

## SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") between Environmental Research Center, Inc. ("ERC") and Izzé Beverage Co. ("Izzé") is effective on the date on which it is fully executed ("Effective Date"). ERC and Izzé 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") dated October 4, 2024 and October 24, 2024 (the "Notices") that ERC served on Izzé with regard to the following products identified below (referred to as the "Covered Products"):

- Izzé Sparkling Peach Flavored Juice Beverage Blend From Concentrate with Other Natural Flavors
- Izzé Sparkling Cherry Lime Flavored Juice Beverage Blend From Concentrate with Other Natural Flavors
- Izzé Sparkling Pomegranate Flavored Juice Beverage Blend From Concentrate with Other Natural Flavors
- Izzé Sparkling Clementine Flavored Juice Beverage Blend From Concentrate with Other Natural Flavors
- Izzé Sparkling Strawberry Flavored Juice Beverage Blend From Concentrate with Other Natural Flavors
- Izzé Sparkling Mango Flavored Juice Beverage Blend From Concentrate with Other Natural Flavors

### 2. NO ADMISSIONS

2.1 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.

2.2 Izzé further asserts that, in addition to the foregoing, it enters into this settlement agreement based on its understanding and belief that, as of the Effective Date, ERC does not have any other charges, lawsuits, or claims under Proposition 65 against Izzé related to any of its products, other than those at issue in this Agreement. ERC represents that it is not aware of any individuals who have retained ERC or its counsel to assert claims under Proposition 65 against Izzé involving any of its products, or who have expressed interest in asserting claims under Proposition 65 against Izzé involving any of its products. Izzé asserts that it would not enter into this Agreement without assurances that ERC has no current intention to bring, maintain, resume, file, or prosecute litigation, arbitration, or any other legal proceeding against Izzé over its products, other than the terms of this Agreement.

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2.3 This Section 2 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 Effective Date, Izze 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 unless it meets the warning requirements under Section 3.2. Except as expressly agreed to herein, nothing in this Section 3 shall bind Izze to any obligations greater than or in addition to those imposed by Proposition 65.

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 Izze 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. The "Daily Lead Exposure Level" for the Covered Products shall be calculated using laboratory testing that complies with the applicable testing and quality control methodology set forth in Section 3.4.

### 3.2 CLEAR AND REASONABLE WARNINGS

If Izze 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 which is 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](http://www.P65Warnings.ca.gov)

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**OPTION 3:**

**WARNING:** Can expose you to lead a [carcinogen and] reproductive toxicant. See [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

For all warning options, the Warning shall begin either with the word "**WARNING,**" as indicated above, or the words "**CA WARNING**" or "**CALIFORNIA WARNING,**" in all capital letters and bold print. Izzie shall use the phrase "cancer and" in the Option 1 and Option 2 Warnings or "carcinogen and" in the Option 3 Warning (each referred to individually as a "Cancer Phrase") 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 Izzie has reason to believe that another Proposition 65 chemical is present at a level requiring the cancer warning. If there is a chemical present at a level that requires a cancer warning, the chemical requiring use of the Cancer Phrase in the Warning shall always be identified.


The Option 2 Warning may only be used until January 1, 2028. Any product that is manufactured and labeled prior to January 1, 2028, may use the Option 2 Warning regardless of when the product is sold to a consumer. For the Option 2 and Option 3 Warnings, 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. Additionally, for the Option 2 Warning, a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black shell 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 label of any Covered Product, and it must be set off from other surrounding information and enclosed in a box. For Covered Products sold in brick-and-mortar locations, the Warning may alternatively be placed on a posted sign, shelf tag, or shelf sign, for the Covered Product at each point of display of the Covered Product. In addition, for any Covered Product sold over the internet, the Warning shall appear on the Covered Product's primary product display page or 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. 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.

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. 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.

Izzie 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

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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 the container or wrapper for the unit sold to a consumer.

### **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 as determined by the exposure methodology set forth in Section 3.1.2 and the testing and quality control methodology described in Section 3.4, and that is not known by Izze 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, Izze shall arrange for lead testing of the Covered Products at least once a year for 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 Izze intends to sell or is manufacturing for sale in California, directly selling to a consumer in California or "Distributing into the State of California" (the "Original Testing"). For a Covered Product, if tests conducted pursuant to this Section demonstrate that the Daily Lead Exposure Level does not exceed the threshold specified in Section 3.1, then no Warning is required for the Covered Product. If the Original Testing demonstrates that no Warning is required for a Covered Product during each of three consecutive years, then the testing requirements of this Section will no longer be required as to that Covered Product.

**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 controlling.

**3.4.3** If, during a required testing year, the highest result for a Covered Product pursuant to the Original Testing as described in Section 3.4.1 reflects an exposure in excess of the thresholds specified in Section 3.1, as applicable, Izze shall have the right to retest three (3) randomly selected samples from different lots ("Retest"), and the highest lead detection result from the three samples tested during the Retest shall be used as controlling for calculating the Daily Lead Exposure Level, as applicable, for that Covered Product for purposes of this Agreement. If Izze chooses to conduct a Retest, then it shall notify ERC in writing that it has done so and shall provide the tests from the Original Testing and the Retest to ERC as required pursuant to Section 3.4.6. Additionally, if Izze chooses to conduct a Retest, it shall comply with Sections 3.1 and 3.2 with respect to any lot from which the Original Testing sample that exceeded the threshold specified in Section 3.1 was obtained. This means that if any sample tested in the Original Testing had a Daily Lead Exposure Level greater than 0.5 micrograms of

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lead per day, as determined by the exposure methodology set forth in Section 3.1.2, then Izze must comply with Sections 3.1 and 3.2 before selling or distributing Covered Products from that sample's lot to California consumers. Izze shall not be permitted to conduct a Retest on a Covered Product for any year in which multiple samples from the Original Testing reflect an exposure in excess of the thresholds specified in Section 3.1. Izze shall be permitted one Retest per Covered Product, as outlined in this Section, during each year that it performs testing. If any sample in the Retest reflects an exposure in excess of the thresholds specified in Section 3.1, Izze shall comply with Sections 3.1 and 3.2 as to that Covered Product.

