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11 **UNITED STATES DISTRICT COURT**  
12 **NORTHERN DISTRICT OF CALIFORNIA**  
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15 GABRIELA BAYOL and BRUCE  
16 VERBECK, individually and on behalf of all  
others similarly situated,

17 Plaintiffs,

18 v.

19 HEALTH-ADE LLC, and WHOLE FOODS  
20 MARKET CALIFORNIA, INC.,

21 Defendants  
22  
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Case No. 3:18-cv-01462 MMC

**STIPULATION OF CLASS ACTION  
SETTLEMENT**

Judge: Hon. Maxine M. Chesney

Subject to Court approval pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs Gabriela Bayol and Bruce Verbeck (“Plaintiffs”), on behalf of themselves and each of the Class Members, and Defendants Health-Ade LLC (“Health-Ade”) and Whole Foods Market California, Inc. (“Whole Foods”) (“Defendants”) (collectively, the “Parties”), by and through their respective counsel, authorized to settle this Action on their behalf, in consideration for and subject to the promises, terms, and conditions contained in this Stipulation of Class Action Settlement (“Agreement”), hereby stipulate and agree, as follows:

## **I. RECITALS**

A. On March 6, 2018, Plaintiff Gabriela Bayol filed a proposed nationwide class action against Defendants in the United States District Court for the Northern District of California, Case No. 3:18-cv-01462 MMC, which asserted claims for violations of the California Consumers Legal Remedies Act (Cal. Civ. Code §§ 1750, *et seq.*) (the “CLRA”), California’s Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200, *et seq.*) (the “UCL”), California’s False Advertising Law (Cal. Bus. & Prof. Code §§ 17500, *et seq.*) (the “FAL”), breach of express warranty, breach of implied warranty of merchantability, negligent misrepresentation, fraud, and unjust enrichment. The March 6, 2018 Complaint alleged that Health-Ade’s kombucha beverages contained more alcohol by volume than permitted by law and contained more sugar than stated on the beverages’ labels. Plaintiff Bayol sought to represent a nationwide class and a California subclass.

B. On May 4, 2018, Defendants filed an Answer to the Complaint.

C. On May 10, 2018, Plaintiffs filed an Amended Class Action Complaint, adding Plaintiff Bruce Verbeck to this action. The Amended Class Action Complaint contained the same allegations as the initial Complaint, but also asserted violations of the New York General Business Law §§ 349 and 350 (“NYGBL”). The Amended Class Action Complaint also added a proposed New York subclass.

D. On May 24, 2018, Defendants filed an Answer to Plaintiffs’ Amended Class Action Complaint.

E. On March 23, 2018, a few weeks after the filing of the initial complaint, a complaint was filed in *Gonzalez, et al. v. Health-Ade LLC*, Case No. 3:18-cv-01836 (N.D. Cal.) (hereafter, the

1 “*Gonzalez* action”). The *Gonzalez* action is, however, significantly narrower than *Bayol* action.  
2 Unlike the *Bayol* action, the *Gonzalez* action rested exclusively on the allegation that Health-Ade’s  
3 kombucha beverages contain more sugar than listed on the label. No allegations regarding alcohol  
4 content were ever made.

5 F. On May 30, 2018, the Court related the *Bayol* and *Gonzalez* actions.

6 G. Plaintiffs in both the *Bayol* and *Gonzalez* actions moved for appointment of their  
7 respective counsel as Interim Class Counsel. On August 23, 2018, the Court granted the *Bayol*  
8 Plaintiffs’ motion, denied the *Gonzalez* Plaintiffs’ motion, and appointed Bursor & Fisher, P.A.,  
9 counsel for the *Bayol* Plaintiffs, as sole Interim Class Counsel. In appointing Bursor & Fisher, P.A.  
10 as sole Interim Class Counsel, the Court found that Bursor & Fisher, P.A. “ha[s] more extensive  
11 experience in representing clients in false advertising cases, including a case factually similar to that  
12 here, and, in the instant case, have done a considerable amount of prefilng work in an effort to  
13 identify and plead potential claims.” The Court ordered that Bursor & Fisher, P.A. would have  
14 responsibility for the overall conduct of the litigation on behalf of the putative classes, and would  
15 have sole authority to (a) “present to the Court and opposing parties the position of the named  
16 plaintiffs and putative class members on all matters arising during pretrial proceedings,” (b) “[e]nter  
17 into stipulations with opposing counsel as necessary for the conduct of the litigation, (c)  
18 “[c]oordinate the initiation and conduct of discovery on behalf of the named plaintiffs and putative  
19 class members,” (d) “[h]ire expert witnesses and consultants ... and advance other costs that may be  
20 reasonable and necessary to the conduct of the litigation,” (e) “[c]onduct settlement negotiations on  
21 behalf of the named plaintiffs and putative class members, and, if appropriate, to enter into a  
22 settlement that is fair, reasonable, and adequate on behalf of the putative class members,” (f)  
23 “[m]onitor the activities of all counsel,” and (g) “[p]erform such other duties as may be incidental to  
24 the proper prosecution and coordination of pretrial activities on behalf of plaintiffs and putative  
25 class members.”

26 H. The Parties have engaged in significant discovery. The Parties exchanged and met  
27 and conferred concerning a number of discovery requests, including interrogatories and requests for  
28 production. In response, Health-Ade produced critical documents concerning the merits of the case

1 and its overall financial condition to Plaintiffs, including Health-Ade's test results concerning the  
2 alcohol content of the Subject Products, test results concerning the sugar content of the Subject  
3 Products, documents concerning the formulation and ingredients of the Subject Products, including  
4 step-by-step directions as to how the Subject Products are formulated, current and former sales  
5 information concerning the Subject Products, current and historical pricing information concerning  
6 the Subject Products, current and former revenue, income, and profit information concerning the  
7 Subject Products, and information regarding current and former labeling of its products.

8 I. Plaintiffs also deposed Health-Ade's Fed. R. Civ. P. 30(b)(6) witness regarding the  
9 sales and pricing of Health-Ade's beverages, Health-Ade's financial welfare and standing, Health-  
10 Ade's alcohol and sugar testing concerning the Subject Products, the alcohol and sugar content of  
11 Health-Ade's beverages, and the formulation of Health-Ade's beverages, including formulation  
12 changes anticipated in the future.

