

## SETTLEMENT AGREEMENT

This Settlement Agreement is entered into by and between *As You Sow* and Project Juice, LLC (“Project Juice”) to resolve claims against Project Juice raised in the 60-day Notice of Violation sent by *As You Sow* to Project Juice, and public enforcers, pursuant to Health and Safety Code §25249.7. *As You Sow* and Project Juice (collectively, “the Parties”) agree to the terms and conditions set forth below.

### 1. **INTRODUCTION**

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

**1.2** Project Juice produces, manufactures, distributes, and/or sells in California pressed juices. Among these are two specific products known as Project Juice - Deep Green and Project Juice - Total Greens (collectively, “Covered Products”).

**1.3** On May 17, 2021, *As You Sow* sent a 60-day Notice of Violation (“Notice”) to Project Juice and to public enforcers, as required by Health and Safety Code section 25249.7, alleging that Project Juice violated the Safe Drinking Water and Toxic Enforcement Act of 1986 (“Toxic Enforcement Act”), California Health and Safety Code §§25249.5 *et seq.*, by failing to provide clear and reasonable warnings before allegedly exposing persons to cadmium contained in the Covered Products.

**1.4** Cadmium is a chemical listed by the State of California as known to cause birth defects or other reproductive harm, pursuant to the Toxic Enforcement Act.

**1.5** The Parties have agreed to enter into this Settlement Agreement to resolve claims and defenses with regard to the Covered Products and to avoid prolonged and costly litigation.

**1.6** Nothing in this Settlement Agreement is or shall be construed as an admission by any Party of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with the Settlement Agreement constitute or be construed by the Parties as any such admission.

**1.7** Nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy, or defense that either Party may have in any other, or in future, proceedings unrelated to the matters covered in this settlement. This paragraph shall not diminish or otherwise affect the obligation, responsibilities, and duties of the Parties under this Settlement Agreement.


## **2. EFFECTIVE DATE AND DURATION**

**2.1** The “Effective Date” shall be the date when all Parties have signed the Settlement Agreement.

**2.2** The “Termination” of this agreement shall be five years from the Effective Date.

## **3. WARNING REQUIREMENT**

**3.1** Beginning no later than the Effective Date, Project Juice shall not produce, distribute, and/or sell into California any Covered Product containing more than 4.1 micrograms per serving of cadmium without first providing the following warning statement (“Warning Statement”):

 **WARNING:** Consuming this product can expose you to chemicals including cadmium, 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](http://www.P65Warnings.ca.gov/food).

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

concerning the Covered Products and accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline (“Warning Symbol”). The Warning Symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING.”

**3.3 Internet Sales; Project Juice Website.** Beginning no later than the Effective Date, Project Juice shall ensure that, for the Covered Products containing more than 4.1 micrograms per Serving of cadmium and sold to customers located in California via the Project Juice Website, [www.projectjuice.com](http://www.projectjuice.com), Project Juice shall prominently display the Warning Statement to purchasers before completing their purchases, or provide the Warning Statement via a clearly marked hyperlink (“Warning Link”) using the words “**WARNING:** California Customers,” with the word “WARNING” in all capital letters and in bold print and the Warning Symbol to the left of the text, in a size no smaller than the height of the word “WARNING” by the methods set forth in paragraph 3.4 below.

**3.4** The Warning Statement or Warning Link shall be displayed in at least the same type size as the surrounding text providing other consumer information concerning the Covered Products, and placed either: (a) directly on the product display page, such that the Warning Statement or Warning Link is visible on the initial product display screen without clicking or scrolling; (b) on the “Your cart” or “Checkout” pages so as to be visible to the consumer without clicking or scrolling prior to checkout; or (c) in a dialogue box which appears when a California address for delivery is provided by the consumer, so long as the dialogue box appears and is visible without clicking or scrolling, prior to completion of the internet sale.

**3.5 Internet Sales; Online Marketplace.** Beginning no later than the Effective Date, Project Juice shall, for the Covered Products sold to customers located in California via the

Amazon Website, or any other internet retail platform, provide Amazon or such other retail platform(s): (1) information concerning the requirements of the Toxic Enforcement Act; and (2) the Warning Statement for placement in the primary product description on the retailer's website such that the Warning Statement or Warning Link is visible on the initial product display screen without scrolling.

