

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

**1.1 The Parties.** This Settlement Agreement is entered into by and between Charles Jamison (“Jamison”) and Kiva Manufacturing, Inc. (“Kiva”). Together, Jamison and Kiva are collectively referred to as the “Parties.” Jamison is an individual that resides in the State of California, and seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Jamison alleges Kiva is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6, et seq. (“Proposition 65”).

**1.2 General Allegations.** Jamison alleges Kiva has exposed individuals in the State of California to THC from its sales of certain products without first providing consumers of the product with a clear and reasonable health hazard exposure warning as required pursuant to Proposition 65. THC is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

**1.3 Product Description.** The products covered by this Settlement Agreement are all Lost Farm Gummies (the “Products”) that have been imported, distributed, offered for sale and/or sold in California by Kiva.

**1.4 Notice of Violation.** On March 4, 2022, Jamison served Kiva and various public enforcement agencies with a document entitled “Amended Notice of Violation of California Health & Safety Code § 25249.6, et seq.” (the “Notice”). The Notice provided Kiva and such others, including public enforcers, with notice that alleged that Kiva was in violation of California Health & Safety Code § 25249.6, for failing to warn California consumers and customers that use of the Products will expose them to THC. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission.** Kiva denies each and every factual and legal allegation contained in the Notice and maintains that, to the best of its knowledge, all products that are or have been sold and distributed in California, including the Products, have been and are in compliance with Proposition


65. Nothing in this Settlement Agreement shall be construed as an admission by Kiva of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Kiva of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by the Kiva. However, this § 1.5 shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notice, Kiva maintains that it has not knowingly manufactured, sold, or offered for sale Products in California in violation of Proposition 65.

**1.6 Effective Date.** For purposes of this Settlement Agreement, the term “Effective Date” shall mean the date this Agreement is last executed by the Parties.

**2. INJUNCTIVE RELIEF: Clear & Reasonable Warnings**

**2.1 Compliance with Proposition 65 Warning Regulations.** As of the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 2.1 and 2.2 must be provided for all points of purchase which it operates and controls, and Products that Kiva manufactures, imports, distributes, sells, or offers for sale in California. There shall be no obligation for such an exposure warning to be provided for Products that entered the stream of commerce, or for which packaging was ordered or purchased, prior to the Effective Date. The warning shall consist of either the Warning or Alternative Warning described in §§ 2.1(a) or (b), respectively:

(a) **Warning.** The “Warning” shall consist of one of the following statements:

 **WARNING:** Consuming this product can expose you to chemicals including delta-9 THC, which is known to the State of California to cause birth defects, or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

(b) **Alternative Warning:** Kiva may, but is not required to, use the alternative short-form warning as set forth in this § 2.3(b) (“Alternative Warning”) as follows:

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

**2.2 A Warning or Alternative Warning** provided pursuant to § 2.1 must have the term “**WARNING:**” printed in all capital letters and in bold font. The warning symbol to the left of the

word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the Products’ packaging or labeling 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 under customary conditions of purchase or use.

2.3 **Compliance with Warning Regulations.** Kiva shall be deemed to be in compliance with this Settlement Agreement by either adhering to §§ 2.1 and 2.2 of this Settlement Agreement or by complying with warning requirements adopted by the State of California’s Office of Environmental Health Hazard Assessment (“**OEHHA**”), as may be amended from time to time.

**3. SETTLEMENT PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

In settlement of all the allegations referred to in this Settlement Agreement, Kiva shall pay a total of \$19,000, as set forth below. \$1,500 of the settlement payment shall be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the payment remitted to OEHHA and the remaining 25% remitted to Jamison. The payment to OEHHA shall be made payable to “**OEHHA**” in the amount of \$1,125 (75%), and the payment to Jamison shall be made payable to “**Law Offices of George Rikos in Trust for Charles Jamison,**” in the amount of \$375. These payments shall be delivered to the addresses identified in § 3.2, below. The payments made in accordance with California Health & Safety Code §§ 25249.12(c)(1) and (d) shall be paid within 10 calendar days of the Effective Date.

**3.2 Payment Procedures.**

**(a) Issuance of Payments.** Payments shall be delivered as follows:

(i) All payments owed to Jamison, pursuant to § 3.1 shall be delivered to the following payment address:

George Rikos  
Law Offices of George Rikos  
555 West Beech, Suite 500

San Diego, CA 92101

(ii) All payments owed to OEHHA (EIN: 68-0284486), pursuant to § 3.1 shall be delivered directly to OEHHA (Memo Line “Prop 65 Penalties”) at the following addresses, and shall be sent no later than 15 business days following the Effective Date:

For United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

**(b) Copy of Payments to OEHHA.** Kiva agrees to provide Jamison’s counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payments to Jamison, to be delivered to the address provided in § 3.2(a)(i), as proof of payment to OEHHA.

**(C) Tax Documentation.** Jamison agrees to provide IRS W-9 forms for each of the following payees under this Settlement Agreement along with his executed copy of the Settlement Agreement:

- (i) “Law Offices of George Rikos” at the address provided in Section 3.2(a)(i); and
- (ii) “Office of Environmental Health Hazard Assessment” at 1001 I Street, Sacramento, CA 95814.

#### **4. REIMBURSEMENT OF FEES AND COSTS**

Kiva shall reimburse Jamison's counsel \$17,500 for fees and costs incurred as a result of investigating and bringing this matter to Kiva's attention, and negotiating a settlement in the public interest. The check for fees and costs shall be made payable by check to payable to "Law Offices of George Rikos" in the amount of for delivery to the address identified in § 3.2(a)(i), above. The reimbursement of attorney fees and costs shall be shall paid within 10 calendar days of the Effective date.

