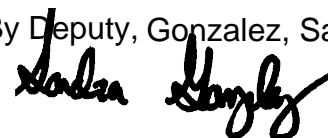


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Superior Court of California  
County of Santa Cruz  
September 18, 2020  
Alex Calvo, Clerk  
By Deputy, Gonzalez, Sandra

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DISTRICT ATTORNEY, COUNTY OF SANTA CRUZ  
2 EDWARD T. BROWNE, SBN 167638  
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3 701 Ocean Street, Suite 200  
Santa Cruz, California 95060  
4 Telephone: (831) 454-2547



5 ATTORNEYS FOR PLAINTIFF

6  
7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **COUNTY OF SANTA CRUZ**

10 THE PEOPLE OF THE STATE OF  
CALIFORNIA,

) **Civil Case No.:** 20CV01927  
) **D.A. Case No.:** 19-06-2668

11 Plaintiff,

)  
) **STIPULATED FINAL JUDGMENT AND**  
) **INJUNCTION.**

12 v.

13  
14 VERVE LLC,

15 Defendant(s).  
16

17 Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA, having filed its Complaint  
18 herein, and appearing through their attorneys, JEFFREY S. ROSELL, District Attorney of Santa  
19 Cruz County, by EDWARD T. BROWNE, Assistant District Attorney, VERVE LLC (hereinafter  
20 to be referred to as “VERVE” or “Defendant”), by and through its attorney NATHAN C.  
21 BENJAMIN,

22 With all parties having stipulated and consented to this Stipulated Final Judgment without  
23 the taking of any evidence regarding any issue of law or fact; and,

24 The Court having considered the pleadings, the Stipulation of the parties, and good cause  
25 appearing:

26 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

27 ///

28 ///

1 **JURISDICTION**

2 1. This Court has jurisdiction of the parties to this Judgment and of the subject  
3 matter in this action, and that the injunctive provisions of this Judgment are issued pursuant to  
4 Business and Professions Code §17203 and Health & Safety Code section 25249.5 et seq..

5 2. This action is based upon a 60-day notice letter, dated May 22, 2019, sent to  
6 Plaintiff alleging that Defendant had violated provisions of the California Safe Drinking Water  
7 and Toxic Enforcement Act, Health & Safety Code § 25249.5 et seq. (“Prop. 65”) by failing to  
8 give clear and reasonable warnings of the potential of exposure to Lead to those residents of  
9 California who drank Defendant’s product, KOMBUCHA, which was served at its locations  
10 from kegs as a draft beverage which used taps fabricated from brass.

11 **DEFINITIONS:**

12 3. The "Effective Date" of this Stipulated Final Judgment shall be the date on which  
13 the Stipulated Final Judgment is entered as a judgment by the Court.

14 4. As used in this Stipulated Final Judgment, the term "Covered Product” shall  
15 mean any KOMBUCHA product sold or distributed by VERVE.

16 5. As used in this Stipulated Final Judgment, the term "Distributes into the State of  
17 California" shall mean to directly ship a Covered Product into California for sale in California  
18 or to sell a Covered Product to a distributor that VERVE knows or should have known will sell  
19 the Covered Product in California.

20 6. The "Maximum Lead Level" is 1 microgram per liter or 1 part per billion (ppb).  
21 A Covered Product satisfies the Maximum Lead Level if it has a lead concentration of no more  
22 than 1 microgram per liter or 1 ppb.

23 **INJUNCTION:**

24 **APPLICABILITY**

25 7. The provisions of this Stipulated Final Judgment apply to the Defendant and its  
26 successors, subsidiaries, divisions, officers, directors, agents, employees, representatives, and  
27 all other persons and entities who act in concert with said Defendant who have actual or  
28 constructive notice of this Judgment.

1           8.       The requirements of this Stipulated Final Judgment shall apply to all  
2 Defendant's businesses located in the state of California, including but not limited to its store  
3 locations in the cities of Santa Cruz, Los Angeles, Menlo Park, Palo Alto, and Palo Alto,  
4 California.

