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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL  
HEALTH, a non-profit corporation,

Plaintiff,

v.

GT'S LIVING FOODS, LLC; MILLENNIUM  
PRODUCTS, INC.; ALBERTSON'S LLC; O  
ORGANICS LLC; LUCERNE FOODS INC.;  
SAFEWAY INC.; HUMM KOMBUCHA,  
LLC; INC.; and DOES 1 through 100,  
inclusive,

Defendants.

Case No. RG-19-047748

**[PROPOSED] CONSENT JUDGMENT AS  
TO HOLY KOMBUCHA, INC.**

1       **1.       INTRODUCTION**

2           1.1       The Parties to this Consent Judgment are the Center for Environmental Health, a  
3 California non-profit corporation (“CEH”) and Holy Kombucha, Inc. (“Settling Defendant”). The  
4 Parties enter into this Consent Judgment to settle certain claims asserted by CEH against Settling  
5 Defendant as set forth in the operative complaint (“Complaint”) in the above-captioned matter.  
6 This Consent Judgment covers Kombucha drinks sold by Settling Defendant other than those sold  
7 as alcoholic beverages that have been or will be sold or offered for sale to California consumers  
8 (“Covered Products”).

9           1.2       On October 30, 2019, CEH provided a 60-day Notice of Violation under Proposition  
10 65 to the California Attorney General, the District Attorneys of every county in California, the City  
11 Attorneys of every California city with a population greater than 750,000 and Settling Defendant,  
12 alleging that, by selling the Covered Products, Settling Defendant violated Proposition 65 by  
13 exposing persons to ethyl alcohol in alcoholic beverages and alcoholic beverages (collectively,  
14 “Alcohol”) without first providing a clear and reasonable Proposition 65 warning.

15           1.3       Settling Defendant is a corporation or other business entity that manufactures,  
16 distributes, sells or offers for sale Covered Products that are sold or offered for sale or has done so  
17 in the past.

18           1.4       On December 20, 2019, CEH filed the Complaint in the above-captioned matter. On  
19 February 26, 2020, CEH filed an amendment to the Complaint naming Settling Defendant as a  
20 defendant.

21           1.5       For purposes of this Consent Judgment only, CEH and Settling Defendant (the  
22 “Parties”) stipulate that this Court has jurisdiction over the allegations of violations contained in the  
23 Complaint and personal jurisdiction over the Settling Defendant as to the acts alleged in the  
24 Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to  
25 enter this Consent Judgment as a full and final resolution of all claims which were or could have  
26 been raised in the Complaint based on the facts alleged therein with respect to Covered Products  
27 manufactured, distributed, and/or sold by Settling Defendant.  
28

1           1.6     Nothing in this Consent Judgment is or shall be construed as an admission by the  
2 Parties of any fact, conclusion of law, issue of law or violation of law, rule or regulation, nor shall  
3 compliance with the Consent Judgment constitute or be construed as an admission by the Parties of  
4 any fact, conclusion of law, issue of law, or violation of law, rule or regulation. Nothing in this  
5 Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense the  
6 Parties may have in any other pending or future legal or administrative proceedings. This Consent  
7 Judgment is the product of negotiation and compromise and is accepted by the Parties solely for  
8 purposes of settling, compromising, and resolving issues disputed in this Action.

9           **2.     DEFINITIONS**

10           2.1     The “Complaint” means the operative complaint in the above-captioned matter.

11           2.2     “Covered Products” means kombucha drinks manufactured, distributed or sold by  
12 Settling Defendant other than kombucha drinks that are sold as alcoholic beverages.

13           2.3     “Effective Date” means the date on which notice of entry of this Consent Judgment  
14 by the Court is served upon Settling Defendant.

15           2.4     “Expiration Date” means the best-by or sell-by date of a Covered Product.

16           2.5     “Compliance Level” means less than 0.5% Alcohol by volume.

17           2.6     “Type” means flavor. To the extent different flavors of Covered Products contain  
18 identical ingredients, such products will be treated as the same Type for purposes of this Consent  
19 Judgment.

