

SETTLEMENT AGREEMENT AND RELEASE

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

1. This Agreement 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 Buchi on or about August 17, 2023 and August 29, 2023 (the “Notices”). The products covered by this Agreement are identified below and are referred to as the “Covered Products”:

- **Buchi Kombucha Seed Coconut Pineapple Turmeric**
- **Buchi Kombucha Legacy Orange Mango Sea Buckthorn**
- **Buchi Kombucha Sovereign Peach Ginger Molasses**
- **Buchi Kombucha Fire Ginger Cayenne**
- **Buchi Kombucha Air Mint Pineapple Echinacea**
- **Buchi Kombucha Water Coconut Blueberry Elderberry**

2. The Parties enter into this Agreement as a full, final, and binding resolution between the Parties to fully resolve all claims, demands, and allegations arising out of the Notices that were or could have been asserted by ERC against Buchi and for the purpose of avoiding prolonged litigation. Buchi denies the material, factual and legal allegations contained in the Notices and maintains that, to the best of its knowledge, all Covered Products that are or have been sold in California have been and are in compliance with all laws. Nothing in this Agreement shall be construed as an admission of the Parties of any fact, finding, 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, finding, 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 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 Buchi contends that it no longer sells or distributes any Covered Products to consumers in the State of California and that it does not intend to resume selling or distributing Covered Products to consumers in the State of California in the foreseeable future. Accordingly, beginning on the Effective Date, Buchi 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 that does not include a warning as set out in Section 3.4

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below (collectively referred to as “California Sales Practices”).

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

3.2 If ERC alleges that Buchi has failed to comply with this Agreement by engaging in California Sales Practices with respect to any of the Covered Products after the Effective Date, ERC shall first provide Buchi thirty (30) days’ advance written notice of the alleged violation(s). The Parties shall meet and confer during such thirty (30) day period in an effort to reach agreement on an appropriate cure for the alleged violation without the need for litigation.

3.2.1 Should ERC contend that Buchi engaged in California Sales Practices with respect to a Covered Product after the Effective Date, the written notice described in Section 3.2 shall contain information sufficient to identify the date of purchase, including a receipt, as well as the manufacture, packaging and/or distribution date, if available to ERC, and any SKU, UPC, or lot numbers appearing on the product. The notice contemplated by this section will also set forth supporting facts underlying ERC’s basis for believing that Buchi is the entity responsible for the California Sales Practices as to the Covered Product after the Effective Date.

3.2.2 Within thirty (30) days of receipt of the notice described in Section 3.2.1, Buchi will provide information sufficient to show that Buchi did not engage in California Sales Practices after the Effective Date with respect to the Covered Product(s) identified in the Section 3.2.1 notice. If Buchi makes such a showing within the time provided by this Section, ERC will not file an action or motion to enforce this Agreement. If Buchi fails to make a sufficient showing within the time provided by this Section, ERC may pursue an action for breach of this Agreement and/or for Buchi’s failure to comply with Proposition 65. To the extent ERC alleges in such action that Buchi violated Proposition 65, ERC may seek whatever fines, costs, penalties, or remedies as are provided by law for failure to comply with Proposition 65.

3.3 Clear and Reasonable Warnings

If Buchi manufactures Covered Products for sale in the State of California, distributes Covered Products into the State of California, or directly sells Covered Products in the State of California, Buchi is required to provide a warning on the Covered Products and one of the following warnings must be utilized (“Warning”):

OPTION 1:


WARNING: Consuming this product can expose you to chemicals including [lead or 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.

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Or

OPTION 2:

 **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov.

Buchi 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 3.6 or if Buchi 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, mercury, or another chemical 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. For the Option 2 Warning, 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. Further, for Option 2, 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.

The Warning shall be securely affixed to or printed upon the packaging or label of any Covered Product offered for sale in California, and if the Warning is provided on the label, it must be set off from other surrounding information and enclosed in a box. In addition, for any Covered Product sold over the internet by Buchi when a California delivery address is indicated, the Warning shall be provided either by including the Warning on the product display page or by otherwise prominently displaying the Warning to the purchaser during the checkout process prior to completing the purchase. If the Warning is provided on the checkout page, an asterisk or other identifying method must be utilized to identify which products on the checkout page are 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. In all cases, a warning is not prominently displayed if the purchaser must search for it in the general content of the website.

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.

Buchi must display the above Warning with such conspicuousness, as compared with other words, statements or designs on the label, or on its website, if applicable, to render the Warning

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likely to be read and understood by an ordinary individual under customary conditions of purchase or use of the product. Where a sign or label used to provide the Warning for a Covered Product includes consumer information about the Covered Product in a language other than English, the Warning must also be provided in that language in addition to English.