## **5. RELEASE OF ALL CLAIMS**

**5.1 Release of Kiva.** This Settlement Agreement is a full, final and binding resolution between Jamison, acting on his own behalf, and Kiva, of any violation of Proposition 65 that was or could have been asserted by Jamison or on behalf of his past and current agents, representatives, attorneys, successors, and/or assigns ("Releasers") for failure to provide warnings for alleged Proposition 65 violations relating to the Products, and Releasers hereby release any such claims against the Kiva, and each of their past and present parents, subsidiaries, affiliated entities, shareholders, marketplaces, directors, officers, agents, employees, attorneys, successors and assignees, and all entities from whom they obtain and to whom they directly or indirectly distribute or sell Products, and all other manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees, retailers, franchisees, and cooperate members, including but not limited to Green Rose Green Leaf Care, Inc., and Albert Einstone's LLC, except as to Jamison's current pending claim against Albert Einstone's LLC in San Diego Superior Court, Case No. 37-2021-00049608-CU-MC-CTL, (collectively, the "Releasees"), from any and all claims for violations of Proposition 65 as set forth in the Notice with respect to any Products manufactured, distributors, or sold by Kiva through the Effective Date .

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to §§ 3 and 4 above, Jamison, on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, hereby covenants not to sue and waives any right to institute, participate in, directly or indirectly, any form of legal action and releases all claims that he may have, including without limitation, all actions and causes of action in law and in equity, all obligations, expenses (including without limitation all attorneys' fees, expert fees, and

investigation fees, and costs), damages, losses, liabilities and demands with respect to any alleged violations of Proposition 65 related to arising from Products manufactured, distributed, or sold by Kiva or Releasees.

This release explicitly does not include claims against any other violators identified on the January 6, 2021 Notice of Violation, including but not limited to, Humboldt Seed Company, LLC, GP Operations, Inc., Nug LICO1, LLC, SD Pantry, Inc., Nfuzed Crosstown Holdings, LLC, Verdant Ventures, LLC, Papa & Barkley California, LLC, and ERA Services, LLC.

**5.2 Kiva Manufacturing, Inc.'s Release of Jamison.** Kiva, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Jamison, his attorneys and other representatives, for any and all actions taken or statements made by Jamison and/or her attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Products.

**5.3 California Civil Code § 1542.** It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. Jamison on behalf of himself only, on one hand, and Kiva, on the other hand, acknowledge that this Agreement is expressly intended to cover and include all such claims up through the Effective Date, including all rights of action therefor. The Parties acknowledge that the claims released in §§ 5.1 and 5.2, above, may include unknown claims, and nevertheless waive California Civil Code § 1542 as to any such unknown claims. California Civil Code § 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.

Jamison and Kiva each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

**5.4 Deemed Compliance with Proposition 65.** Compliance by Kiva with this Settlement Agreement constitutes compliance with Proposition 65 with respect to exposure to Cannabis, Cannabis Smoke, and/or THC from use of the Products.

**5.5. Public Benefit.** It is Kiva's understanding that the commitments they have agreed to herein, and actions to be taken by it under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Kiva that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Kiva's alleged failure to provide a warning concerning exposure to Cannabis, Cannabis Smoke, or THC prior to use of the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Settlement Agreement, provided that Kiva is in material compliance with this Settlement Agreement.

**6. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are deemed by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected but only to the extent the deletion of the provision deemed unenforceable does not materially affect, or otherwise result in the effect of the Settlement Agreement being contrary to the intent of the Parties in entering into this Settlement Agreement.

**7. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the law of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable or limited by reason of law generally, or as to the Products, Pestell shall provide written notice to Jamison of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, a Product is so affected.

**8. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any party by the other party to the following addresses

For Kiva Manufacturing, Inc.:

Hazel Ocampo  
GREENBERG TRAUIG, LLP  
18565 Jamboree Road, Suite 500  
Irvine, CA 92612  
[ocampoh@gtlaw.com](mailto:ocampoh@gtlaw.com)

With copy to:

Kiva Manufacturing, Inc.  
2300 North Loop Road  
Alameda, CA 94502  
Attn: Legal Department

For Charles Jamison:

George Rikos  
LAW OFFICES OF GEORGE RIKOS  
555 West Beech, Suite 500  
San Diego, CA 92101

Either party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

**9. COUNTERPARTS: SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or .pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Jamison agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

**11. MODIFICATION**



This Settlement Agreement may be modified only by a written agreement of the Parties.

**12. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

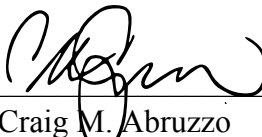
**13. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

**AGREED TO:**

Date: December 27, 2022

Print Name:

  
\_\_\_\_\_  
Craig M. Abruzzo  
Authorized Representative of  
Kiva Manufacturing, Inc.

**AGREED TO:**

Date: December \_\_, 2022

\_\_\_\_\_  
Charles Jamison


This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

**13. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

**AGREED TO:**

Date: December 27, 2022

  
\_\_\_\_\_  
Print Name: Craig M. Abruzzo  
Authorized Representative of  
Kiva Manufacturing, Inc.

**AGREED TO:**

Date: December \_\_, 2022

 12/29/22  
\_\_\_\_\_  
Charles Jamison