

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (“Agreement”) between Environmental Research Center, Inc. (“ERC”) and KinderFarms LLC (“KinderFarms”) is effective on the date on which it is fully executed (“Effective Date”). ERC and KinderFarms 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 KinderFarms on June 14, 2024 and June 28, 2024 (the “Notices”) with regard to the following products identified below (referred to as the “Covered Products”):

- **Kindersprout Organic Plant Protein Kids Nutrition Shake Chocolate Naturally Flavored (lead, PFOA)**
- **Kindersprout Organic Plant Protein Kids Nutrition Shake Vanilla Naturally Flavored (PFOA)**

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. KinderFarms denies the material, factual, and legal allegations contained in the Notices and maintains that, to the best of its knowledge, all 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, 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 on the Compliance Date, which date is 90-days after the Effective Date, KinderFarms 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 any PFOA above reliably detectable levels for the product being tested using available technologies, 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 KinderFarms 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.

### 3.2 Clear and Reasonable Warnings

KinderFarms asserts that it has stopped the manufacturing of the Covered Products. Should KinderFarms begin the manufacturing of the Covered Products again, and if it 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] [perfluorooctanoic acid] 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).

KinderFarms may, but is not required to, use the alternative short-form warning as set forth in this Section 3.2 (“Alternative Warning”) as follows:

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

KinderFarms shall use the phrase “cancer and” in the Warning and/or Alternative Warning if KinderFarms knows that PFOA is present in the Covered Product, and/or 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 and/or if KinderFarms 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 and/or Alternative Warning shall appropriately reflect whether the Covered Product contains lead at a level that exceeds the Daily Lead Exposure Level and/or contains PFOA above a reliably detectable level for the product being tested using available technologies, or whether there are multiple chemicals present in the Covered Product, 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 and/or Alternative Warning shall always be identified.

The Warning and/or Alternative Warning shall be securely affixed to or printed upon the label of each Covered Product. The Warning must be set off from other surrounding information and enclosed in a box. If the Alternative Warning is utilized, 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



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no case shall the Alternative Warning appear in a type size smaller than 6-point type. Further, for the Alternative 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. In addition, for any Covered Product sold on websites where KinderFarms offers the Covered Products for sale over the internet to consumers in California, the Warning and/or Alternative Warning shall be provided either by including the Warning and/or Alternative Warning on the product display page or by otherwise prominently displaying the Warning and/or Alternative Warning to the purchaser during the checkout process prior to completing the purchase. If the Warning and/or Alternative Warning is provided on the checkout page, an asterisk or other identifying method must be utilized to identify which product on the checkout page is subject to the Warning. In addition, for any Covered Product sold over the internet, the Warning may be provided through a clearly marked hyperlink using the word “**WARNING**” in all capital and bold letters on the Covered Product’s primary product display page so long as the hyperlink goes directly to a page prominently displaying the Warning without content that detracts from the Warning. A Warning is not prominently displayed if the purchaser has to search for it in the general content of the website.

If a Covered Product is being sold by an online third-party seller and/or downstream reseller customer, known to and authorized to sell such Covered Product by KinderFarms, and KinderFarms cannot itself post the warning on the authorized online third-party seller’s and/or downstream reseller customer’s website, then KinderFarms must notify the authorized online third-party seller and/or downstream reseller customer of its duty to provide an internet warning. KinderFarms may comply with this obligation to notify authorized online third-party sellers and/or downstream reseller customers by complying with 27 C.C.R. § 25600.2 (2024) and providing the information required by 27 C.C.R. § 25600.2 (2024) to any such authorized online third-party seller and/or downstream reseller customer that is subject to California Health and Safety Code § 25249.6.

The Warning and/or Alternative 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 and/or Alternative Warning on the average lay person shall accompany the Warning and/or Alternative Warning. Further, no statements may accompany the Warning and/or Alternative 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.

KinderFarms must display the above Warning and/or Alternative 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 and/or Alternative Warning 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 and/or Alternative Warning for a

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Covered Product includes consumer information about the Covered Product in a language other than English, the Warning and/or Alternative 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.



There shall be no obligation for KinderFarms to provide a warning for Covered Products that entered the stream of commerce prior to the Compliance Date, and the Section 6 release applies to all such Covered Products. For purposes of this paragraph, the term “entered the stream of commerce” means the individual unit of Covered Product was put into final packaging for consumer sale and is no longer in the possession of or under the control of Kinderfarms. KinderFarms shall provide a Warning and/or Alternative Warning in compliance with Section 3.2 for any Covered Products sold to California consumers or delivered to a California delivery address after the Compliance Date and that had not entered the stream of commerce before the Compliance Date.

If subsequently enacted changes to Proposition 65 or its implementing regulations require the use of additional or different information on any warning specifically applicable to the Covered Products (the “New Safe Harbor Warning”), the Parties agree that the New Safe Harbor warning may be utilized in place of or in addition to, as applicable, the warnings set forth in this Section.

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

**3.4.1** Should KinderFarms resume manufacturing the Covered Products (the term “manufacturing” includes having the Covered Products manufactured for KinderFarms by another entity), beginning within one year of either the Effective Date or the date that KinderFarms resumes manufacturing the Covered Products, whichever is later, KinderFarms shall arrange for lead and PFOA testing of the Covered Products at least once a year for a minimum of five (5) 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 KinderFarms 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 five (5) 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 five-year testing period, KinderFarms changes ingredient suppliers for a Covered Product and/or reformulates the Covered Product, KinderFarms shall test that Covered Product annually for at least four (4) consecutive years after such change is made.

