be executed in one or more counterparts and by means of
27 facsimile or portable document format (.pdf), which taken together shall be deemed to
28 constitute one document.

19. **DRAFTING.**

The terms of this Consent Judgment have been reviewed by the respective counsel for each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn, and no provision of this Consent Judgment shall be construed against any Party, based on the fact that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated equally in the preparation and drafting of this Consent Judgment.

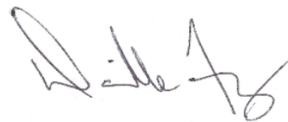
20. **AUTHORIZATION.**

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

APPROVED AS TO FORM AND CONTENT:

Dated: November 7, 2023

AS YOU SOW



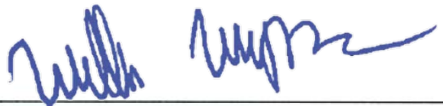
By _____

DANIELLE R. FUGERE
Attorney for Plaintiff
AS YOU SOW

1 Dated: 10/31, 2022

FRONTIER COOPERATIVE

2
3 By



WILLIS WAGNER
Arnold & Porter
Attorneys for Defendant
FRONTIER COOPERATIVE

6 **SO AGREED:**

8 Dated: 9/11, 2023

AS YOU SOW

10 By:

11 Name:  Andrew Behar

12 Title: CEO

13 Dated: 10/31/^{8D}₂₀₂₃, 2022

FRONTIER COOPERATIVE

14 By:

15 Name:  RAVIN DONALD

16 Title: EVP OF OPERATIONS