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.

4. Buchi shall make a total payment of \$15,000.00 ("Total Settlement Amount") by wire transfer to ERC's account within 5 days of the Effective Date ("Due Date"), for which ERC will give Buchi the necessary account information. The Total Settlement Amount shall be allocated as follows:

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

b. \$1,134.21 shall be considered a reimbursement to ERC for its costs incurred as a result of bringing this matter to Buchi's attention and negotiating a settlement.

c. \$6,270.00 shall be distributed to Aqua Terra Aeris Law Group as reimbursement of ERC's attorney fees, while \$6,095.79 shall be distributed to ERC for its in-house legal fees.

d. In the event that Buchi fails to remit the Total Settlement Amount owed under Section 4 of this Agreement on or before the Due Date, Buchi shall be deemed to be in material breach of its obligations under this Agreement. ERC shall provide written notice of the delinquency to Buchi via electronic mail. If Buchi fails to deliver the Total Settlement Amount within five 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, Buchi 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, its respective owners, principals, shareholders, officers, directors, employees, past and present agents, parents, subsidiaries, successors, assigns, and legal representatives (collectively "ERC Releasers") and Buchi and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers, franchisees, licensees, customers

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(not including private label customers of Buchi), 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 Releasers, 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 mercury from the Covered Products as set forth in the Notices. 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 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 Buchi 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.

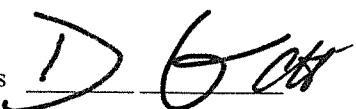
6.4 It is possible that other claims not known to the Parties, arising out of the facts alleged in the Notices, and relating to the Covered Products, will develop or be discovered. ERC, on behalf of itself only, and Buchi, on behalf of itself only, acknowledge that this Agreement is expressly intended to cover and include all such claims up through and including the Effective Date, including all rights of action therefore. ERC and Buchi 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 Buchi, 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

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environmental exposures arising under Proposition 65, nor shall it apply to any of Buchi's products other than the Covered Products.

7. Nothing herein shall be construed as diminishing Buchi's 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 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

With a copy to:

Matthew C. Maclear
Anthony M. Barnes
Aqua Terra Aeris Law Group
4030 Martin Luther King Jr. Way
Oakland, CA 94609
Telephone: (415) 568-5200
Email: mcm@atalawgroup.com
amb@atalawgroup.com

FOR ASHEVILLE KOMBUCHA MAMAS, LLC individually and dba BUCHI

FedUp Foods
Attn: David J Gray
242 Derringer Road
Marshall, NC 28753
Email: david.gray@fedupfoods.co

With a copy to:

Carol R. Brophy
Steptoe & Johnson LLP
One Market Plaza, Steuart Tower, Ste 1070
San Francisco, California 94105
Ph: (415) 365-6722
Email: cbrophy@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

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copy of this Agreement. The Parties acknowledge and agree that the Parties shall provide as much information as is reasonably 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.

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.

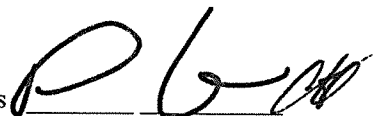
13. If any provision, term, or section of this Agreement is found to be invalid, illegal, or unenforceable, then all remaining provisions, terms, or sections shall continue in full force and effect and remain binding on the Parties. If any provision, term, or section of this Agreement is determined to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

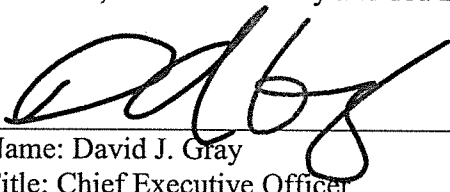
17. This Agreement may be signed in counterparts, and each counterpart, as well as any facsimile, e-mail, copy of this Agreement, or any other counterpart, shall be deemed to be an original.

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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.

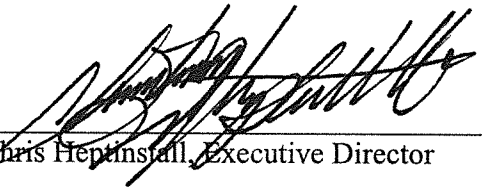
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1/12/24 DG

FEDUP FOODS, ASHEVILLE KOMBUCHA
MAMAS, LLC individually and dba BUCHI

By: 
Name: David J. Gray
Title: Chief Executive Officer

DATED: 1/15/24

ENVIRONMENTAL RESEARCH CENTER, INC.

By: 
Chris Heptinstall, Executive Director

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