13 J. Plaintiffs reviewed all of the documents produced by Health-Ade, as well as  
14 documents and information obtained through their own research and investigation. For instance,  
15 Plaintiffs commissioned separate, independent tests concerning the alcohol and sugar content of the  
16 Subject Products. Plaintiffs also researched issues of refrigeration and supply chain that may have  
17 contributed to the alleged alcohol and sugar issues, and interviewed one of Health-Ade's  
18 distributors regarding these issues.

19 K. Before entering into this Agreement, the Parties, by and through their respective  
20 counsel, conducted a thorough examination, investigation, and evaluation of the relevant law, facts,  
21 and allegations to assess the merits of the claims and potential claims to determine potential  
22 liability, remedies, and all defenses thereto, including an extensive investigation into the facts and  
23 law relating to (i) label design and product formulation; (ii) the marketing and advertising of the  
24 products; (iii) sales, pricing, and financial data; and (iv) the sufficiency of the claims and  
25 appropriateness of class certification.

26 L. This Agreement was reached as a result of extensive arm's-length negotiations  
27 between the Parties and their counsel. The Parties have engaged in extensive settlement discussions  
28 to determine if the Parties could reach a resolution short of protracted litigation. On June 26, 2018,

1 the Parties participated in a full day of mediation before Jill R. Sperber, Esq. of Judicate West. The  
2 June 26, 2018 mediation did not result in a settlement. After the Court's August 23, 2018 Order  
3 appointing Bursor & Fisher, P.A. as Interim Class Counsel, the Parties engaged in weeks of back  
4 and forth settlement negotiations. On October 4, 2018, the Parties participated in another full day of  
5 mediation before Ms. Sperber. The Parties agreed on the relevant material terms of this Agreement  
6 at the October 4, 2018 mediation. Neither the *Gonzalez* Plaintiffs nor their counsel participated in  
7 any of the mediations or settlement discussions in this case, and they have not contributed any  
8 benefit of any kind to this Agreement or to the Class Members generally (as defined herein).

9 M. Based upon their review, investigation, and evaluation of the facts and law relating to  
10 the matters alleged in the pleadings, Plaintiffs, as settlement class representatives, believe that the  
11 claims settled herein have merit. However, they and their counsel recognize and acknowledge the  
12 expense and length of continued proceedings necessary to prosecute the claims through trial, appeal,  
13 and ancillary actions. Plaintiffs and their counsel have also taken into account the uncertain  
14 outcome and risk of litigation, and the difficulties and delay inherent in such litigation, and they  
15 believe that the settlement set forth in this Agreement confers important benefits upon the Class  
16 Members (defined herein). Accordingly, based upon their evaluation, after considering, among  
17 other things: (i) the benefits to the Class Members under the terms of this Agreement; (ii) the risks,  
18 costs, and uncertainty of protracted litigation, especially in complex actions such as this, as well as  
19 the difficulties and delays inherent in such litigation; and (iii) the desirability of consummating this  
20 Agreement promptly to provide effective relief to Class Members, Plaintiffs and their counsel have  
21 determined that the settlement set forth in this Agreement is in the best interests of the Class and, on  
22 behalf of Plaintiffs and the Class, have agreed to settle the Action (as defined herein) pursuant to the  
23 provisions of this Agreement.

24 N. Defendants deny and continue to deny all charges of wrongdoing or liability against  
25 them arising out of any conduct, statements, acts or omissions alleged, or that could have been  
26 alleged, in the Action. Defendants specifically deny all allegations that Health-Ade's beverages (i)  
27 failed to bear alcohol warnings required by any applicable laws owing to their specific alcohol  
28 content; or (ii) failed to accurately state their sugar content. Whole Foods further denies that Whole

1 Foods' retail locations can be held liable, in whole or in part, for the acts and omissions alleged in  
 2 the Action, as these retail locations merely sell Health-Ade's beverages and do not manufacture or  
 3 label them. As a result, Defendants believe they cannot be held liable for any alleged conduct,  
 4 statements, acts, or omissions at issue in the Action.

5 O. Defendants have also denied and continue to deny, among other things, allegations  
 6 that Plaintiffs, the Class, or any member of the Class have suffered damage or harm by reason of  
 7 any alleged conduct, statement, act, or omission of Defendants, or that Plaintiffs could establish  
 8 damages or entitlement to injunctive relief on a classwide basis. Defendants have further denied  
 9 and continue to deny that the Action meets the requisites for certification as a class action under  
 10 federal, California, or New York law, except for purposes of settlement, or that the evidence is  
 11 sufficient to support a finding of liability on an individual or classwide basis. Nonetheless,  
 12 Defendants have concluded that further defense of the Action would be protracted and expensive,  
 13 and that it is desirable that the Action be fully and finally settled in the manner and upon the terms  
 14 and conditions set forth in the Agreement. Defendants have also taken into account the uncertainty  
 15 and risks inherent in any litigation. Defendants, therefore, have determined that it is desirable and  
 16 beneficial that the Action be settled in the manner and upon the terms and conditions set forth in  
 17 this Agreement.

18 P. This Agreement, and the proposed certification, for settlement purposes only, of the  
 19 Class, effectuates the resolution of disputed claims and is for settlement purposes only.

20 NOW THEREFORE, it is hereby STIPULATED AND AGREED, by and between the  
 21 Parties, through their respective counsel, that: (a) the Action and all Released Claims be fully and  
 22 finally compromised, settled, and released upon final settlement approval by the Court after the  
 23 hearings as provided for in this Agreement; and (b) upon such approval by the Court, a Final Order  
 24 and Final Judgment, substantially in the form attached hereto as Exhibits A and B, respectively, be  
 25 entered dismissing the Action with prejudice upon the following terms and conditions:

## 26 **II. DEFINITIONS**

27 As used in this Agreement and the attached exhibits, the following terms have the following  
 28 meanings, unless this Agreement specifically provides otherwise. Other capitalized terms used in

1 this Agreement but not defined below shall have the meaning ascribed to them in this Agreement  
2 and the exhibits attached hereto:

3 1. "Action" means the proposed class action lawsuit entitled *Bayol et al. v. Health-Ade*  
4 *LLC, et al.*, Case No. 3:18-cv-01462 MMC pending in the United States District Court for the  
5 Northern District of California.

