

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (“Agreement”) between Environmental Research Center, Inc. (“ERC”) and Treo Brands LLC (“Treo Brands”) is effective on the date on which it is fully executed (“Effective Date”). ERC and Treo Brands 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 Treo Brands on November 18, 2022 and December 1, 2022 (the “Notices”) with regard to the following products identified below (referred to as the “Covered Products”):

- **Organic Treo Full Flavor Hydration Blueberry Caffeine Free Nutrient Enhanced Water – Lead, Mercury**
- **Organic Treo Full Flavor Hydration Kiwi Watermelon Caffeine Free Nutrient Enhanced Water– Lead**
- **Organic Treo Full Flavor Hydration Raspberry Lemonade Caffeine Free Nutrient Enhanced Water – Lead**
- **Organic Treo Full Flavor Hydration Strawberry Caffeine Free Nutrient Enhanced Water – Lead, Mercury**

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**

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 Beginning within 3 months of the Effective Date, Treo Brands 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 Mercury Exposure Level” of more than 0.3 micrograms per day of mercury unless it meets the warning requirements under Section 3.2.

3.1.1 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

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or to sell a Covered Product to a distributor that Treo Brands knows or has reason to know will sell the Covered Product in California.

**3.1.2** 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), 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.

**3.1.3** For purposes of this Agreement, the “Daily Mercury Exposure Level,” shall be measured in micrograms, and shall be calculated using the following formula: micrograms of mercury 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 mercury 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 Treo Brands is required to provide a warning pursuant to Section 3.1, the following warning must be utilized (“Warning”):

**WARNING:** Consuming this product can expose you to chemicals including [lead] [and] [mercury] 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).

Treo Brands 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 or if Treo Brands has reason to believe that another Proposition 65 chemical is present at a level requiring the cancer warning. As identified in the brackets, the warning shall appropriately reflect whether there is lead or mercury present in each of the Covered Products, but if there is a chemical present at a level that requires a cancer warning, the chemical requiring use of the phrase “cancer and” in the Warning shall always be identified.

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, the Warning shall appear on the checkout page 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. In no event shall any internet or website Warning be contained in or made through a link.

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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.

Treo Brands 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.

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.

### **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 the “Daily Mercury Exposure Level” is no more than 0.3 micrograms of mercury 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, and that is not known by Treo Brands to contain other chemicals that violate Proposition 65’s safe harbor thresholds.

### **3.4 Testing and Quality Control Methodology**

**3.4.1** Beginning within one year of the Effective Date, Treo Brands shall arrange for lead and mercury testing of the Covered Products at least once a year for a minimum of three (3) consecutive years by arranging for testing of three (3) randomly selected samples of the Covered Products, in the form intended for sale to the end-user, which Treo Brands intends to sell or is manufacturing for sale in California, directly selling to a consumer in California or “Distributing into the State of California.” If tests conducted pursuant to this Section demonstrate that no Warning is required for the Covered Products during each of the three (3) consecutive years, then the testing requirements of this Section will no longer be required as to the Covered Products. However, if during or after the three-year testing period, Treo Brands changes ingredient suppliers for the Covered Products and/or reformulates the Covered Products, Treo Brands shall test that Covered Product annually for at least two (2) consecutive years after such change is made.

**3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” and/or the “Daily Mercury Exposure Level,” the highest lead and/or mercury detection result of the three (3) randomly selected samples of the Covered Products will be controlling.

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**3.4.3** 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.

**3.4.4** 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.

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

**3.4.6** Within thirty (30) days of ERC's written request, Treo Brands shall deliver lab reports obtained pursuant to Section 3.4, and related documentation, to ERC. Treo Brands shall retain all such lab reports and related documentation for a period of five 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 five-year time period identified in this section 3.4.6.

**3.4.7** The testing requirements under this Section 3.4 do not apply to any Covered Product for which Treo Brands has provided the Warning specified in Section 3.2 continuously and uninterrupted after the Effective Date or that Treo Brands is no longer selling in California; however, in the event Treo Brands ceases to provide the Warning specified in Section 3.2 or resumes selling the Covered Product in California, Treo Brands shall be required to comply with the testing requirements of this Section beginning immediately after (a) the date the Warning ceases to be provided or (b) the date that Treo Brands resumes selling the Covered Product in California (whichever is applicable) or one year after the Effective Date, whichever date is later.

