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9 Attorneys for Plaintiff  
10 AS YOU SOW

11 SUPERIOR COURT OF CALIFORNIA  
12 IN AND FOR THE COUNTY OF SAN FRANCISCO

13 AS YOU SOW, a non-profit  
14 corporation,

15 Plaintiff

16 v.

17 H.B. FULLER COMPANY, and DOES 1  
18 through 1500,

19 Defendants.

Case No. 976169

STIPULATION FOR  
ENTRY OF JUDGMENT

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IT IS HEREBY STIPULATED, by and between plaintiff As  
You Sow and defendant H.B. Fuller Company, through their  
respective representatives, that judgment in the above-  
entitled action be entered in accordance with the terms of the  
settlement agreement between the parties, which is attached  
hereto as Exhibit A.

Dated: April 9, 1996

by: Mark Todres  
Mark Todres  
Attorneys for Plaintiff  
AS YOU SOW

Dated: April 2, 1996

by: Mary Lynn Jahnke  
Mary Lynn Jahnke  
Attorneys for Defendant  
H.B. FULLER COMPANY

# **Exhibit A**

## SETTLEMENT AGREEMENT

This Settlement Agreement (this "Agreement") is entered into by and between As You Sow, a California nonprofit corporation ("AYS") and H.B. FULLER COMPANY, a Minnesota corporation ("H.B. FULLER"), as of March \_\_, 1996 (the "Effective Date").

### **WHEREAS:**

AYS is a not-for-profit public interest foundation dedicated to promoting consumer and worker awareness, protecting the environment and improving human health;

H.B. FULLER is a company that manufactures and/or distributes various products in the State of California that contain the following chemicals listed pursuant to Proposition 65: Antimony Trioxide, Crystalline Silica, Dichloromethane, Epichlorohydrin, Formaldehyde, Nickel, Sodium o-Phenylphenate, Thiourea and Toluene;

The products that are subject to the Agreement are all Fuller products containing one or more of the above listed chemicals that are manufactured by Fuller (or by third parties under agreement with Fuller), on or before the date of this Agreement and which will continue to be so manufactured pursuant to substantially the same formulation following the date of this Agreement. More specifically, a list of the categories of products that contain one or more of the chemicals listed above is provided in Exhibit A (the "Products");

The Products have been distributed and sold by H.B. FULLER for use in California since at least February 27, 1988;

On November 4, 1994, AYS first served H.B. FULLER and all of the requisite public enforcement agencies with a document entitled "60-Day Notice" which provided H.B. FULLER and such public enforcers with notice that H.B. FULLER was allegedly in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products it sells in California expose users to Proposition 65-listed chemicals; and

On February 16, 1996, AYS filed a complaint entitled As You Sow v. H.B. FULLER COMPANY, et al. (No. 976169) in the San Francisco Superior Court, naming H.B. FULLER as a defendant and alleging violations of Business & Professions Code §17200 and Health & Safety Code §25249.6 on behalf of individuals in

California who allegedly are exposed to chemicals listed pursuant to Proposition 65 contained in certain H.B. FULLER products.

**NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

1. Product Labeling. H.B. FULLER shall continue to revise its current labels for the Products. H.B. FULLER shall use its best efforts to ensure that all Products are relabeled as quickly as possible, however, H.B. FULLER agrees that as of November 1, 1996, it shall not ship (or cause to be shipped) any of the Products for sale or use in or into the State of California unless each such Product contains the appropriate warning statement on its label as follows:

- 1.1. For Products containing a chemical listed by the State of California as known to cause birth defects or other reproductive harm:

**"WARNING: This product contains a chemical(s) known to the State of California to cause birth defects or other reproductive harm."**

- 1.2. For Products containing a chemical listed by the State of California as known to cause cancer:

**"WARNING: This product contains a chemical(s) known to the State of California to cause cancer."**

- 1.3. For Products containing any combination of chemicals listed by the State of California as known to cause cancer and known to cause birth defects or other reproductive harm:

**"WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm."**

Additionally, H.B. FULLER shall have the right, in its sole discretion, to identify in the text of the warning the specific Proposition 65 chemical(s) contained in a product. The warning statement shall be prominent and displayed with such conspicuousness, as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual. The parties agree that the sample label attached hereto as Exhibit B satisfies this requirement.

2. Current Production. In an effort to ensure that individuals receive Proposition 65 warnings during the period while H.B. FULLER produces labels in accordance with §1, H.B.

FULLER agrees that it will use its best efforts to produce interim warning stickers as quickly as possible, however, H.B. FULLER agrees that within sixty (60) days of the Effective Date, it shall produce warning stickers and make its best efforts to ensure that such warning stickers are affixed to any and all Products it manufactures, distributes, or sells for sale in the State of California. The stickers shall be printed in black ink on a white background, be at least 5 cm by 2 cm, and display the appropriate warning statement as set forth in ¶1. Exemplars of satisfactory warning stickers are attached hereto as Exhibit C.