6 2. "Agreement" means this Stipulation of Class Action Settlement and its exhibits,  
7 attached hereto and incorporated herein, including all subsequent amendments agreed to in writing  
8 by the Parties and any exhibits to such amendments.

9 3. "Attorneys' Fees and Expenses" means such funds as may be awarded by the Court  
10 to Plaintiffs' Counsel to compensate Plaintiffs' Counsel for their fees and expenses in connection  
11 with the Action and the Settlement, as described more particularly in Section VI of this Agreement.

12 4. "Authorized Claimant" means a member of the Class who timely submits a valid  
13 Claim Form in accordance with the terms of this Agreement.

14 5. "Claim Deadline," means the final time and date by which a valid Claim Form must  
15 be postmarked or received by the Settlement Administrator for a Class Member to be eligible for  
16 any of the settlement consideration contemplated in this Agreement. The Claim Deadline shall be  
17 clearly set forth in the Court orders granting preliminary and final approval of the Settlement, the  
18 Long Form Notice and Summary Notice, on the Settlement Website, and on the front page of the  
19 Claim Form.

20 6. "Claim Form" means the proof of claim and release form(s), substantially in the  
21 form attached hereto as Exhibit C, the format of which may be modified to meet the requirements of  
22 the Settlement Administrator, to be submitted by Class Members seeking to recover settlement  
23 consideration pursuant to this Agreement.

24 7. "Class" means all persons in the United States and United States Territories who  
25 purchased at retail one or more of the Subject Products during the Class Period. Specifically  
26 excluded from the Class are: (a) Defendants and their employees, principals, officers, directors,  
27 agents, affiliated entities, legal representatives, successors and assigns; (b) the judges to whom the  
28 Action has been or is assigned and any members of their immediate families; (c) those who

1 purchased the Subject Products for the purpose of resale; and (d) all persons who have filed a timely  
2 Request for Exclusion from the Class.

3 8. "Class Member(s)" means any member of the Class.

4 9. "Class Notice" means, collectively, the Long Form Notice and Summary Notice  
5 provided to the Class as provided herein and directed by the Court, and the Internet and print  
6 advertising to be facilitated by the Settlement Administrator.

7 10. "Class Period" means the period from March 6, 2014 up to and including the Notice  
8 Date.

9 11. "Court" means the United States District Court for the Northern District of  
10 California and all judges assigned to the Action.

11 12. "Defense Counsel" means the law firm of Greenberg Traurig, LLP, counsel for  
12 Defendants.

13 13. "Effective Date" means the first date after which all of the following events and  
14 conditions have been met or have occurred:

15 (a) The Court has entered the Preliminary Approval Order;  
16 (b) The Court has entered the Final Order and Final Judgment;  
17 (c) Unless the Parties otherwise agree in writing to waive all or any portions of  
18 the following provision, there has occurred: (i) in the event there is a properly and timely filed  
19 objection to entry of the Final Order and Final Judgment, the expiration (without the filing or  
20 noticing of an appeal) of the time to appeal from the Final Order and Final Judgment; (ii) if the  
21 Final Order and Final Judgment is appealed, the final dismissal of an appeal from the Final Order  
22 and Final Judgment or the affirmance on appeal of the Final Order and Final Judgment in its  
23 entirety; (iii) if a ruling or decision is entered by an appellate court affirming the Final Order and  
24 Final Judgment, the time to petition for a writ of certiorari with respect to such ruling or decision  
25 has expired; or (iv) if a petition for a writ of certiorari with respect to the Final Order and Final  
26 Judgment is filed, the petition has been denied or dismissed or, if granted, has resulted in affirmance  
27 of the Final Order and Final Judgment in substantial form.

28 14. "Fairness Hearing" means the hearing that is to take place after the entry of the



1 Preliminary Approval Order and after the Notice Date for purposes of: (a) determining the fairness,  
2 adequacy and reasonableness of the Agreement in accordance with applicable jurisprudence; (b) if  
3 the Court so decides, entering the Final Order and Final Judgment and dismissing the Action with  
4 prejudice; and (c) ruling upon an application by Class Counsel for Attorneys' Fees and Expenses  
5 and Plaintiffs' incentive awards. The Parties shall request that the Court schedule the Fairness  
6 Hearing for a date that is in compliance with the provisions of 28 U.S.C. § 1715(d).

7 15. "Final Order and Final Judgment" means the Court's order and judgment fully and  
8 finally approving the Settlement and dismissing the Action with prejudice, substantially in the form  
9 attached hereto as Exhibits A and B.

10 16. "Long Form Notice" means the long form notice of settlement, substantially in the  
11 form attached hereto as Exhibit E.

12 17. "Health-Ade" means Health-Ade LLC, and includes, without limitation, all related  
13 entities, including but not limited to parents, subsidiaries, agents, employees and assigns,  
14 predecessors, successors and affiliates of Health-Ade LLC, and their related entities and owners.

15 18. "Net Cash Amount" means the value derived by subtracting the value of Attorneys'  
16 Fees and Expenses to be awarded to Plaintiffs' Counsel, any incentive awards to be awarded to any  
17 Plaintiffs, and any Settlement Administration Expenses from three million nine hundred ninety  
18 seven thousand and five hundred dollars (\$3,997,500).

19 19. "Notice Date" means the first date upon which the Class Notice is disseminated.

20 20. "Objection Deadline" means the date, to be set by the Court, by which Class  
21 Members must file or postmark objections, if any, to the Agreement in accordance with Section IX  
22 of this Agreement. The Parties shall request that the Court set an Objection Deadline coinciding  
23 with the Opt Out Date.

24 21. "Opt Out Date" means the date, to be set by the Court, by which a Request for  
25 Exclusion must be sent to Settlement Administrator for a Class Member to be excluded from the  
26 Settlement Class. The Parties shall request that the Court set an Opt Out Date coinciding with the  
27 Objection Deadline.