20           **3.     INJUNCTIVE RELIEF**

21           3.1     **Alcohol Content of Covered Products.** As of the Effective Date, Settling  
22 Defendant shall not sell or offer for sale directly to consumers or to a reseller a Covered Product  
23 manufactured on or after the Effective Date to California consumers if that Covered Product  
24 contains more than 0.5% Alcohol by volume as measured at any time between the production date  
25 and the expiration date of the Covered Product according to the results of the testing described in  
26 Section 3.2 below. Settling Defendant shall not be deemed to be in violation of this injunction if a  
27 reseller, who received a Covered Product prior to the Effective Date, resells a Covered Product after  
28 the Effective Date.

1           3.2     **Testing.** In order to ensure that the Covered Products meet the Compliance Level,  
2 Settling Defendant shall conduct random testing of Covered Products from its production facility  
3 and take the follow-up actions described in this section (“Validation Testing”).

4                     3.2.1     Covered Products To Be Tested. For a period of three (3) years  
5 following the date this judgment is entered by the Court, Validation Testing shall be performed on a  
6 quarterly basis for each Type of Covered Product Settling Defendant manufactures or arranges to be  
7 manufactured on or after the Effective Date; such Validation Testing shall be performed on samples  
8 drawn randomly from single production lots of each Type of Covered Product manufactured during  
9 that quarter. Three (3) samples of each Type of Covered Product shall be tested at the beginning  
10 and end of the Covered Product’s shelf-life, extending from a Covered Product’s manufacturing  
11 date to its expiration or “best-by” date (the “Testing Period”).

12                     3.2.2     Methods of Testing. Settling Defendant shall conduct Alcohol by  
13 Volume Validation Testing pursuant to one of the following methods: (1) Ethanol Analysis by  
14 Headspace Gas Chromatography with Mass Spectroscopy Detection; or (2) Ethanol Analysis by  
15 Headspace Gas Chromatography with Flame Ionization Detector (AOAC 2016.12). Additionally,  
16 Settling Defendant may use any other methodology for alcohol testing of kombucha products that is  
17 accepted for First Action by the AOAC in the future.

18                     3.2.3     Laboratories Conducting Validation Testing. Any Validation Testing  
19 shall be performed by an independent, accredited third party laboratory.

20                     3.2.4     Covered Products That Exceed Compliance Level. If the Validation  
21 Testing result indicates that any of the tests for a type of a Covered Product exceeds the Compliance  
22 Level, Settling Defendant shall, within ten days, select another production lot of the same Type and  
23 sample three additional bottles for testing (“Secondary Testing”). Should this Secondary Testing  
24 show an exceedance of a Compliance Level, Settling Defendant shall, within 10 days of the  
25 exceedance: (a) notify CEH as set forth in Section 8; and (b) undertake a root cause analysis of the  
26 formulation, production and storage of that Type of Covered Product to determine the cause of the  
27 exceedance, and shall institute appropriate corrective measures to avoid future exceedances as  
28

1 measured by the quarterly Validation Testing. Settling Defendant must provide CEH with notice  
2 regarding the corrective measures taken.

3           3.2.5       Records. The testing reports and results of the Validation Testing and  
4 Secondary Testing performed pursuant to this Consent Judgment shall be retained by Settling  
5 Defendant for four (4) years and made available to CEH upon reasonable request, but no more than  
6 twice per year.