**3.6 In-Store Retail Sales.** If Project Juice sells the Covered Products containing more than 4.1 micrograms per Serving of cadmium via stores or other physical outlets, it shall prominently affix the Warning Statement on the Covered Product's individual label, or on the outside packaging of products sold together as a package.

#### **4. PRODUCT REFORMULATION**

**4.1** The provisions of this section apply only in the event Project Juice reformulates any of the Covered Products ("Reformulated Covered Product") to reduce consumer exposure to less than 4.1 micrograms of cadmium per serving and seeks to remove the Warning Statement.

**4.2** In the event Project Juice reformulates any of the Covered Products, and relies on product testing to substantiate the removal of the Warning Statement, the company shall conduct testing for cadmium on at least three (3) samples of the Covered Product (in the form intended for sale to the end-user) from three (3) different lots (or from the maximum number of lots available for testing if there are fewer than three (3) lots available), on two (2) separate occasions. Testing for cadmium content shall be conducted using EPA Methods 6020, 6020a, via ICP-MS (inductively coupled plasma mass spectrometry ("ICP-MS")), following EPA protocols. The laboratory shall digest each sample with a level of detection of at least 4 parts per billion, and a reporting limit of at least 10 parts per billion. The sample preparation method must use a microwave- or heat-assisted acid digestion method.

**4.3** Testing for cadmium content shall be performed by an independent third-party laboratory certified for the analysis of heavy metals by the California Environmental Laboratory Accreditation Program (ELAP), the National Environmental Laboratory Accreditation Program (NELAP), or an independent third party laboratory registered with the United States Environmental Protection Agency or the United States Food & Drug Administration.

**4.4** In the event Project Juice reformulates any of the Covered Products and relies on product testing to substantiate the removal of the Warning Statement pursuant to this section, Project Juice shall notify *As You Sow* within thirty (30) days of such reformulation and provide all test results and documentation of testing for cadmium content in the Covered Products as described in Paragraph 4.2, including all accompanying quality assurance/quality control ("QA/QC") documentation. Testing pursuant to paragraph 4.2 shall be repeated annually for 3 years within 30 days of the anniversary of the reformulation, and Project Juice shall send to *As You Sow* a full copy of all test results obtained pursuant to this section within 30 days after Project Juice receives the results along with a certification that the Covered Products either: (a) do not require a warning or (b) will be sold with a compliant warning pursuant to Section 3. Any test results and documentation exchanged pursuant to this section shall be deemed and treated by *As You Sow* as confidential information.

**4.5** As of the Effective Date, Project Juice shall not produce, distribute, and/or sell in California any Covered Product unless they are Reformulated Covered Products, or unless Project Juice provides the Warning Statement as provided in Section 3 above. Any dispute as to whether a Reformulated Covered Product complies with this Section shall be subject to the provisions of Section 6 of this Agreement.

**5. SETTLEMENT PAYMENTS**

**5.1** Civil Penalty: Within 30 days of the Effective Date, Project Juice 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 remit seventy-five percent (75%) of this amount to the State of California pursuant to Health and Safety Code section 25249.12(b).

**5.2** Within 30 days of the Effective Date, Project Juice shall pay \$3,000, in the form of a check made payable to *As You Sow*, as reimbursement for *As You Sow*'s attorneys' fees, investigation costs, and other reasonable litigation costs and expenses.

**6. ENFORCEMENT OF SETTLEMENT AGREEMENT**

**6.1** Prior to the filing of any action related to this Settlement Agreement, in the event a dispute arises with respect to any of the provisions of this Settlement Agreement, a Party must provide to the other Party written notice of any alleged violation. The Parties shall meet and confer in good faith within 30 days after either Party receives written notice of an alleged violation of this Agreement to attempt to resolve the alleged violation informally. The Parties shall first attempt to resolve the matter as specified herein before either Party files an enforcement action.

**6.2** A party who prevails in a contested enforcement action arising with respect to any of the provisions of this Settlement Agreement is entitled to seek recovery of its reasonable attorneys' fees and costs incurred in any such motion or proceeding pursuant to California Code of Civil Procedure § 1021.5.

