

## SETTLEMENT AGREEMENT AND RELEASE

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

1. This matter arises out of the Notices of Violation of California Health & Safety Code §25249.5, *et seq.* (also known as "Proposition 65") that ERC served on Blue Zones on February 8, 2022 and April 26, 2022 (the "Notices") with regard to the following products identified below (referred to as the "Covered Products"):

- **Blue Zones Nicoya Yummy Blue Nutritional Cacao & Purple Corn Powdered Drink**
- **Blue Zones Nicoya Nutritional Maya Nut Drink Powder Healthy Blue**

2. The Parties enter into this Agreement in order to fully resolve all claims, demands, and allegations regarding the Notices and for the purpose of avoiding prolonged litigation. 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. **INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

3.1 Beginning on the Effective Date, Blue Zones shall be permanently enjoined from manufacturing for sale in the State of California, "Distributing into the State of California," or directly selling in the State of California, any Covered Product which exposes a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day and/or a "Daily Cadmium Exposure Level" of more than 4.1 micrograms of cadmium per day unless it meets the warning requirements under Section 3.2.

3.1.2 As used in this Agreement, the term "Distributing into the State of California" shall mean to directly ship a Covered Product into California for sale in California or to sell a Covered Product to a distributor that Blue Zones knows or has reason to know will sell the Covered Product in California.

3.1.3 For purposes of this Agreement, the "Daily Lead Exposure Level," shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of recommended daily servings appearing on the label),

Initials

BRL 

SETTLEMENT AGREEMENT AND RELEASE

1

which equals micrograms of lead exposure per day. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one.

**3.1.4** For purposes of this Agreement, the "Daily Cadmium Exposure Level," shall be measured in micrograms, and shall be calculated using the following formula: micrograms of cadmium per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of recommended daily servings appearing on the label), which equals micrograms of cadmium exposure per day. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one.

### **3.2 Clear and Reasonable Warnings**

If Blue Zones is required to provide a warning pursuant to Section 3.1, one of the following warnings must be utilized ("Warning"):

#### **OPTION 1:**

**WARNING:** Consuming this product can expose you to chemicals including [lead][and][cadmium] which is [are] 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).

#### **OPTION 2:**



**WARNING:** [Cancer and] Reproductive Harm - [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

(a) Blue Zones shall use the phrase "cancer and" in the Warning only if the "Daily Lead Exposure Level" is greater than 15 micrograms of lead as determined pursuant to the quality control methodology set forth in Section 3.4.

(b) For the Option 2 Warning, a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline shall be placed to the left of the text of the Warning, in a size no smaller than the height of the word "WARNING." Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol may be printed in black and white. Additionally, the entire Warning must be in a type size no smaller than the largest type size used for other consumer information on the product. In no case shall the Warning appear in a type size smaller than 6-point type.

(c) The Warning shall be securely affixed to or printed upon the label of any Covered Product, and it must be set off from other surrounding information and enclosed in a box. In addition, for any Covered Product sold over the internet, Blue Zones agrees to either (1) place the Warning on the specific webpage listing the Covered Product for sale; (2) place the Warning on the same page as the order confirmation for the Covered Product (e.g., review cart URL); or

Initials

*BRL CBH*

SETTLEMENT AGREEMENT AND RELEASE

(3) prominently display the Warning to the purchaser during the checkout process before sale can be completed when a California delivery address is indicated for any purchase of any Covered Product. An asterisk or other identifying method must be utilized to identify which product on the checkout page is subject to the Warning. The Warning may be provided with a conspicuous hyperlink stating **“WARNING”** in all capital and bold letters so long as the hyperlink goes directly to a page prominently displaying the Warning without content that detracts from the Warning. For purposes of this Agreement, a warning is not prominently displayed if the purchaser must search for it in the general content of the website.