7       **4.       ENFORCEMENT**

8           4.1       CEH may, by motion or application for an order to show cause before the Superior  
9 Court of the County of Alameda, enforce the terms and conditions contained in this Consent  
10 Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3  
11 above, CEH shall provide Settling Defendant with a Notice of Violation setting forth the basis for  
12 the alleged violation. The Parties shall then meet and confer regarding the basis for CEH's  
13 anticipated motion or application in an attempt to resolve it informally. Should such attempts at  
14 meeting and conferring fail, CEH may file its enforcement motion or application. In ruling on any  
15 motion to enforce the terms of this section, the Court may, in addition to ordering compliance with  
16 the terms of this Judgment, employ such remedies as necessary to ensure compliance with  
17 Proposition 65 including, but not limited to, requiring Settling Defendant to provide warnings.  
18 Should CEH prevail on any motion or application to enforce a material violation of this Consent  
19 Judgment under this Section, CEH shall be entitled to its reasonable attorneys' fees and costs  
20 incurred as a result of such motion or application. Should Settling Defendant prevail on any motion  
21 or application under this Section, Settling Defendant may be awarded their reasonable attorneys'  
22 fees and costs as a result of such motion or application upon a finding by the court that CEH's  
23 prosecution of the motion or application was not in good faith.

24       **5.       PAYMENTS**

25           5.1       **Payments by Settling Defendant.** Within fifteen (15) calendar days of the Effective  
26 Date, Settling Defendant shall pay the total sum of Thirty-five Thousand Dollars and no cents  
27 \$35,000.00 as a settlement payment as further set forth in this Section. Any payment by Settling  
28 Defendant shall be deemed to be timely and not subject to a late charge and/or other penalty if (1)

1 postmarked (if sent by the United States Postal Service) or (2) delivered to an overnight carrier (e.g.  
2 Fed Ex), on or before the deadline set forth in this paragraph.

3           **5.2 Allocation of Payments.** The total settlement amount for Settling Defendant shall  
4 be paid in five (5) separate checks in the amounts specified below and delivered as set forth below.  
5 Any failure by Settling Defendant to comply with the payment terms herein shall be subject to a  
6 joint and several stipulated late fee to be paid by Settling Defendant in the amount of \$100 for each  
7 day the full payment is not received after the applicable payment due date set forth in Section 5.1.  
8 The late fees required under this Section shall be recoverable, together with reasonable attorneys’  
9 fees, in an enforcement proceeding brought pursuant to Section 4 of this Consent Judgment. The  
10 funds paid by Settling Defendant shall be allocated as set forth below between the following  
11 categories and made payable as follows:

12                       5.2.1     \$4,670 as a civil penalty pursuant to Health & Safety Code § 25249.7(b).  
13 The civil penalty payment shall be apportioned in accordance with Health & Safety Code §  
14 25249.12 (25% to CEH and 75% to the State of California’s Office of Environmental Health  
15 Hazard Assessment (“OEHHA”)). Accordingly, the OEHHA portion of the civil penalty payment  
16 for \$3,510 shall be made payable to OEHHA and associated with taxpayer identification number  
17 68-0284486. This payment shall be delivered as follows:

18                       For United States Postal Service Delivery:

19                                       Attn: Mike Gyurics  
20                                       Fiscal Operations Branch Chief  
21                                       Office of Environmental Health Hazard Assessment  
22                                       P.O. Box 4010, MS #19B  
23                                       Sacramento, CA 95812-4010

24                       For Non-United States Postal Service Delivery:

25                                       Attn: Mike Gyurics  
26                                       Fiscal Operations Branch Chief  
27                                       Office of Environmental Health Hazard Assessment  
28                                       1001 I Street, MS #19B  
  Sacramento, CA 95814

                                  The CEH portion of the civil penalty payment for \$1,160 shall be made  
payable to the Center for Environmental Health and associated with taxpayer identification number

1 94-3251981. This payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San  
2 Francisco, CA 94117.

3 5.2.2 \$3,480 as an Additional Settlement Payment (“ASP”) to CEH pursuant  
4 to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3204. CEH  
5 intends to place these funds in CEH’s Toxics in Food Fund, which is used to support CEH programs  
6 and activities that seek to educate the public about alcohol and other toxic chemicals in food, to  
7 work with the food industry and agriculture interests to reduce exposure to alcohol and other toxic  
8 chemicals in food, and to thereby reduce the public health impacts and risks of exposure to  
9 acrylamide and other toxic chemicals in food sold in California. CEH shall obtain and maintain  
10 adequate records to document that ASPs are spent on these activities and CEH agrees to provide  
11 such documentation to the Attorney General within thirty (30) days of any request from the  
12 Attorney General. The payment pursuant to this Section shall be made payable to the Center for  
13 Environmental Health and associated with taxpayer identification number 94-3251981. This  
14 payment shall be delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA  
15 94117.