5           9.       The provisions of this Injunction in Paragraphs 10 – 18 shall be in effect for a  
6 term of five (5) years which commences on the Effective Date of this Stipulated Final  
7 Judgment.

8                   **PROHIBITORY TERMS**

9           10.      Defendant is enjoined from selling, furnishing, giving away or causing to be  
10 sold, furnished or given away any beverage which contains ethyl alcohol of 0.5% or higher as  
11 defined by Business and Professions Code section 23004 to any person unless authorized by the  
12 State of California, Department of Alcoholic Beverage Control, pursuant to Business and  
13 Professions Code section 23300.

14           11.      Beginning on the Effective Date, at all times that VERVE employs ten or more  
15 employees as defined by Title 27 California Code of Regulations section 25102(h), any Covered  
16 Products that are manufactured and that VERVE thereafter "Distributes into the State of  
17 California" or directly sells in the State of California, shall meet the warning requirements of  
18 Paragraph 13.

19                   **MANDATORY TERMS:**

20           12.      Defendant shall not sell any Covered Product manufactured after the Effective  
21 Date unless (1) the Covered Product satisfies the Maximum Lead Level of lead; or (2)  
22 Defendant provides the warning set forth in Paragraphs 13-14 below.

23           13.      **CLEAR AND REASONABLE WARNINGS:** If VERVE is required to provide  
24 a warning pursuant to section 12, the following warning must be utilized ("Warning"):

25                   WARNING: Consuming Kombucha can expose you to chemicals including lead which  
26 is known to the State of California to cause cancer and birth defects or other  
reproductive harm. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

27           14.      The Warning shall contain a symbol consisting of a black exclamation point in a  
28 yellow equilateral triangle with a bold black outline as depicted below:



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4 15. Where the sign, label or shelf tag for the product is not printed using the color  
5 yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of  
6 the text of the warning, in a size no smaller than the height of the word "WARNING" in all  
7 capital letters and bold print.

8 16. The Warning shall be conspicuously and publicly displayed at all of Defendant's  
9 store locations that sell Covered Product at each point of display of the Covered Product. In  
10 addition, for any Covered Product sold over the internet, the Warning shall appear on the  
11 checkout page when a California delivery address is indicated for any purchase of any Covered  
12 Product. An asterisk or other identifying method must be utilized to identify which products on  
13 the checkout page are subject to the Warning.

14 17. The Warning shall be at least the same size as the largest of any other health or  
15 safety warnings also appearing on Defendant's website or store locations and the word  
16 "WARNING" shall be in all capital letters and in bold print. In no case shall the Warning  
17 appear in type size smaller than 6-point font. No other statements about Proposition 65 or lead  
18 may accompany the warning.

19 18. VERVE must display the above Warning with such conspicuousness to render  
20 the Warning likely to be read and understood by an ordinary individual under customary  
21 conditions of purchase or use of the product.

### **MONETARY PROVISIONS**

22  
23 19. Defendant shall pay the sum of \$25,435.00 as agreed civil penalties and  
24 miscellaneous costs. Said payment shall be made by certified checks or money orders payable  
25 to Santa Cruz County District Attorney, shall be made upon execution by the Defendant of the  
26 Stipulation for Entry of Final Judgment, and shall be distributed by the Santa Cruz County  
27 District Attorney as follows:  
28

1           A.     Pursuant to California Health & Safety Code sections 25249.7(b) and  
2 25249.12, Defendant shall pay a penalty of \$4,000.00. Seventy-five percent (75%) of these  
3 funds or \$3,000 shall be remitted to the California Office of Environmental Health Hazard  
4 Assessment ("OEHHA "), and the remaining twenty-five percent (25%) or \$1,000 shall be paid  
5 to plaintiff the Santa Cruz County District Attorney.