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

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controlling.

**3.4.3** All testing pursuant to this Consent Judgment 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 for lead and the lowest level that can be reliably detected for the product being tested using available technologies for PFOA.

**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 KinderFarms’ 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, KinderFarms shall deliver lab reports obtained pursuant to Section 3.4, and related documentation, to ERC. KinderFarms 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.

**3.5** Nothing in Section 3 of this Agreement shall prevent or preclude ERC from obtaining and relying upon its own testing for purposes of enforcement, so long as such testing meets the requirements of Sections 3.4.3 and 3.4.4. Nothing in Section 3.4 of this Agreement is intended by either Party to set a precedent for the level of lead, PFOA, or other chemicals that is permissible in consumer products under Proposition 65.

**4.** KinderFarms shall make a total payment of \$45,000.00 (“Total Settlement Amount”) by wire transfer to ERC’s account within 5 days of the Effective Date (“Due Date”), for which ERC will give KinderFarms the necessary account information. The Total Settlement Amount shall be allocated as follows:

a. \$4,000.00 shall be considered a civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$3,000.00) 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% (\$1,000.00) of the civil penalty.

b. \$5,496.60 shall be considered a reimbursement to ERC for its costs incurred as a result of bringing this matter to KinderFarms’ attention and negotiating a settlement.

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c. \$11,525.00 shall be distributed to Aqua Terra Aeris Law Group as reimbursement of ERC's attorney fees, while \$23,978.40 shall be distributed to ERC for its in-house legal fees.


d. In the event that KinderFarms fails to remit the Total Settlement Amount owed under Section 4 of this Agreement on or before the Due Date, KinderFarms shall be deemed to be in material breach of its obligations under this Agreement. ERC shall provide written notice of the delinquency to KinderFarms via electronic mail. If KinderFarms 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, KinderFarms 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 officers, directors, shareholders, employees, past and present agents, parent companies, subsidiaries, successors, assigns, and legal representatives ("ERC Releasers") and KinderFarms and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers, franchisees, licensees, customers (not including private label customers of KinderFarms), 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"). Online third-party sellers and downstream reseller customers of KinderFarms that do not provide the Warning after being instructed or notified by KinderFarms to do so, as outlined in Section 3.2, are not released from liability for violations of Proposition 65.

6.2 ERC Releasers release the Released Parties from any and all claims for violations of Proposition 65 with respect to the Covered Products, including those Covered Products that have "entered the stream of commerce" as indicated in Section 3.2, up to and including the Compliance Date based on exposure to lead and/or PFOA. 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, including those Covered Products that have "entered the stream of commerce" as indicated in Section 3.2, regarding lead and/or PFOA up to and including the Compliance Date. Online third-party sellers and downstream reseller customers of KinderFarms that do not provide the Warning after being instructed or notified by KinderFarms to do so, as outlined in Section 3.2, are not released from liability for violations of Proposition 65.

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**6.3** ERC, on its own behalf only, and KinderFarms 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 to and including the Compliance 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 KinderFarms, on behalf of itself only, acknowledge that this Agreement is expressly intended to cover and include all such claims up to and including the Compliance Date, including all rights of action therefore. ERC and KinderFarms 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 KinderFarms, 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 PFOA 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 KinderFarms' products other than the Covered Products.

**7.** Nothing herein shall be construed as diminishing KinderFarms' 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.

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**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  
8 Rio Vista Avenue  
Oakland, CA 94611  
Ph: (415) 568-5200  
Email: mcm@atalawgroup.com  
amb@atalawgroup.com

**FOR KINDERFARMS LLC:**


KinderFarms  
Attn: Matthew Leytman  
Chief Financial Officer  
407 N. Pacific Coast Hwy, Ste. 451  
Redondo Beach, CA 90277  
E-Mail: mleytman@kinderfarms.com

With a copy to:

Willis M. Wagner  
Greenberg Traurig, LLP  
400 Capitol Mall, Suite 2400  
Sacramento, CA 95814  
Ph: (916) 868-0629  
Email: will.wagner@gtlaw.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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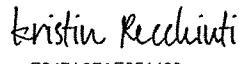
11. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective owners, principals, shareholders, members, managers, officers, directors, employees, agents, successors, and assigns.
12. No inference, assumption or presumption shall be drawn, and no provision 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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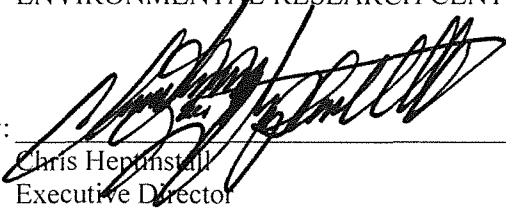
DATED: 11/17/2024

KINDERFARMS LLC

Signed by:  
  
By: E347A8FAE251423  
Kristin Recchiuti  
Chief Executive Officer

DATED: 11/18/24

ENVIRONMENTAL RESEARCH CENTER, INC.

  
By: \_\_\_\_\_  
Chris Hepinstall  
Executive Director

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