**3. Warnings For Products in Commerce.** H.B. FULLER agrees that it will use its best efforts to provide warnings for products already in commerce as quickly as possible, however, H.B. FULLER agrees that within sixty (60) days of the Effective Date, it shall provide warning materials by ~~certified~~ mail to the customers that H.B. FULLER knows or has reason to believe sell or distribute the Products in California in an effort to ensure that users receive Proposition 65 warnings for Products that have not been labeled in accordance with Section 1. Such warning materials shall include a reasonably sufficient number of warning stickers (considering the size of each particular customer and the amount of Products each customer has purchased), a letter of instruction for the placement of the stickers, and a Notice and Acknowledgment postcard. A sample of these materials is attached hereto as Exhibit D.

**4. Penalties.** H.B. FULLER agrees to pay a civil penalty of \$30,000 pursuant to Health & Safety Code §25249.7(d) in two installments as follows:

- (a) The first installment of \$15,000 shall be due on or before June 1, 1996. The first installment shall be waived upon written certification that H.B. FULLER has allocated an additional \$30,000 above its 1996 budget for research and development into reformulation of products containing toluene.
- (b) The second installment of \$15,000 shall be due on or before January 1, 1997. The second installment shall be waived upon written certification that H.B. FULLER has allocated at least \$40,000 in its 1996 budget for conducting a reasonable number of customer seminars in California regarding the proper handling of Fuller products containing Proposition 65 chemicals.

Penalty monies shall be apportioned by AYS in accordance with Health & Safety Code §25192.

**5. Restitution, Fees and Costs.** H.B. FULLER agrees to pay \$42,500 to AYS upon execution of this Agreement. The



restitutionary component of this sum, made pursuant to Business & Professions Code §17203, shall be distributed by AYS to the following groups: The Santa Clara Center for Occupational Safety and Health (to assist in the Center's Asian Workers Health Project and campaign to phase out occupational exposure to chemicals linked to miscarriages); Baykeeper (to support continuing efforts to monitor the San Francisco Bay for toxic dumping and illegal discharges); and the AYS Proposition 65 Enforcement Fund (to support AYS' ongoing investigation and chemical monitoring programs. The fees and cost component of this sum will be used by AYS to help defray its investigation fees and costs, reasonable attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to H.B. FULLER's attention, litigating and negotiating a settlement in the public interest.

**6. AYS Release.** AYS, in consideration of the H.B. FULLER commitments and payments set forth herein, on its own behalf, its attorneys, employees, successors, assigns, predecessors, principals, agents, consultants and insurers, does hereby release and forever discharge H.B. FULLER and those retailers and distributors of the Products, as well as each of their successors, assigns, predecessors, officers, directors, affiliates, agents, attorneys, employees and consultants, of and from any and all rights, claims, actions, and causes of action of whatsoever kind, direct or indirect, rising out of or relating, directly or indirectly, to the Products' compliance with Proposition 65, Business & Profession Code §§17200 et seq., or any other statutory or common law claim, or arising from or relating to any facts or theories involving the Products' compliance with Proposition 65.

**7. H.B. FULLER Release.** H.B. FULLER, by this Agreement, waives all rights to institute any form of legal action against AYS, its members, officers, directors, attorneys and representatives (the "AYS Releasees") for all actions or statements made by the AYS Releasees in the course of seeking enforcement of Proposition 65 or Business & Profession Code §§17200 et seq. against H.B. FULLER.

**8. MSDS Revisions.** H.B. FULLER agrees to revise the Material Safety Data Sheet ("MSDS") for each of the Products covered by this Agreement to include the applicable warning language\* ~~set forth in Paragraph 1 of this Agreement.~~ H.B. FULLER agrees to use its best efforts to ensure that such MSDS revisions are undertaken as quickly as possible. However, H.B. FULLER agrees that final MSDSs incorporating the revised warning language for at least 40 percent of the products covered by this Agreement will be completed and distributed in the normal course of business before July 1, 1996, final MSDSs for an additional 30 percent of the products will be completed and distributed in the normal course of business before October 1, 1996, and final MSDSs

\*previously agreed upon by the parties, as set forth in Section XV of Exhibit E hereto.

incorporating the revised warning language for the remainder of the products covered by this Agreement will be completed and distributed in the normal course of business on or before January 1, 1997. An example of an acceptable MSDS is attached hereto as Exhibit E.