(d) The Warning shall be at least the same size as the largest of any other health or safety warnings also appearing on the website or on the label and the word **“WARNING”** shall be in all capital letters and in bold print. No statements intended to or likely to have the effect of diminishing the impact of, or reducing the clarity of, the Warning on the average lay person shall accompany the Warning. Further, no statements may accompany the Warning that state or imply that the source of the listed chemical has an impact on or results in a less harmful effect of the listed chemical.

(e) Blue Zones must display the above Warning with such conspicuousness, as compared with other words, statements or designs on the label, or on its website, as applicable, to render the Warning likely to be read and understood by an ordinary individual under customary conditions of purchase or use of the product.

(f) For purposes of this Agreement, the term “label” means a display of written, printed or graphic material that is printed on or affixed to a Covered Product or its immediate container or wrapper.

(g) Notwithstanding the above, as an alternative to placing warnings as set forth herein, Blue Zones has the option of ceasing California sales of the Covered Products, and this cessation of sales will be considered compliance with this Agreement. Blue Zones can accomplish this cessation of sales by making the Covered Products unavailable for online sale, either directly by Blue Zones or indirectly through an authorized or accepted third-party seller, for shipment to an address in California. The Parties understand and agree that under this option some Covered Products that may require warnings under this section may be featured for sale on the Blue Zones website without warnings, but sales to California consumers in these instances will not be possible.

### 3.3 Conforming Covered Products

A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure Level” is no greater than 0.5 micrograms of lead per day and/or “Daily Cadmium Exposure Level” is no greater than 4.1 micrograms of cadmium per day as determined by the exposure methodology set forth in Section 3.1.2 and the quality control methodology described in Section 3.4.

///

Initials

BRL CEO

SETTLEMENT AGREEMENT AND RELEASE

### 3.4 Reformulation Testing and Quality Control Methodology

3.4.1 (a) The testing requirements of this Section 3.4 do not apply to any Covered Product for which Blue Zones has provided a Warning in compliance with Section 3.2 continuously and uninterrupted after the Effective Date. In the event Blue Zones ceases to provide the Warning in compliance with Section 3.2, Blue Zones shall be required to comply with the testing requirements of this Section beginning immediately after the date the Warning ceases to be provided or one year after the Effective Date, whichever date is later.

(b) If ERC believes that Blue Zones is not providing the Warning continuously and uninterrupted as required by Section 3.4.1(a), it may make a written request to Blue Zones for information establishing compliance with this Section 3.4. Specifically, upon receipt of such a written ERC request, Blue Zones shall produce to ERC: (1) the testing information and documentation it maintains pursuant to Section 3.4 and (2) any additional testing or materials that Blue Zones believes supports its position of compliance. If Blue Zones believes the failure to provide the Warning was unintentional, due to mistake or error, it may alternatively provide the information, documents and/or materials as outlined in subsection (c). If Blue Zones submits that it is no longer required to comply with warnings on the Covered Products pursuant to this provision, then it shall respond to ERC's written request with the documents and materials it claims support this position.

(c) In the unlikely situation where warnings may fail to appear on Covered Products, and Blue Zones contends that the failure to provide the warnings was unintentional, due to mistake or error, Blue Zones may, as an alternative to providing the information, documents and/or materials referenced in subsection (b)(1) and (2), respond to the subsection (b) request by summarizing and providing supporting documents and materials: (i) confirming the date range when Blue Zones submits it believes warnings may not have appeared in certain instances, and for which Product(s); (ii) supporting Blue Zones' investigation and position that the lack of warnings was unintentional and caused by mistake or error; and (iii) summarizing how and when the oversight was corrected and warnings resumed as soon as practicable.