**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. Izze shall have sole discretion to select a qualifying laboratory of its choice to conduct testing pursuant to Section 3.4.1.

**3.4.5** Nothing in this Agreement shall limit Izze's 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, Izze shall deliver lab reports obtained pursuant to Section 3.4, and related documentation, to ERC. Izze 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 3.4.6.

**3.4.7** Izze shall not be obligated to test any Covered Product pursuant to this Section 3.4 during any period of time that such Covered Product is discontinued and/or not being sold to California consumers. However, if Izze resumes sales of such Covered Product to California consumers, Izze shall be required to begin testing the Covered Product in accordance with Section 3.4 before resuming sales to California consumers and shall continue or resume complying with the testing requirements of Section 3.4 with respect to the Covered Product immediately after the date that Izze resumes selling the Covered Product to California consumers. Izze shall not include the period of time the Covered Product was discontinued and/or not sold to California consumers in calculating the three years for which testing is required by this Section 3.4. For purposes of this Section 3.4.7, the term "discontinued" shall mean that the Covered Product is not being manufactured.

**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

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intended by either Party to set a precedent for the level of lead or other chemicals that is permissible in consumer products under Proposition 65.

4. **SETTLEMENT PAYMENT**

4.1 In full satisfaction of all potential civil penalties, additional settlement payments, attorneys' fees, and costs, Izze shall make a total payment of \$75,000 ("Total Settlement Amount") by wire transfer to ERC's account within sixty (60) days of the Effective Date ("Due Date"). Izze shall make this payment by wire transfer to ERC's account, for which ERC will provide to Izze the necessary account information prior to the Effective Date. Izze shall have no obligation or duty whatsoever with respect to the allocation of the Total Settlement Amount. The Total Settlement Amount shall be allocated as follows:

(a) \$19,000.00 shall be considered a civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$14,250.00) 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% (\$4,750.00) of the civil penalty.

(b) \$4,313.69 shall be distributed to ERC as reimbursement for reasonable costs incurred in bringing this matter to Izze's attention and negotiating a settlement.

(c) \$18,822.50 shall be distributed to Lozeau Drury LLP as reimbursement of ERC's attorney fees, while \$32,863.81 shall be distributed to ERC for its in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and costs.

(d) In the event that Izze fails to remit the Total Settlement Amount owed under Section 4 of this Agreement on or before the Due Date without a written agreement from ERC for an extension, Izze shall be deemed to be in material breach of its obligations under this Agreement. ERC shall provide written notice of the delinquency to Izze via electronic mail. If Izze 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, and any release provisions in Section 6 that are for the benefit of Izze and the Released Parties (as defined in Section 6.1) shall be suspended and of no effect until such time as the Total Settlement Amount is paid in full. Additionally, Izze 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 Izze and its respective officers, directors, shareholders, employees, agents, past and

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present parent companies, subsidiaries, divisions, suppliers, franchisees, and licensees, and the predecessors, successors, and assigns of any of them (collectively, "Released Parties").

6.2 ERC, on behalf of itself and its officers, directors, shareholders, employees, agents, past and present parent companies, subsidiaries, and divisions, 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, including 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 up to and including the Effective Date.

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

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7. Nothing herein shall be construed as diminishing Izze's continuing obligations to comply with Proposition 65. In the event that Proposition 65, either as a whole or as specifically applicable to the Covered Products or listed chemicals, is repealed or preempted by the California legislature, the California Supreme Court or the United States Supreme Court, then Izze may provide written notice to ERC of any asserted change in the law, and it shall have no further obligations pursuant to this Agreement, subject to ERC's right to contest the applicability of such asserted change in the law to this matter. If Proposition 65 is otherwise altered or amended by the California legislature, the California Supreme Court or the United States Supreme Court in a manner that Izze believes affects its obligation to provide Proposition 65 warnings with respect to the Covered Products under the Agreement, the Parties shall meet and confer in good faith in an effort to reach an agreement on modification(s) to the obligations in Section 3 of this Agreement that reflect and are consistent with the alteration(s) or amendment(s) to Proposition 65. Under no circumstances will Izze's obligations under Section 3 of this Agreement ever be greater than those imposed by Proposition 65 unless otherwise agreed to in this 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

With a copy to:

Richard T. Drury  
LOZEAU | DRURY LLP  
1939 Harrison Street, Suite 150  
Oakland, CA 94612  
Telephone: (510) 836-4200  
Email: richard@lozeaudrury.com

**FOR IZZE BEVERAGE CO.:**

Charles Broll  
Izze Beverage Co.  
433 W Van Buren St., Ste 3N  
Chicago, IL 60607  
Email: Charles.Broll@tropicana.com

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With a copy to:  
Arianna Scavetti  
Dan Nadratowski  
WEIL, GOTSHAL & MANGES LLP  
2001 M Street NW, Suite 600  
Washington, DC 20036  
Telephone: (202) 682-7291  
Email: arianna.scavetti@weil.com  
daniel.nadratowski@weil.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.
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

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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.

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.

DATED: July 3 2025

IZZE BEVERAGE CO.

By: 

Charles Broll  
Chief Legal Officer

DATED: 7/3/2025

ENVIRONMENTAL RESEARCH CENTER, INC.

By: 

Chris Heptinstall  
Executive Director

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SETTLEMENT AGREEMENT AND RELEASE