28 22. "Parties" means Plaintiffs, Health-Ade, and Whole Foods Market California, Inc.

collectively, as each of those terms are defined in this Agreement.

23. “Plaintiffs” means Gabriela Bayol and Bruce Verbeck.

24. “Plaintiffs’ Counsel” and/or “Class Counsel” means the law firm of Bursor & Fisher, P.A.

25. “Preliminary Approval Order” means the order, substantially in the form attached hereto as Exhibit D, conditionally certifying, for settlement purposes only, the Class; appointing Plaintiffs’ Counsel as counsel for the Class; setting the date of the Fairness Hearing; preliminarily approving this Agreement; approving the Class Notice program and Claim Form; and setting dates for the Claim Deadline, Opt Out Date, Objection Deadline, and Notice Date.

26. “Proof of Purchase” means receipts, Health-Ade packaging, or other documentation from a third-party commercial source reasonably establishing the purchase during the Class Period of one or more of the Subject Products. Packaging, including bar codes or UPCs, shall constitute Proof of Purchase only if the Subject Product(s) claimed to have been purchased by the Class Member can be identified from the packaging submitted.

27. “Related Action” means *Gonzalez, et al., v. Health-Ade LLC*, Case No. 3:18-cv-01836-MMC (N.D. Cal. 2018).

28. (a) “Released Claims” means and includes any and all claims, demands, rights, damages, obligations, suits, debts, liens, and causes of action under common law or statutory law (federal, state, or local) of every nature and description whatsoever, monetary, injunctive, or equitable, ascertained or unascertained, suspected or unsuspected, existing or claimed to exist, including Unknown Claims as of the Notice Date by Plaintiffs and all Class Members (and Plaintiffs’ and Class Members’ respective heirs, guardians, executors, administrators, representatives, agents, attorneys, partners, successors, predecessors-in-interest, and assigns) that:

(i) were asserted or that could have been reasonably asserted in the Action against the Released Parties (as hereinafter defined), or any of them, and that arise out of or are related in any way to any or all of the acts, omissions, facts, matters, transactions, or occurrences that were or could have been directly or indirectly alleged or referred to in the Action (including, but not limited to, alleged violations of the CLRA, UCL, FAL, NYGBL or

1 similar laws of any state or United States territory, and alleged claims for injunctive relief,  
2 breach of warranty, breach of the implied warranty of merchantability, negligent  
3 misrepresentation, fraud, and unjust enrichment); or

4 (ii) were asserted or that could have been reasonably asserted by any Class Member  
5 against the Released Parties (as hereinafter defined), or any of them, and that arise out of or  
6 are related in any way to any or all of the acts, omissions, facts, matters, transactions, or  
7 occurrences that were or could have been directly or indirectly alleged or referred to,  
8 including all claims for monetary, injunctive, or equitable relief that relate in any way to  
9 communications, disclosures, representations, statements, claims, nondisclosures and/or  
10 omissions, packaging, advertising, labeling, and/or marketing of or concerning the Subject  
11 Products, in the Related Action; or

12 (iii) relate in any way to communications, disclosures, representations, statements,  
13 claims, nondisclosures and/or omissions, packaging, advertising, labeling, testing, and/or  
14 marketing of or concerning the Subject Products related to the alleged alcohol content of the  
15 products; or

16 (iv) relate in any way to communications, disclosures, representations, statements,  
17 claims, nondisclosures and/or omissions, packaging, advertising, labeling, testing, and/or  
18 marketing of or concerning the Subject Products related to the consequences of continued  
19 fermentation of the products; or

20 (v) relate in any way to communications, disclosures, representations, statements,  
21 claims, nondisclosures and/or omissions, packaging, advertising, labeling, testing, and/or  
22 marketing of or concerning the Subject Products related to the alleged sugar content of the  
23 products.

24 (b) Notwithstanding any other provision of this Agreement, “Released Claims”  
25 does not include claims for personal injuries. Plaintiffs and Class Members are not releasing any  
26 claims, demands, rights, damages, obligations, suits, debts, liens, and causes of action relating to  
27 personal injuries, and any such allegations or claims shall be dismissed without prejudice.

28 29. “Released Parties” shall be defined and construed broadly to effectuate a complete

1 and comprehensive release, and means Health-Ade and any entity that made, manufactured, tested,  
2 inspected, audited, certified, purchased, distributed, supplied, licensed, transported, donated,  
3 marketed, advertised, promoted, sold or offered for sale any Subject Product, including but not  
4 limited to Whole Foods, other distributors or retailers, or any entity that contributed to any labeling,  
5 sale, distribution, supply, advertising, marketing, or packaging of any Product, including all of their  
6 respective predecessors, successors, assigns, parents, subsidiaries, divisions, departments, and  
7 affiliates, and any and all of their past, present and future officers, directors, employees,  
8 shareholders, partners, principals, agents, servants, successors, attorneys, insurers, representatives,  
9 licensees, licensors, customers, subrogees and assigns. It is expressly understood that, to the extent  
10 a Released Party is not a Party to this Agreement, all such Released Parties are intended third party  
11 beneficiaries of this Agreement.

12 30. “Releasing Parties” means Plaintiffs, Plaintiffs’ Counsel, all Class Members, and any  
13 person claiming by or through each Class Member, including but not limited to spouses, children,  
14 wards, heirs, devisees, legatees, invitees, employees, associates, co-owners, attorneys, agents,  
15 administrators, predecessors, successors, assignees, representatives of any kind, shareholders,  
16 partners, directors, or affiliates.

17 31. “Request for Exclusion” means the written communication that must be sent to the  
18 Settlement Administrator and postmarked on or before the Opt Out Date by a Class Member who  
19 wishes to be excluded from the Class.

20 32. “Settlement” means the settlement embodied in this Agreement, including all  
21 attached exhibits (which are an integral part of this Agreement and are incorporated in their entirety  
22 by reference).

23 33. “Settlement Administrator” means RG/2 Claims Administration LLC.