(d) Blue Zones shall provide to ERC the information, documents and/or materials required pursuant to Section 3.4.1 (b) and (c) within 45-days of ERC's written request, or by some later date as agreed upon in writing by the Parties. After such information, documents and/or materials are provided, if they do not resolve the issue, ERC shall initiate a written meet and confer process to facilitate the Parties discussing the matter and exchanging additional evidence informally. The Parties agree to this meet and confer obligation governing subsections (b) and (c) in the hope of resolving any questions or issues as soon as practicable and cost effectively. This meet and confer obligation shall be in person, or via electronic means (such as zoom), or via telephone, and shall take place within thirty (30) days of the date that ERC received from Blue Zones the information identified in Section 3.4.1(b) and/or (c). Within thirty (30) days after such meeting, Blue Zones shall provide to ERC in writing the evidence and factors supporting its position, including anything agreed to in the meet and confer communications. The Parties shall continue to meet and confer during this thirty-day period, if necessary, in an effort to resolve any possible disputes. Should it become necessary,

Initials

BRL 

SETTLEMENT AGREEMENT AND RELEASE

the Parties may agree in writing to different deadlines for the meet-and-confer period.

**3.4.2** Subject to Section 3.4.1, beginning within one year of the Effective Date, for any Covered Product that Blue Zones intends to sell in California without warnings, is directly selling to consumers in California, or is "Distributing into the State of California," Blue Zones shall arrange for lead and cadmium testing of that Covered Product. The testing shall take place at least once a year beginning within the one year after the Effective Date for a minimum of three (3) consecutive years by arranging for testing of three (3) randomly selected samples of the Covered Product, in the form intended for sale to the end-user. If tests conducted pursuant to this Section demonstrate that no Warning is required for the Covered Product(s) during each of the three (3) consecutive years, then the testing requirements of this Section will no longer be required as to the Covered Product(s). However, if during the three-year testing period, Blue Zones changes ingredient suppliers for a Covered Product and/or reformulates a Covered Product, Blue Zones shall test that Covered Product annually for at least two (2) consecutive years after such change is made.

**3.4.3** For purposes of measuring the "Daily Lead Exposure Level" and/or the "Daily Cadmium Exposure Level," the highest lead and/or cadmium detection result of the three (3) randomly selected samples of the Covered Products will be controlling.

**3.4.4** All testing pursuant to this Agreement shall be performed using a laboratory method that complies with the performance and quality control factors appropriate for the method used, including limit of detection and limit of quantification, sensitivity, accuracy, and precision that meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS") achieving a limit of quantification of less than or equal to 0.005 mg/kg.

**3.4.5** All testing pursuant to this Agreement shall be performed by an independent third-party laboratory certified by the California Environmental Laboratory Accreditation Program or an independent third-party laboratory that is registered with the United States Food & Drug Administration.

**3.4.6** Nothing in this Agreement shall limit Blue Zones' ability to conduct, or require that others conduct, additional testing of the Covered Products, including the raw materials used in their manufacture.

**3.4.7** Within thirty (30) days of ERC's written request, Blue Zones shall deliver lab reports obtained pursuant to Section 3.4, and related documentation, to ERC. Blue Zones shall retain all such lab reports and related documentation for a period of three years from the date of each test. Any request by ERC for lab reports and related documentation shall be made prior to the expiration of the three-year time-period identified in this section 3.4.7.

///  
///  
///

Initials

BRL CB

SETTLEMENT AGREEMENT AND RELEASE



#### 4. PAYMENT

4.1 Blue Zones shall make a total payment of \$47,500.00 ("Total Settlement Amount") by wire transfer to ERC's account within thirty (30) days of the Effective Date ("Due Date"), for which ERC will give Blue Zones the necessary account information. The Total Settlement Amount shall be allocated as follows:

(a) \$19,264.00 shall be considered a civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$14,448.00) 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% (\$4,816.00) of the civil penalty.

(b) \$1,173.39 shall be considered a reimbursement to ERC for its costs incurred as a result of bringing this matter to Blue Zones' attention and negotiating a settlement.

(c) \$5,400.00 shall be distributed to Michael Freund as reimbursement of ERC's attorney fees, while \$21,662.61 shall be distributed to ERC's in-house legal fees.

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

#### 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 Blue Zones and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers, franchisees, licensees, customers (not including private label customers of Blue Zones), distributors, wholesalers, retailers, and all other upstream and downstream entities in the distribution chain of any Covered Products, and the predecessors, successors, and assigns of any of them (collectively, "Released Parties").