16 5.2.3 \$26,850 as a reimbursement of a portion of CEH’s reasonable attorneys’  
17 fees and costs. The attorneys’ fees and cost reimbursement shall be made in two separate checks as  
18 follows: (a) \$22,600 payable to the Lexington Law Group and associated with taxpayer  
19 identification number 94-3317175; and (b) \$4,250 payable to the Center for Environmental Health  
20 and associated with taxpayer identification number 94-3251981. Both of these payments shall be  
21 delivered to Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117.

22 5.2.4 To summarize, Settling Defendant shall deliver checks made out to the  
23 payees and in the amounts set forth below:

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25 <b>Payee</b>	<b>Type</b>	<b>Amount</b>	<b>Deliver To</b>
26 OEHHA	Penalty	\$3,510	OEHHA per Section 27 5.2.1
28 Center For Environmental Health	Penalty	\$1,160	LLG

Center For Environmental Health	ASP	\$3,480	LLG
Lexington Law Group	Fee and Cost	\$22,600	LLG
Center For Environmental Health	Fee and Cost	\$4,250	LLG

5.2.5 Notwithstanding the provisions of the Enforcement of Judgments Law and Code of Civil Procedure § 780.160, in the event that Settling Defendant do not comply fully with its payment obligations under this Section 5, in addition to any other enforcement mechanism available to CEH, CEH may seek an order requiring Settling Defendant to submit a debtor’s examination in the Alameda County Superior Court. In the event that Settling Defendant fails to submit to any such debtor’s examination ordered by the Court, CEH may seek an order holding Settling Defendant in contempt of Court.

**6. MODIFICATION AND DISPUTE RESOLUTION**

6.1 **Modification.** This Consent Judgment may be modified from time to time by express written agreement of the Parties, with the approval of the Court, or by an order of this Court upon motion and in accordance with law.

6.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with all affected Parties prior to filing a motion to modify the Consent Judgment.

**7. CLAIMS COVERED AND RELEASE**

7.1 This Consent Judgment is a full, final and binding resolution between CEH on behalf of itself and the public interest and Settling Defendant and Settling Defendant’s parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, agents, shareholders, successors, assigns, and attorneys (“Defendant Releasees”), and all entities to which Settling Defendant directly or indirectly distribute or sell Covered Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, licensors and licensees (“Downstream Defendant Releasees”), of any violation of Proposition 65 based on failure to warn



1 about alleged exposure to Alcohol contained in Covered Products that were sold, distributed or  
2 offered for sale by Settling Defendant prior to the Effective Date.

3 7.2 CEH, for itself, its agents, successors and assigns, releases, waives, and forever  
4 discharges any and all claims against Settling Defendant, Defendant Releasees, and Downstream  
5 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or common  
6 law claims that have been or could have been asserted by CEH regarding a violation of Proposition  
7 65 and/or the failure to warn about exposure to Alcohol arising in connection with Covered  
8 Products manufactured by or for Settling Defendant prior to the Effective Date .

9 7.3 Compliance with the terms of this Consent Judgment by Settling Defendant shall  
10 constitute compliance with Proposition 65 by Settling Defendant, their Defendant Releasees and  
11 their Downstream Defendant Releasees with respect to any alleged failure to warn about Alcohol in  
12 Covered Products manufactured, distributed or sold by Settling Defendant after the Effective Date  
13 for as long as Settling Defendant continue testing in accordance with Section 3.2.