24 34. “Settlement Administration Expenses” means the expenses incurred by the  
25 Settlement Administrator assisting with the implementation of this Agreement, which shall  
26 primarily result from administering the notice program and processing all claims made by Class  
27 Members.

28 35. “Subject Products” means all products sold by Defendants during the Class Period

1 under Health-Ade's kombucha product lines, including but not limited to the following flavors:  
2 Beet; Blood Orange-Carrot-Ginger; California Grape; Cayenne Cleanse; Ginger-Lemon; Holiday  
3 Cheers; Jalapeño-Kiwi-Cucumber; Maca-Berry; Matcha+Cold Brew Coffee; The Original; Pink  
4 Lady Apple; Plum; Pomegranate; Power Greens; Reishi-Chocolate; and Sweet Thorn.

5 36. "Summary Notice" means the summary notice of the proposed Settlement,  
6 substantially in the form attached hereto as Exhibit F.

7 37. "Unknown Claims" means any and all Released Claims that a Class Member, or  
8 anyone acting on behalf of or in the Class Member's interest, does not know or suspect to exist  
9 against any of the Released Parties relating to any Subject Product, which, if known, might have  
10 affected his or her decision to enter into or to be bound by the terms of this Agreement. The  
11 Plaintiffs and Class Members acknowledge that they may hereafter discover facts in addition to or  
12 different from those that they now know or believe to be true concerning the subject matter of this  
13 Agreement, but nevertheless fully, finally, and forever settle and release any and all Released  
14 Claims, monetary, injunctive, or equitable, known or unknown, suspected or unsuspected,  
15 contingent or non-contingent, which now exist, may hereafter exist, or heretofore have existed  
16 which arise from, or in any way relate to, the labeling, packaging, sale, distribution, supply,  
17 marketing, testing, or advertising, regardless of medium, of any Subject Product, without regard to  
18 subsequent discovery or existence of such different or additional facts concerning each of the  
19 Released Parties. Notwithstanding this paragraph or any other paragraph herein, this Agreement  
20 shall not be deemed to release any individual, class, representative, group or collective claim,  
21 liability, right, demand, suit, matter, obligation, damage, loss, action or cause of action, of any kind  
22 or description that a Releasing Party has or may have for personal injuries.

23 38. "Whole Foods" means Whole Foods Market California, Inc., and includes, without  
24 limitation, all related entities, including but not limited to parents, subsidiaries, agents, employees  
25 and assigns, predecessors, successors and affiliates of Whole Foods Market California, Inc., and  
26 their related entities or owners.

**III. SUBMISSION OF THE SETTLEMENT TO THE COURT FOR REVIEW AND**  
**APPROVAL**

39. As soon as is practicable following the signing of this Agreement, Class Counsel shall apply to the Court for entry of the Preliminary Approval Order (substantially in the form attached as Exhibit D), for the purpose of, among other things:

(a) Approving the Class Notice, including the Long Form Notice and Summary Notice, substantially in the form set forth in Exhibits E and F;

(b) Finding that the requirements for preliminary certification of the Class have been satisfied, appointing Plaintiffs as the representatives of the Class and their counsel as Class Counsel, and preliminarily approving the Settlement as being within the range of reasonableness such that the Class Notice should be provided pursuant to this Agreement;

(c) Scheduling the Fairness Hearing on a date ordered by the Court, provided in the Preliminary Approval Order, and in compliance with applicable law, to determine whether the Settlement should be approved as fair, reasonable, and adequate, and to determine whether a Final Order and Final Judgment should be entered dismissing the Action with prejudice;

(d) Determining that the notice of the Settlement and of the Fairness Hearing, as set forth in this Agreement, complies with all legal requirements, including but not limited to the Due Process Clause of the United States Constitution;

(e) Preliminarily approving the form of the Final Order and Final Judgment;

(f) Appointing RG/2 Claims Administration LLC as the Settlement Administrator;

(g) Directing that Class Notice shall be given to the Class as provided in Section V of this Agreement;

(h) Providing that Class Members will have until the Claim Deadline to submit Claim Forms;

(i) Providing that any objections by any Class Member to the certification of the Class and the proposed Settlement contained in this Agreement, and/or the entry of the Final Order and Final Judgment, shall be heard, and any papers submitted in support of said objections shall be

1 considered by the Court at the Fairness Hearing only if, on or before the Objection Deadline set by  
2 the Court, such objector files with the Court a written objection and notice of the objector's  
3 intention to appear, and otherwise complies with the requirements in Section IX of this Agreement;

4 (j) Establishing dates by which the Parties shall file and serve all papers in  
5 support of the application for final approval of the Settlement and/or in response to any valid and  
6 timely objections;

7 (k) Providing that all Class Members will be bound by the Final Order and Final  
8 Judgment dismissing the Action with prejudice unless such members of the Class timely file valid  
9 written Requests for Exclusion in accordance with this Agreement and the Class Notice;

10 (l) Providing that Class Members wishing to exclude themselves from the  
11 Settlement will have until the Opt Out Date to submit a valid written Request for Exclusion to the  
12 Settlement Administrator, in accordance with the procedures set forth in Section IX of this  
13 Agreement;

14 (m) Directing the Parties, pursuant to the terms and conditions of this Agreement,  
15 to take all necessary and appropriate steps to establish the means necessary to implement the  
16 Settlement;

17 (n) Pending the Fairness Hearing, staying all proceedings in the Action, other  
18 than proceedings necessary to carry out or enforce the terms and conditions of this Agreement and  
19 the Preliminary Approval Order; and

20 (o) Pending the Fairness Hearing, enjoining Plaintiffs and Class Members, or any  
21 of them, from commencing or prosecuting, either directly or indirectly, any action in any forum  
22 (state or federal) asserting any Released Claims.

23 40. Following the entry of the Preliminary Approval Order, the Class Notice shall be  
24 given and published in the manner directed and approved by the Court, as set forth in fuller detail in  
25 Section V of this Agreement.