6.2 ERC, acting in the public interest, releases the Released Parties from any and all claims for violations of Proposition 65 up through the Effective Date based on exposure to lead and/or cadmium from the Covered Products as set forth in the Notices of Violation. ERC, on behalf of itself only, hereby fully releases and discharges the Released Parties from any and all

Initials

BRL 

SETTLEMENT AGREEMENT AND RELEASE

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 Products, as to any alleged violation of Proposition 65 or its implementing regulations arising from the failure to provide Proposition 65 warnings on the Covered Products regarding lead and/or cadmium up to and including the Effective Date.

6.3 ERC, on its own behalf only, and Blue Zones 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 Notices 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 Notices, and relating to the Covered Products, will develop or be discovered. ERC, on behalf of itself only, and Blue Zones, 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 Blue Zones 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:

(i) 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 Blue Zones, 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 and/or cadmium in the Covered Products as set forth in the Notices.

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 Blue Zones' products other than the Covered Products.

7. Nothing herein shall be construed as diminishing Blue Zones' continuing obligations to comply with Proposition 65.

8. All notices required to be given to either Party to this Agreement by the other shall be in

Initials

BRL CEO

SETTLEMENT AGREEMENT AND RELEASE

writing and sent to the following agents listed below via first-class mail, or via electronic mail where required. Courtesy copies of notices sent via first-class mail may also be sent via email.

**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](mailto:chris.heptinstall@erc501c3.org)

With a copy to:

Michael Freund  
Michael Freund & Associates  
1919 Addison Street, Suite 105  
Berkeley, CA 94704  
Ph: (510) 499-1992  
Email: [freund1@aol.com](mailto:freund1@aol.com)

**FOR BLUE ZONES, LLC:**

April Lunde  
Vice President and General Counsel  
1600 Utica Avenue, Suite 900  
St. Louis Park, MN 55416  
Ph: (952) 220-8515  
Email: [april@bluezones.com](mailto:april@bluezones.com)

With a copy to:

Dennis Raglin  
Steptoe & Johnson LLP  
633 West Fifth Street, Suite 1900  
Los Angeles, CA 90071  
Ph: (213) 439-9433  
Email: [draglin@steptoe.com](mailto:draglin@steptoe.com)

9. After executing this Agreement, ERC will submit to the California Attorney General a Report of Settlement. In addition, ERC will provide to the California Attorney General a signed copy of this Agreement. The Parties acknowledge and agree that they will cooperate in good faith with the California Attorney General, should it request additional information regarding the Notices, the settlement, and this Agreement.

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

Initials

BRL 

SETTLEMENT AGREEMENT AND RELEASE



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 Notices and the terms and conditions of this Agreement or have made the decision not to consult with an attorney regarding the Notices 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, according to proof, that a court determines are necessary and required to enforce the Agreement pursuant to California Code of Civil Procedure section 1021.5.

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.

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.

*Signatures on Following Page*

Initials BRL 

SETTLEMENT AGREEMENT AND RELEASE

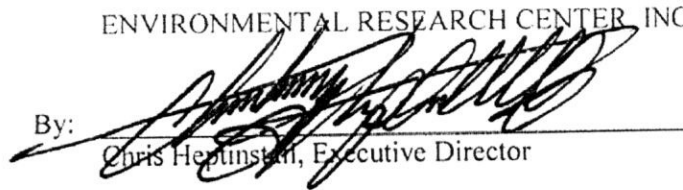
DATED: 05 / 16 / 2022

BLUE ZONES, LLC

By: Ben R Leedle Jr  
Name: Ben Leedle  
Title: Chief Executive Officer

DATED: 5/17/22

ENVIRONMENTAL RESEARCH CENTER, INC.

By:   
Chris Hepinstall, Executive Director

Initials BRL CH

SETTLEMENT AGREEMENT AND RELEASE