6           B.     Pursuant to Business and Professions Code section 17206, Defendant  
7 shall pay a civil penalty of \$11,000,00 to the Santa Cruz County District Attorney

8           C.     To the Superior Court of the State of California, County of Santa Cruz,  
9 the sum of \$435.00. Said payment shall be made by certified checks or money orders payable  
10 to Superior County of the State of California and due at the date of filing this Judgment.

11           D.     In addition to the amounts set forth in subdivisions A,B, and C above,  
12 Verve shall pay an additional civil penalty of \$10,0000 pursuant to Business and Professions  
13 Code section 17206, This additional civil penalty shall be STAYED for a period of 5 years,  
14 beginning on the Effective Date of this Stipulated Final Judgment, and on the condition that no  
15 violation or breach of the injunctive provisions of this Stipulated Final Judgment occurs. If no  
16 violation or breach occurs during the five (5) year period, the stay will become permanent. This  
17 stayed \$10,000.00 additional civil penalty pursuant to Business and Professions Code section  
18 17206 shall be immediately due and owed if any violation or breach of this Stipulated  
19 Judgment occurs. If a violation or breach of this Stipulated Final Judgment occurs, the District  
20 Attorney for the County of Santa Cruz County may file a regularly noticed civil motion  
21 pursuant to California Code of Civil Procedure section 1005(b) to lift the stay on the penalties  
22 set forth in this Paragraph.

23           **METHOD OF PAYMENT**

24           20.     These civil penalties and costs as stated above in Paragraphs 15.A., and 15.B . in  
25 the sum of \$15,000.00, shall be paid as follows:

26           A.     To the California Office of Environmental Health Hazard Assessment  
27 ("OEHHA "), the sum of \$3,000.00 to be paid on or before November 15, 2020.

28

1           B.     To Santa Cruz County District Attorney, the sum of \$12,000.00 to be  
2 paid in twelve (12) equal installments of no less than \$1,000 per month with the first  
3 installment to be paid on or before the date of January 1, 2021, and continuing on the first day  
4 of each and every following month until paid in full.

5           21.    Default: Defendants shall be deemed in default of the terms set forth in this  
6 Stipulated Final Judgment if a monthly payment of the civil penalties and costs is not received  
7 within thirty (30) days of the day which the payment is due.

8           22.    Interest: Statutory interest shall accrue on the unpaid balance of the civil  
9 penalties and costs only upon default.

10          23.    Acceleration: Upon default by the Defendants, any and all unpaid balances of  
11 the civil penalties and costs shall become due and owing to the Plaintiff.

12          24.    All payments pursuant to provisions 19. A, B, and D shall made payable to the  
13 Consumer Fraud and Environmental Protection Unit, Santa Cruz County District Attorney, 701  
14 Ocean Street, Suite 200, Santa Cruz, CA 95060, and to be delivered to EDWARD T.  
15 BROWNE, Assistant District Attorney, to be distributed upon payment in full by the  
16 Defendants

17          25.    Each party shall bear all other costs of suit incurred in this case.

18          26.    All forms of notice of service required to be made upon any Defendant for the  
19 purpose of enforcement of the terms of this Judgment shall be deemed to have been made when  
20 such service has been made by United States mail as follows:

21                   VERVE LLC  
22                   Attention: MICHAEL EYRE  
23                   104 Bronson Street, Suite 19, Santa Cruz, CA 95062


24          27.    Jurisdiction is retained for the purpose of enabling any party to this Judgment to  
25 apply to the Court at any time for such further orders or directions as may be necessary or  
26 appropriate for the carrying out of this Judgment, for the modification or termination of any of  
27 the injunctive provisions herein, for the enforcement of compliance herewith, and for  
28 punishment of violations hereof.

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**IT IS SO ORDERED:**

Signed: 9/18/2020 03:08 PM

DATED: September 18, 2020

  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT  
Connolly, Rebecca