26 41. At the Fairness Hearing, the Parties shall seek to obtain from the Court a Final Order  
27 and Final Judgment in the form substantially similar to Exhibits A and Exhibit B, respectively. The  
28 Final Order and Final Judgment shall, among other things:

(a) Find that the Court has personal jurisdiction over all Class Members, the Court has subject matter jurisdiction over the claims asserted in the Action, and that venue is proper;

(b) Finally approve the Agreement and the Settlement pursuant to Rule 23 of the Federal Rules of Civil Procedure;

(c) Certify the Class for settlement purposes only;

(d) Find that the notice to the Class complied with all laws and requirements, including, but not limited to, the Due Process Clause of the United States Constitution;

(e) Incorporate and effectuate the release set forth in the Agreement and make the Release effective as of the date of the Final Order and Final Judgment;

(f) Authorize the Parties to implement the terms of the Settlement;

(g) Dismiss the Action with prejudice; and

(h) Notwithstanding the aforementioned dismissal with prejudice, retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Agreement, the Final Order and Final Judgment, any final order approving Attorneys' Fees and Expenses and incentive awards, and for any other necessary purpose.

42. The Parties acknowledge that each intends to implement the terms of this Agreement. The Parties shall, in good faith, cooperate and assist with and undertake all reasonable actions and steps to accomplish all required events on the schedule set by the Court, and shall use reasonable efforts to implement all terms and conditions of this Agreement. In the event the Court does not preliminarily or finally approve this Agreement, the Parties further agree to continue to cooperate in good faith in an attempt to address any deficiencies raised by the Court in an expeditious manner.

#### **IV. THE SETTLEMENT CONSIDERATION**

The Net Cash Amount will be distributed in the form of cash payments as follows:

##### **A. Settlement Fund and Awards to Class Members**

43. Total Financial Commitment: Defendants' maximum financial commitment under the Settlement shall be three million nine hundred ninety seven thousand and five hundred dollars



1 (\$3,997,500.00). This amount shall include any Court-ordered Attorneys' Fees and Expenses,  
2 Plaintiffs' incentive awards, any and all Settlement Administration Expenses, and the monetary  
3 value of all cash awards paid to or issued to Class Members. Whole Foods shall have no obligation  
4 to contribute any funds to the total financial commitment expressed in this paragraph 43.

5 44. Cash Award: Class Members who (a) execute and submit a valid Claim Form on or  
6 before the Claim Deadline; (b) attest under penalty of perjury that they purchased one or more of  
7 the Subject Products during the Class Period; and (c) provide all required Proof of Purchase or other  
8 required documentation (as necessary), and comply with all other conditions and requirements  
9 specified herein, may opt to receive a cash award as follows: Authorized Claimants may receive up  
10 to a \$4.00 cash award for each Subject Product the Authorized Claimant purchased during the Class  
11 Period, up to a maximum of ten (10) claims (or \$40.00 in cash) if the Authorized Claimant does not  
12 provide Proof of Purchase. Authorized Claimants who claim more than \$40.00 in cash awards must  
13 submit Proof of Purchase establishing their purchase during the Class Period of each Subject  
14 Product claimed and may receive up to \$80.00 in cash awards based on the retail value of the  
15 Subject Products shown in the Proof of Purchase.

16 45. Timing of Awards: All Class Members who submit Claim Forms shall be sent cash  
17 awards or, as applicable, a letter explaining the rejection of their Claim Forms, within forty-five  
18 (45) calendar days of the Effective Date (the "Award Issuance Date"). Health-Ade shall pay the  
19 Settlement Administrator the aggregate value of all cash awards to be distributed to Class Members  
20 no later than fifteen (15) calendar days before the Award Issuance Date. All cash awards to Class  
21 Members will be in the form of checks, and such checks will state that they must be redeemed  
22 within one hundred twenty (120) calendar days of the Award Issuance Date (the "Expiration Date")  
23 or they will become void.

24 46. Insufficient Funds: If the aggregate value of the cash rewards claimed by Authorized  
25 Claimants pursuant to valid and timely Claim Forms exceeds the Net Cash Amount, then the  
26 monetary value of the awards to be provided to each Authorized Claimant shall be reduced on a pro  
27 rata basis, such that the aggregate value of the awards does not exceed the Net Cash Amount. After  
28 the Award Issuance Date, the Settlement Administrator, in consultation with the Parties as

necessary, shall determine each Authorized Claimant's pro rata share based upon each Authorized Claimant's Claim Form and the aggregate value of the awards claimed by Authorized Claimants.

**B. Injunctive Relief**

47. In consideration for the Release contained in this Agreement, and as a result of the efforts of the Plaintiffs and their counsel:

(a) For a period beginning on the date this Agreement is executed until 365 calendar days later, Health-Ade shall maintain on the labels of the Subject Products the following statement: "Kombucha should not be consumed if left unrefrigerated for an extended period of time. Pregnant/breast feeding? Consult your doctor. Due to natural fermentation, there may be trace amounts of alcohol and small pieces of culture." This Agreement will not prevent Health-Ade from implementing label changes regarding the alcohol content of Health-Ade's products that are (a) reasonably necessary to comply with any statute, regulation, or other law of any kind; (b) necessitated by product and/or ingredient changes; or (c) permitted by subsequent statute, regulation, or case law concerning alcohol disclosures and/or alcohol warnings on food and beverage labels.

(b) No later than 120 days after the Effective Date, Health-Ade will effectuate a formulation change that will control the variability of the alcohol and sugar content in its products to ensure that the declared sugar and alcohol content on such products' labels do not vary to a greater extent than allowed by federal or state labeling standards.

(c) To ensure that all such products continue to comply with federal and state labeling standards, Health-Ade will regularly (every 120 days) test the sugar and alcohol content of product samples drawn from every Subject Product line, using third-party laboratories. If such testing reveals that the sugar or alcohol content of a product sample varies from the declared sugar or alcohol content on that product's label to a greater extent than allowed by federal or state labeling standards, Health-Ade will repeat the testing for the product line at issue, and, if variability is repeated, make formulation or label adjustments regarding sugar and/or alcohol content.