**9. Warranties and Representations.** The parties make the following representations and warranties:

9.1. H.B. FULLER represents and warrants as follows:

9.1.1. Each of the Products listed in Exhibit "A" contains one or more substances known to the state of California to cause cancer or birth defects or other reproductive toxicity, and to the knowledge of the undersigned, that H.B. FULLER has no analytical, risk assessment, or other data indicating that an exposure to any or all Products listed in Exhibit "A" poses "no significant risk" or will have "no observable effect," as each such standard is applicable and as each is defined under Health & Safety Code § 25249.10(c).

9.1.2. In the event that H.B. FULLER obtains analytical, risk assessment, or other data that shows that an exposure to any or all Products listed in Exhibit "A" poses "no significant risk" or will have "no observable effect," as each such standard is applicable and as each is defined under Health & Safety Code § 25249.10(c), H.B. FULLER shall provide AYS with 90 days prior written notice of its intent to limit or eliminate the warning provisions under Section 1 and shall provide AYS with all such supporting data. Within thirty (30) days of receipt of H.B. FULLER's exposure data, AYS shall provide H.B. FULLER with written notice of its desire to challenge the data (in the event that AYS chooses to make such a challenge), and AYS and H.B. FULLER shall negotiate in good faith to attempt to reach a settlement. In the event that no settlement is reached within thirty (30) days of mailing by AYS of such notice of challenge, AYS and H.B. FULLER agree to submit such challenge to binding arbitration, with an arbitrator acceptable to both parties. The prevailing party shall be entitled to reasonable attorney's fees and costs associated with such an arbitration. If AYS does not challenge H.B. FULLER's notice or the arbitrator determines that no warning is required for a particular Product or Products, H.B. FULLER shall no longer be required to provide the warnings described in Section 1 of this Agreement for those Products.

9.1.3. H.B. FULLER understands that the sales data provided to AYS by H.B. FULLER in letters dated May 25, 1995 and December 15, 1995 was a material factor upon which AYS has relied to determine the amount of penalties and restitution in Sections 4 and 5 of this agreement. The



information provided in the above-referenced letters is true and accurate, based on information provided to H.B. FULLER's counsel. In the event AYS finds that the information provided is materially inaccurate, this Agreement may be rescinded.

AYS will give H.B. FULLER prompt written notice of any intent to rescind this Agreement, and shall immediately return all monies paid to AYS and AYS's attorneys and agents by H.B. FULLER as a condition precedent to bringing any form of action against H.B. FULLER, including any lawsuit and any notice of violation of Proposition 65.

With regard to the question of whether any information was "materially inaccurate" for purposes of this settlement, AYS and H.B. FULLER shall first submit such question to a sole arbitrator located in San Francisco, California prior to the commencement of any proceedings of any kind against H.B. FULLER, including but not limited to a 60-day notice of potential violation of Proposition 65. In the event the arbitrator decides that the information was materially inaccurate, then the ensuing dispute shall be resolved by binding arbitration. In the event of such arbitration, all applicable statutes of limitation shall be deemed tolled for the period between the Effective Date of this Agreement and the date AYS notifies H.B. FULLER that it is rescinding this Agreement pursuant to this subpart.

In any instance where arbitration is required, the parties shall select a mutually agreeable arbitrator who may, but need not be, from the American Arbitration Association. In the event the parties cannot agree on an arbitrator, each side shall select an arbitrator, and these two arbitrators shall together make the final selection of arbitrator. All sales, product composition and other confidential information of H.B. FULLER submitted to the arbitrator or to AYS shall remain confidential and shall not be disclosed except as necessary to conduct and resolve the arbitration. The fees for such arbitration shall be equally borne by the parties.

**10. Specific Performance.** In the event that H.B. FULLER is found to be in breach of this agreement for failure to provide proper warning as described in Paragraph 1, AYS shall be entitled to specific performance of this agreement on the part of H.B. FULLER. This section shall in no way limit any other damages for breach to which AYS may be entitled.

**11. Stipulated Judgment.** The parties shall file a stipulated judgment to be approved pursuant to CCP §664.6 by the San Francisco Superior Court in accordance with the terms of this agreement.

**12. Severability.** In the event that any of the provisions of this Agreement are held by a court to be

unenforceable, the validity of the enforceable provisions shall not be adversely affected.

**13. Merger.** This Agreement contains the entire Agreement of the parties with respect to the subject matter hereof, and may be changed only by written agreement signed by both parties, or when required by law.

**14. Attorneys' Fees.** In the event that a dispute arises with respect to any provision(s) of this Agreement, the prevailing party shall be entitled to recover costs and reasonable attorneys' fees.