14 **8. PROVISION OF NOTICE**

15 8.1 When CEH is entitled to receive any notice under this Consent Judgment, the notice  
16 shall be sent by first class and electronic mail to:

17 Mark N. Todzo  
18 Lexington Law Group  
19 503 Divisadero Street  
20 San Francisco, CA 94117  
21 mtodzo@lexlawgroup.com

22 8.2 When Settling Defendant are entitled to receive any notice under this Consent  
23 Judgment, the notice shall be sent by first class and electronic mail to:

24 Ellen Kaufman Wolf  
25 Wolf Wallenstein, PC  
26 11400 W. Olympic Blvd., Ste. 700  
27 Los Angeles, CA 90064  
28 ewolf@wolfwallenstein.com

Any Party may modify the person and address to whom the notice is to be sent by  
sending the other Party notice by first class and electronic mail.

1       **9.       COURT APPROVAL**

2           9.1       This Consent Judgment shall become effective as a contract upon the date signed by  
3       CEH and Settling Defendant, whichever is later, provided however, that CEH shall also prepare and  
4       file a Motion for Approval of this Consent Judgment and Settling Defendant shall support approval  
5       of such Motion.

6           9.2       If this Consent Judgment is not entered by the Court, it shall be of no force or effect  
7       and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

8       **10.       GOVERNING LAW AND CONSTRUCTION**

9           10.1       The terms of this Consent Judgment shall be governed by the laws of the State of  
10       California.

11       **11.       ATTORNEYS' FEES**

12           11.1       A Party who unsuccessfully brings or contests an action arising out of this Consent  
13       Judgment shall be required to pay the prevailing Party's reasonable attorneys' fees and costs.

14           11.2       Nothing in this Section 11 shall preclude a party from seeking an award of sanctions  
15       pursuant to law.

16       **12.       ENTIRE AGREEMENT**

17           12.1       This Consent Judgment contains the sole and entire agreement and understanding of  
18       the Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
19       negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and  
20       therein. There are no warranties, representations, or other agreements between the Parties except as  
21       expressly set forth herein. No representations, oral or otherwise, express or implied, other than  
22       those specifically referred to in this Consent Judgment have been made by any Party hereto. No  
23       other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed  
24       to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced  
25       herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the  
26       extent that they are expressly incorporated herein. No supplementation, modification, waiver, or  
27       termination of this Consent Judgment shall be binding unless executed in writing by the Party to be  
28       bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or

1 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such  
2 waiver constitute a continuing waiver.

3 **13. SUBMISSION OF REPORTS AND DATA TO CEH**

4 13.1 For any report or information that Settling Defendant submit to CEH pursuant to this  
5 Consent Judgment, Settling Defendant may make such a submission subject to the terms of a  
6 protective order

7 **14. RETENTION OF JURISDICTION**

8 14.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent  
9 Judgment.

10 **15. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

11 15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
12 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute  
13 the Consent Judgment on behalf of the Party represented and legally to bind that Party.

14 **16. NO EFFECT ON OTHER SETTLEMENTS**

15 16.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
16 against an entity that is not the Settling Defendant (or a Defendant Releasee) on terms that are  
17 different than those contained in this Consent Judgment.

18 **17. EXECUTION IN COUNTERPARTS**

19 17.1 The stipulations to this Consent Judgment may be executed in counterparts and by  
20 means of facsimile or portable document format (pdf), which taken together shall be deemed to  
21 constitute one document.

22 **IT IS SO ORDERED, ADJUDGED, AND**  
23 **DECREED:**

24  
25  
26 Dated: \_\_\_\_\_, 2020

27 \_\_\_\_\_  
28 Judge of the Superior Court of the State of California

1 **IT IS SO STIPULATED:**

2  
3 Dated: April 23, ~~2020~~ 2021

**CENTER FOR ENVIRONMENTAL HEALTH**

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Michael Green  
Chief Executive Officer

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11 Dated: April 9, ~~2020~~--2021

**HOLY KOMBUCHA, INC.**

12  
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14 

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Signature

15 **Leandro Bienati**

16 

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Printed Name

17 **CEO**

18 

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Title