

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) between Environmental Research Center, Inc. (“ERC”) and Harmless Harvest, Inc. (“Harmless Harvest”) is effective on the date on which it is fully executed (“Effective Date”). ERC and Harmless Harvest are referred to individually as a “Party” and collectively as the “Parties.” The Parties agree as follows:

1. This matter arises out of the Notice of Violation of California Health & Safety Code §25249.5, *et seq.* (also known as “Proposition 65”) that ERC served on Harmless Harvest on August 12, 2021 (the “Notice”) with regard to certain products including Harmless Harvest Energizing Coconut Water Infused with Tea Black Tea, UPC 8 50003 02356 4 (“Covered Product”).
2. The Parties enter into this Agreement in order to fully resolve all claims, demands, and allegations regarding the Notice and for the purpose of avoiding prolonged litigation. Harmless Harvest denies that any of the products identified in the Notice violate or have ever violated Proposition 65. Nothing in this Agreement shall be construed as an admission of the Parties of any fact, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by the Parties of any fact, issue of law or violation of law. Nothing in this Agreement or any document referred to shall be construed as giving rise to any presumption or inference of admission or concession by the Parties as to any fault, wrongdoing or liability. This Section shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Agreement.

3. **DISCONTINUATION OF THE COVERED PRODUCT**

In consideration of the following covenants and conditions contained in this Agreement, the Parties have provided the releases as set forth in Section 6 below:

- 3.1 Harmless Harvest contends, and based on this contention, ERC acknowledges, that in 2021 Harmless Harvest discontinued the Covered Product due to poor performance in the market. Harmless Harvest asserts that the last shipment of the Covered Product was February 22, 2022 and that the Covered Product has a three month shelf-life when refrigerated.
- 3.2 Harmless Harvest represents that it has a good faith belief that there is no Covered Product available for sale at any retailer at this time.
- 3.3 Harmless Harvest agrees that it will not manufacture the Covered Product in the future and the Covered Product shall remain discontinued. Harmless Harvest further agrees that it shall be permanently enjoined from distributing or directly selling the Covered Product to or in the State of California after the Effective Date.

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4. Settlement Payment. Harmless Harvest shall make a total payment of \$45,000.00 (“Total Settlement Amount”) by wire transfer to ERC’s account within ten (10) business days of the Effective Date (“Due Date”), for which ERC will give Harmless Harvest the necessary account information. The Total Settlement Amount shall be allocated as follows:

a. \$5,000.00 shall be considered a civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$3,750.00) of the civil penalty to the Office of Environmental Health Hazard Assessment (“OEHHA”) for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code §25249.12(c). ERC will retain the remaining 25% (\$1,250.00) of the civil penalty.

b. \$1,704.08 shall be considered a reimbursement to ERC for its costs incurred as a result of bringing this matter to Harmless Harvest attention and negotiating a settlement.

c. \$13,700.00 shall be distributed to Michael Freund as reimbursement of ERC’s attorney fees, while \$24,595.92 shall be distributed to ERC’s in-house legal fees.

d. In the event that Harmless Harvest fails to remit the Total Settlement Amount owed under Section 4 of this Agreement on or before the Due Date, Harmless Harvest shall be deemed to be in material breach of its obligations under this Agreement. ERC shall provide written notice of the delinquency to Harmless Harvest via electronic mail to both Harmless Harvest and counsel for Harmless Harvest. If Harmless Harvest fails to deliver the Total Settlement Amount within five (5) business days from the written notice, the Total Settlement Amount shall become immediately due and payable and accrue interest at the statutory judgment interest rate provided in the Code of Civil Procedure section 685.010. Additionally, Harmless Harvest agrees to pay ERC’s reasonable attorneys’ fees and costs for any efforts to collect the payment due under this Agreement.

5. Except as expressly set forth in Section 4, the Parties shall bear their own costs, expenses, and attorneys’ fees related to the Notice.

6. Binding Effect; Claims Covered and Released

6.1. This Agreement is a full, final, and binding resolution between ERC, on behalf of itself, and Harmless Harvest and its respective members, officers, directors, shareholders, owners, employees, agents, parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers (not including private label customers of Harmless Harvest), distributors, wholesalers, retailers, and all other upstream and downstream entities in the distribution chain of the Covered Product, and the predecessors, successors, and assigns of any of them (collectively, “Released Parties”).

6.2 ERC, in the public interest, releases the Released Parties from any and all claims for violations of Proposition 65 up through and including the Effective Date based on exposure

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to lead from the Covered Product as set forth in the Notice. ERC, on behalf of itself only, hereby fully releases and discharges the Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have been asserted from the handling, use, or consumption of the Covered Product, as to any alleged violation of Proposition 65 or its implementing regulations arising from the failure to provide Proposition 65 warnings on the Covered Product regarding lead up to and including the Effective Date.

6.3 ERC, on its own behalf only, and Harmless Harvest on its own behalf only, further waive and release any and all claims they may have against each other for all actions or statements made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notice up through and including the Effective Date, provided, however, that nothing in Section 6 shall affect or limit any Party's right to seek to enforce the terms of this Agreement.