**3.4.8** The injunctive requirements of this Section 3 shall not apply to Covered Products that "enter the stream of commerce" prior to the Effective Date, which Covered Products are expressly subject to the releases provided in Section 6. For the avoidance of doubt, the term "enter the stream of commerce" means that manufactured Covered Products have been put into final packaging for consumer sale and are no longer in the possession of or under the control of Treo Brands.

**4.** Treo Brands shall make a total payment of \$12,000.00 ("Total Settlement Amount") by wire transfer to ERC's account in three periodic payments (the "Periodic Payments") according to the following payment schedule ("Due Dates"):

- Payment 1 -- \$4,000.00 within 30 days of the Effective Date
- Payment 2 -- \$4,000.00 within 60 days of the Effective Date

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- Payment 3 -- \$4,000.00 within 90 days of the Effective Date

Treo Brands shall make these Periodic Payments by wire transfer to ERC's account, for which ERC will give Treo Brands the necessary account information. The Total Settlement Amount shall be apportioned as follows:

a. \$500.00 shall be considered a civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$375.00) 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% (\$125.00) of the civil penalty.

b. \$5,610.00 shall be distributed to Aqua Terra Aeris Law Group as reimbursement of ERC's attorney fees, while \$688.33 shall be considered a reimbursement to ERC for its costs incurred as a result of bringing this matter to Treo Brands' attention and negotiating a settlement.

c. \$5,201.67 shall be distributed to ERC for its in-house legal fees.

d. In the event that Treo Brands fails to remit, in full, any of the Periodic Payments owed under Section 4.1 of this Agreement on or before the applicable Due Date, Treo Brands shall be deemed to be in material breach of its obligations under this Agreement. ERC shall provide written notice of the delinquency to Treo Brands via electronic mail. If Treo Brands fails to deliver the delinquent payment within five days from the written notice, the Total Settlement Amount, less any amounts previously paid pursuant to Section 4.1, 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, Treo Brands 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 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 Treo Brands and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers, franchisees, licensees, customers (not including private label customers of Treo Brands), distributors, wholesalers, retailers, and all other upstream and downstream entities in the distribution chain of any Covered Product, and the predecessors, successors, and assigns of any of them (collectively, "Released Parties").

6.2 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 Products as to any alleged violation of

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Proposition 65 or its implementing regulations arising from the failure to provide Proposition 65 warnings on the Covered Products regarding lead and/or mercury up to and including the Effective Date.

**6.3** ERC, on its own behalf only, and Treo Brands 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 Treo Brands, 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 Treo Brands 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.

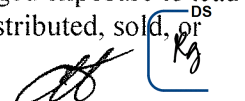
ERC, on behalf of itself only, and Treo Brands, on behalf of itself only, acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

**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 mercury 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 Treo Brands' products other than the Covered Products.

**7.** It is Treo Brands's understanding that the commitments it has agreed to herein, and actions to be taken by Treo Brands under this Settlement Agreement 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 Treo Brands that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to Treo Brands's alleged failure to provide a warning concerning actual or alleged exposure to lead and/or mercury prior to use of the Covered Products it has manufactured, distributed, sold, or

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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 Covered Products addressed in this Settlement Agreement, provided that Treo Brands is in material compliance with this Settlement Agreement.

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 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:  
Matthew C. Maclear  
Anthony M. Barnes  
Aqua Terra Aeris Law Group  
4030 Martin Luther King Jr. Way  
Oakland, CA 94609  
Email: [mcm@atalawgroup.com](mailto:mcm@atalawgroup.com)  
[amb@atalawgroup.com](mailto:amb@atalawgroup.com)

**FOR TREO BRANDS LLC:**

Matthew R. Orr, Esq.  
Amin Talati Wasserman, LLP  
515 S Flower St, 18th Floor  
Los Angeles, CA 90071  
Email: [matt@amintalati.com](mailto:matt@amintalati.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 the Parties shall provide as much information as is requested by the California Attorney General, or any other governmental agency, 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.

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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 that 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*

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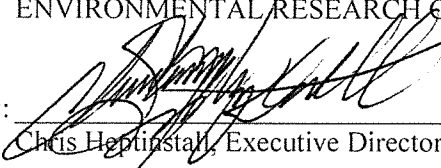
DATED: 6/23/2023

TREO BRANDS LLC

By:   
Name: Robert Golden  
Title: ceo

DATED: 6/13/23

ENVIRONMENTAL RESEARCH CENTER, INC.

By:   
Chris Heptinstall, Executive Director

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