**15. Governing Law.** The terms of this Agreement shall be governed by the laws of the State of California.

**16. Notices.** All correspondence to AYS shall be mailed to:

Joshua M. King, Esq.  
Chanler & Somers  
1700 Montgomery Street  
Suite 110  
San Francisco, CA 94111

All correspondence to H.B. FULLER shall be mailed to:

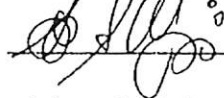
Mary Lynn Jahnke, Esq.  
Law Department  
H.B Fuller Company  
1200 County Road "E" West  
Arden Hills, MN 55112-3792

**17. No Admissions.** Nothing in this Agreement shall be construed as an admission by H.B. FULLER of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by H.B. FULLER of any fact, finding, conclusion, issue of law, or violation of law.

18. **Authorization.** The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood and agree to all of the terms and conditions of this Agreement.

AGREED TO:

AS YOU SAW



Lisa S. Wiggins  
Printed Name

General Counsel  
Title

AGREED TO:

H.B. FULLER COMPANY



John T. Ray  
Printed Name

Senior Vice-President  
Title

# **Exhibit A**

Exhibit A

1. Toluene
  - a. Joint sealant
  - b. Various types of adhesives
  - c. Construction mastic
  - d. Coating resins
  - e. Curing agent for epoxy coatings
  - f. Aircraft sealants
  - g. Duct sealants
  - h. Automotive sealants
2. Dichloromethane
  - a. Laminating adhesive and various other adhesives
3. Crystalline Silica
  - a. Vacuum bag tape
  - b. Epoxy resin grout
  - c. Curing agent for grout pipe bonding
  - d. Labeling adhesives
  - e. Automotive adhesives and sealants
  - f. Butyl tapes
  - g. Mastics and adhesives
  - h. Architectural coatings
4. Sodium o-Phenylphenate
  - a. Wood adhesives
  - b. Case sealing adhesives
  - c. Labeling adhesives
  - d. Tube winding adhesives
5. Thiourea
  - a. Animal glue
6. Antimony Trioxide
  - a. Laminating adhesives
  - b. Potting and core insert bonding
  - c. Core filler
  - d. Curing agent for core filler
  - e. Resin insert bonding
  - f. Epoxy adhesives
  - g. Vapor barrier coating
  - h. Bridging encapsulant



7. Formaldehyde
  - a. Bottle labeling adhesives
  - b. Paper laminating adhesives
  - c. Case sealing adhesives
8. Nickel
  - a. Powder coatings
  - b. Powder finishes
9. Epichlorohydrin
  - a. Various adhesives
  - b. Various caulks and sealants
  - c. Resins

## **Exhibit B**

## Exhibit B

The text of the warning shall be as follows:

**Warning:** This product contains a chemical(s) known to the State of California to cause cancer.

**Warning:** This product contains a chemical(s) known to the State of California to cause birth defects or other reproductive harm.

**Warning:** This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

The appearance of the actual warning label shall be as follows:

**WARNING:** This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

# **Exhibit C**

### Exhibit C

The following is the language to be included on the stickers described in paragraph 2 of the Settlement Agreement:

**Warning:** This product contains a chemical(s) known to the State of California to cause cancer.

**Warning:** This product contains a chemical(s) known to the State of California to cause birth defects or other reproductive harm.

**Warning:** This product contains chemical(s) known to the State of California to cause cancer and birth defects or other reproductive harm.

The actual sticker shall appear as follows:

**WARNING:** This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.



# **Exhibit D**

Exhibit D

**IMPORTANT NOTICE**

To: California H.B. Fuller Customer or Distributor

Re: Proposition 65 Warnings

This letter is to advise you that the types of products on the attached list expose users to the chemical(s) listed by the State of California as causing cancer or birth defects (or other reproductive harm). Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), individuals must be given clear and reasonable warnings before being exposed to this chemical(s).

H.B. Fuller believes that its warnings were clear and reasonable, as required by Proposition 65. However, recent actions to enforce Proposition 65 show that very specific warning text is to be used on the label.

Fuller has been labeling all products sold and distributed in California. However, there may still be in your inventory Fuller products that do not include the warning label required by certain California organizations. Proposition 65 chemicals sold in California must be labeled with the new warning immediately.

Enclosed is what we believe will be a sufficient number of stickers for you to apply to your unlabeled inventory and instruction for their application. We recommend that you apply these stickers **immediately**. The sticker must be affixed so that it is readily seen by the purchaser. **Thus, do not place the sticker on the bottom of the container, on packaging that could be discarded prior to sale, or where it could obstruct other safety and warning language.**

If additional stickers are required, please contact your Fuller supplier or representative. We understand that this requirement will cause some inconvenience in your operation; however, Proposition 65 warning requirements are affecting virtually every manufacturer, distributor, seller and user of products in our industry.

Thank you for your continuing support of H.B. Fuller Company products.

cc: California H.B. Fuller Sales Personnel