**V. NOTICE TO THE CLASS**

48. Subject to the Court's approval, the Parties shall jointly recommend and retain RG/2

Claims Administration LLC as the Settlement Administrator. Following the entry of the Preliminary Approval Order and the Court's appointment of the proposed Settlement Administrator, the Settlement Administrator shall disseminate the Class Notice as specified in the Preliminary Approval Order and in this Section, to comply with all applicable laws and requirements, including, but not limited to, the Due Process Clause of the United States Constitution. The Settlement Administrator shall develop a notice and claims administration program, subject to the approval of the Parties and the Court, designed to achieve at least 80% reach. Health-Ade shall pay all reasonable Settlement Administration Expenses within the confines of Section IV(A). Following the dissemination of the Class Notice, the Settlement Administrator shall submit a declaration under penalty of perjury attesting that the Class Notice has achieved at least 80% reach.

49. The Long Form Notice: The Long Form Notice, which shall be made available on the Settlement Website (as defined herein), to Class Members requesting a hard copy from the Settlement Administrator, and to Class Members that Health-Ade can identify in its records through reasonable effort, shall be in a form substantially similar to the document attached to this Agreement as Exhibit E and shall comport to the following terms and requirements:

(a) General Terms: The Long Form Notice shall contain a plain and concise description of the nature of the Action and the proposed Settlement, including information on the definition of the Class, the identity of eligible Class Members, how the proposed Settlement would provide relief to Class Members, what claims are released under the proposed Settlement, and other relevant information.

(b) Opt Out Rights: The Long Form Notice shall inform Class Members that they have the right to opt out of the Settlement. The Long Form Notice shall provide the deadlines and procedures for exercising this right.

(c) Objection to Settlement: The Long Form Notice shall inform Class Members of their right to object to the proposed Settlement and appear at the Fairness Hearing. The Class Notice shall provide the deadlines and procedures for exercising these rights.

(d) Fees and Expenses: The Long Form Notice shall inform Class Members about the amounts being sought by Class Counsel as Attorneys' Fees and Expenses and Plaintiffs'

incentive awards, and shall explain that the Attorneys' Fees and Expenses and Plaintiffs' incentive awards, in addition to amounts being made available for relief to Class Members, will be deducted from the Settlement Fund and be paid out of the Settlement Fund.

(e) Claim Form: The Long Form Notice and Settlement Website shall include the Claim Form, which shall inform Class Members that they must fully complete and timely return the Claim Form prior to the Claim Deadline to be eligible to obtain relief pursuant to this Agreement.

50. The Summary Notice: Upon the Notice Date, the Settlement Administrator shall cause the Summary Notice, in the form substantially similar to Exhibit F, to be published once a week, for four successive weeks, in the Los Angeles Times, Sacramento Bee, and San Francisco Chronicle.

51. Internet Advertising Program: No later than the Notice Date, the Settlement Administrator shall cause notice of the settlement to be provided through digital advertising, pursuant to the Settlement Administrator's notice plan set forth in the Declaration of the Settlement Administrator to be filed in support of preliminary approval of the Settlement. Health-Ade shall also cause notice of the settlement to be posted on Health-Ade's website and on Health-Ade's Facebook, Instagram, and Twitter accounts, in the form of a link to the Settlement Website.

52. Settlement Website: No later than the Notice Date, the Settlement Administrator shall establish and caused to be published an Internet website (the "Settlement Website"), [www.hakombuchasettlement.com](http://www.hakombuchasettlement.com). All Internet advertising that is part of the Class Notice program will direct Class Members to the Settlement Website. The Settlement Website will allow Class Members to submit Claim Forms online and will contain information relevant to Class Members, including but not limited to all applicable deadlines, the Agreement, Class Notice, a downloadable Claim Form, all papers filed by the Parties in support of this Agreement (including Plaintiffs' anticipated motion for Attorneys' Fees and Expenses), orders of the Court pertaining to this Agreement, and contact information for reaching the Settlement Administrator via a toll-free telephone number, e-mail and U.S. mail. The Parties shall use reasonable efforts to agree on all information and documents to be posted on this website, and no information shall be posted or

provided on the website without the Parties' express approval. The website shall be rendered inactive one hundred fifty (150) days after the Award Issuance Date. Settlement Administration Expenses include the costs associated with maintenance of the Settlement Website.

53. Toll-Free Telephone Number: Prior to the dissemination of the Class Notice, the Settlement Administrator shall establish a toll-free telephone number that will provide Settlement-related information to Class Members, pursuant to the terms and conditions of this Agreement. Settlement Administration Expenses include the costs associated with maintenance of this toll-free telephone number. The Parties shall also create a protocol for the Settlement Administrator to refer Class Member inquiries to Class Counsel. The toll-free telephone number shall be rendered inactive one hundred fifty (150) calendar days after the Award Issuance Date.

54. Nothing contained herein shall limit Class Counsel's ability to disseminate notice by publishing a link to the Settlement Website on their firm or attorneys' websites, Facebook pages, or social media accounts.

## **VI. ATTORNEYS' FEES AND EXPENSES AND CLASS REPRESENTATIVE INCENTIVE AWARD**

55. In recognition of the time and effort the representative Plaintiffs expended in pursuing this action and in fulfilling their obligations and responsibilities as class representatives, and in recognition of the benefits conferred on all Class Members by the Settlement, Class Counsel may ask the Court for the payment of incentive awards to the representative Plaintiffs. Plaintiffs and Class Counsel will submit, and Defendants will not oppose, an application for an incentive award of two thousand dollars (\$2,000.00) to each Plaintiff. Any Court-ordered incentive award will be paid to Plaintiffs by Health-Ade no later than fifteen (15) calendar days after the Effective Date.

56. Class Counsel will make an application to the Court for an award of Attorneys' Fees and Expenses in the Action. Defendants will not have the right to challenge Class Counsel's entitlement to Attorneys' Fees and Expenses. Defendants will have the right to challenge the amount of Attorneys' Fees and Expenses requested by Class Counsel. The Parties have no agreement between themselves as to the amounts of Attorneys' Fees and Expenses that Class

Counsel will request or that Defendants will oppose. The Attorneys' Fees and Expenses ordered by the Court shall represent Class Counsel's sole compensation under the Settlement, will be in lieu of statutory fees Plaintiffs and/or their attorneys might otherwise have been entitled to recover from Defendants, and shall be inclusive of all fees and costs of Class Counsel to be paid by Defendants. Plaintiffs and Class Counsel agree that Defendants shall not pay or be obligated to pay Class Counsel in excess of any award of Attorneys' Fees and Expenses ordered by the Court. In no event shall Defendants be obligated to pay Attorneys' Fees and Expenses (or any other payments) that would make Defendants' total payment towards the Settlement an amount in excess of three million nine hundred ninety seven thousand and five hundred dollars (\$3,997,500.00).