6.4 It is possible that other claims not known to the Parties, arising out of the facts alleged in the Notice or relating to the Covered Product will develop or be discovered. ERC, on behalf of itself only, and Harmless Harvest, on behalf of itself only, acknowledge that this Agreement is expressly intended to cover and include all such claims up through and including the Effective Date, including all rights of action therefore. ERC and Harmless Harvest acknowledge that the claims released in Sections 6.2 and 6.3 above may include unknown claims, and the Parties nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

ERC, on behalf of itself only, and Harmless Harvest, on behalf of itself only, acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

6.5 Compliance with the terms of this Agreement shall be deemed to constitute compliance with Proposition 65 by any of the Released Parties regarding alleged exposures to lead in the Covered Product.

6.6 Nothing in this Agreement is intended to apply to any occupational or environmental exposures arising under Proposition 65, nor shall it apply to any of Harmless Harvest's products other than the Covered Product.

7. If, after the Effective Date, Harmless Harvest breaches this Settlement Agreement by

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manufacturing the Covered Product, distributing the Covered Product into the State of California or directly selling the Covered Product in the State of California in violation of Proposition 65, ERC may seek to recover additional civil penalties under Proposition 65 and attorneys' fees and costs incurred by ERC for the enforcement of the breach of this Settlement Agreement from Harmless Harvest.

8. All notices required to be given to either Party to this Agreement by the other shall be in writing and sent to the following agents listed below via overnight delivery service or electronic mail.

FOR ENVIRONMENTAL RESEARCH CENTER, INC.:

Chris Heptinstall, Executive Director, Environmental Research Center
3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
Tel: (619) 500-3090
Email: chris.heptinstall@erc501c3.org

With a copy to:
Michael Freund
Michael Freund & Associates
1919 Addison Street, Suite 105
Berkeley, CA 94704
Ph: (510) 540-1992
Email: freund1@aol.com

FOR HARMLESS HARVEST, INC.:

Ben Mand, CEO
Harmless Harvest, Inc.
1814 Franklin St., Suite 1000
Oakland, CA 94612
Email: ben@harmlessharvest.com

With a copy to:
Peg Carew Toledo
Arnold & Porter Kaye Scholer LLP
Three Embarcadero Center | 10th Floor
San Francisco, CA 94111
Ph: (415) 471-3110
Email: peg.toledo@arnoldporter.com

9. After executing this Agreement, ERC will submit to the California Attorney General a

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Report of Settlement. In addition, ERC will provide to the California Attorney General a signed copy of this Agreement.

10. This Agreement contains the entire agreement between the Parties with regard to settlement of the Notice, and supersedes all prior or contemporaneous agreements or understandings, written or oral, with regard to the Notice as set forth in this Agreement. This Agreement may be amended or modified in whole or in part at any time only by an agreement in writing executed by the Parties.

11. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective owners, principals, shareholders, members, managers, officers, directors, employees, agents, successors, and assigns.

12. No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any of the Parties, based upon the fact that one of the Parties and/or one of the Parties' attorneys prepared and/or drafted all or any portion of this Agreement. It is conclusively presumed that the Parties participated equally in the preparation and drafting of this Agreement.

13. If any provision, term, or section of this Agreement is found to be invalid, illegal, or unenforceable, then all remaining provisions, terms, or sections shall continue in full force and effect and remain binding on the Parties. If any provision, term, or section of this Agreement is determined to be unenforceable, then such provision, term, or section may be modified so that the unenforceable provision, term, or section is enforceable to the greatest extent possible.

14. This Agreement shall be deemed to have been entered into in the State of California and governed and interpreted by the laws of the State of California, regardless of the physical locations of the individuals executing this Agreement at the time of execution.

15. The Parties acknowledge by signing this Agreement that they have a right to consult an attorney and that they have either consulted their attorney(s) with respect to the Notice and the terms and conditions of this Agreement or have made the decision not to consult with an attorney regarding the Notice and the terms and conditions of this Agreement. The Parties further acknowledge that they fully understand this Agreement and the effect of signing and executing this Agreement.

16. Any legal action to enforce this Agreement shall be brought in the county of Alameda of the State of California. ERC shall be entitled to recover its reasonable attorneys' fees and costs that are reasonable and necessary to enforce the Agreement.

17. This Agreement may be signed in counterparts, and each counterpart, as well as any facsimile, e-mail, copy of this Agreement, or any other counterpart, shall be deemed to be an original.

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18. Each of the individuals who execute this Agreement represents and warrants they have the authority to execute this document and bind the respective Parties to the terms and conditions of this Agreement, and have read, understand, and agree to all the terms and conditions in this Agreement.

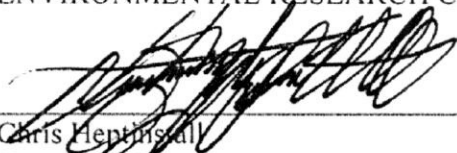
DATED: Oct 5, 2022

HARMLESS HARVEST, INC.

By: *Ben Mand*
Ben Mand (Oct 5, 2022 18:33 GMT+1)
Ben Mand
Chief Executive Officer

DATED: 9/28/22

ENVIRONMENTAL RESEARCH CENTER, INC.

By: 
Chris Henthall
Executive Director

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