**7. CLAIMS COVERED AND RELEASE**

**7.1** This Settlement Agreement is a full, final, and binding resolution between, on the one hand, *As You Sow*, on behalf of itself and its parents, subsidiaries, officers, directors, employees, agents, insurers and representatives, and its successors and assigns (collectively

referred to as the “*As You Sow* Entities”) and, on the other hand, Project Juice and its officers, directors, shareholders, employees, agents, parent companies, and divisions, and the predecessors, successors, and assigns of any of them (collectively referred to as the “Releasees”) of any violation of the Toxic Enforcement Act based on failure to warn about any exposures to cadmium contained in the Covered Products produced, distributed or sold by Project Juice prior to the Effective Date.

**7.2** *As You Sow*, on behalf of itself and the *As You Sow* Entities, hereby waives all rights to institute or participate in (directly or indirectly) any form of legal action for failure to provide warnings for any exposures to cadmium in the Covered Products produced, distributed or sold by Project Juice prior to the Effective Date and up to the Termination of this Agreement.

**7.3** The Parties agree that Project Juice’s compliance with the terms of this Settlement Agreement shall be deemed to constitute compliance with the Toxic Enforcement Act by any Releasee regarding alleged exposures to cadmium in the Covered Products manufactured on and after the Effective Date through the Termination date of this Settlement Agreement.

**7.4** Project Juice, on behalf of itself and the Noticed Companies, hereby releases, and waives any claims against, the *As You Sow* Entities for injunctive relief or damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses, or any other actions, or sum incurred, or claims made or which could have been made for matters related to the Notice.

## **8. GOVERNING LAW AND CONSTRUCTION**

This Settlement Agreement shall be governed by, and construed in accordance with, the laws of the State of California.

## **9. MODIFICATION OF SETTLEMENT AGREEMENT**

This Settlement Agreement may be modified only upon written agreement of the Parties.

**10. ENTIRE AGREEMENT**

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.

**11. APPLICATION OF SETTLEMENT AGREEMENT**

This Settlement Agreement shall apply to and be binding upon the Parties hereto; their divisions, subdivisions and subsidiaries; their respective officers, directors, and shareholders; and the successors or assigns of any of them.

**12. ATTORNEYS' FEES**

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

**13. COMPLIANCE WITH HEALTH AND SAFETY CODE §25249.7**

*As You Sow* 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).

**14. PROVISION OF NOTICE**

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

*As You Sow*

As You Sow Foundation  
Attn: Chelsea Linsley, Staff Attorney  
Main Post Office, P.O. Box 751  
Berkeley, CA 94701  
Tel.: (510) 735-8158



Project Juice, LLC.

Project Juice, LLC  
Martin Orlick, Esq.  
Stuart K. Tubis, Esq. |  
Jeffer Mangels Butler & Mitchell LLP  
Two Embarcadero Center, 5th Floor  
San Francisco, California 94111

**15. EXECUTION AND COUNTERPARTS**

This Settlement 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.

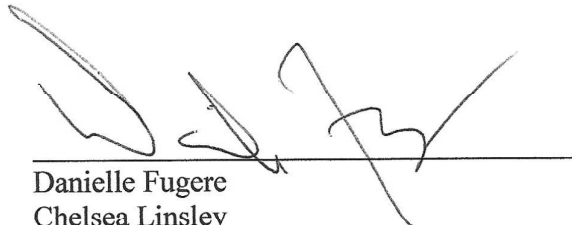
**16. AUTHORIZATION**

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

**APPROVED AS TO FORM:**


Dated: 2/22, 2022

By:

  
Danielle Fugere  
Chelsea Linsley  
Attorneys for AS YOU SOW

Dated: 2/24, 2022

By:

  
Stuart K. Tubis  
Jeffer Mangels Butler & Mitchell LLP  
Attorneys for PROJECT JUICE, LLC

**SO AGREED:**

Dated: February 24, 2022

**AS YOU SOW**

By: 

Name: Andrew Behar

Title: CEO

Dated: \_\_\_\_\_, 2022

**PROJECT JUICE, LLC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SO AGREED:**

Dated: \_\_\_\_\_, 2022

**AS YOU SOW**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated: Jan 21, 2022

**PROJECT JUICE, LLC**

By:  \_\_\_\_\_

Name: Michael Znecher \_\_\_\_\_

Title: General Counsel \_\_\_\_\_