57. Any Attorneys' Fees and Expenses ordered to be paid to Class Counsel shall be paid by Health-Ade to Class Counsel no later than thirty (30) calendar days after the Court's order awarding Attorneys' Fees and Expenses, provided that, pursuant to the terms of the undertaking attached as Exhibit G to this Agreement, any such Attorneys' Fees and Expenses will be repaid to Health-Ade by Class Counsel should the Court's order awarding Attorneys' Fees and Expenses or Final Approval Order be reversed on appeal and/or should the Settlement be terminated according to its terms.

## **VII. RELEASES AND DISMISSAL OF ACTION**

58. Upon the Effective Date, the Releasing Parties shall be deemed to have, and by operation of the Final Order and Final Judgment shall have, fully, finally and forever released, relinquished, and discharged all Released Claims against the Released Parties. In connection with the Released Claims, each Releasing Party shall be deemed as of the Effective Date to have expressly, knowingly, and voluntarily waived any and all provisions, rights, and benefits conferred by Section 1542 of the California Civil Code, and any statute, rule, and legal doctrine similar, comparable, or equivalent to Section 1542, which provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

1 In connection with such waiver and relinquishment, the Releasing Parties hereby acknowledge that  
 2 they are aware that they or their attorneys may hereafter discover claims or facts in addition to or  
 3 different from those that they now know or believe exist with respect to Released Claims, but that it  
 4 is their intention to hereby fully, finally, and forever settle and release all of the Released Claims,  
 5 whether known or unknown, suspected or unsuspected, that they have against the Released Parties.  
 6 In furtherance of such intention, the release herein given by the Releasing Parties shall be and  
 7 remain in effect as a full and complete general release notwithstanding the discovery or existence of  
 8 any such additional different claims or facts. Each of the Releasing Parties expressly acknowledges  
 9 that he/she/it has been advised by its attorney of the contents and effect of Section 1542, and with  
 10 knowledge, each of the Parties hereby expressly waives whatever benefits he/she/it may have had  
 11 pursuant to such section. Plaintiffs and Class Members are not releasing any claims for personal  
 12 injuries. Plaintiffs acknowledge, and the Class Members shall be deemed by operation of the Final  
 13 Judgment to have acknowledged, that the foregoing waiver was separately bargained for and  
 14 constitutes a material element of the Settlement of which this release is a part.

15 59. Upon the Effective Date, the Action shall be dismissed with prejudice. Plaintiffs and  
 16 Class Counsel shall have the responsibility for ensuring that the Action is dismissed with prejudice  
 17 in accordance with the terms of this Agreement.

18 60. The Court shall enter an order retaining jurisdiction over the Parties to this  
 19 Agreement with respect to the future performance of the terms of this Agreement. In the event that  
 20 any applications for relief are made, such applications shall be made to the Court.

21 61. Upon the Effective Date: (a) the Agreement shall be the exclusive remedy for any  
 22 and all Released Claims of Plaintiffs and Class Members; and (b) Plaintiffs and the Class Members  
 23 stipulate to be and shall be permanently barred and enjoined by Court order from initiating,  
 24 asserting, or prosecuting against the Released Parties in any federal or state court or tribunal any  
 25 and all Released Claims.

## 26 **VIII. ADMINISTRATION OF THE SETTLEMENT**

27 62. Health-Ade shall, subject to the approval of Class Counsel and the Court, retain  
 28 RG/2 Claims Administration LLC as the Settlement Administrator to help implement the terms of



1 the Agreement. Subject to the terms and conditions of this Agreement, Health-Ade shall pay all  
2 costs associated with the Settlement Administrator, including costs of providing Class Notice and  
3 reviewing and processing claims.

4 63. In fulfilling its responsibilities, the Settlement Administrator shall be responsible for,  
5 without limitation: (a) consulting on and designing the notice to be disseminated to Class Members;  
6 (b) arranging for the publication of the Summary Notice and dissemination of Class Notice; (c)  
7 responding to requests from Class Counsel and/or Defense Counsel; and (d) otherwise assisting  
8 with administration of the Settlement.

9 64. The Settlement Administrator shall also be responsible for, without limitation, the  
10 dissemination of Class Notice and implementing the terms of the claim process and related  
11 administrative activities that include communications with Class Members concerning the  
12 Settlement, claim process, and their options thereunder. In particular, the Settlement Administrator  
13 shall be responsible for: (a) printing, e-mailing, mailing or otherwise arranging for the mailing of  
14 the Class Notice in response to Class Members' requests; (b) making any mailings required under  
15 the terms of this Agreement; (c) establishing the Settlement Website; (d) establishing a toll-free  
16 voice line to which Class Members may refer for information about the Action and the Settlement;  
17 (e) receiving and maintaining any Class Member correspondence regarding requests for exclusion  
18 and objections to the Settlement; (f) forwarding inquiries from Class Members to Class Counsel or  
19 their designee for a response, if warranted; (g) establishing a post office box for the receipt of Claim  
20 Forms, exclusion requests, and any correspondence; (h) reviewing Claim Forms according to the  
21 review protocols agreed to by the Parties and standards set forth in this Agreement; and (i)  
22 otherwise implementing and/or assisting with the claim review process and payment of the claims.

23 65. The Settlement Administrator shall administer the Settlement in accordance with the  
24 terms of this Agreement and, without limiting the foregoing, shall: (a) treat any and all documents,  
25 communications and other information and materials received in connection with the administration  
26 of the Settlement as confidential and shall not disclose any such documents, communications or  
27 other information to any person or entity except as provided for in this Agreement or by Court  
28 order; and (b) receive Requests for Exclusion and provide to Class Counsel and Defense Counsel a



1 copy thereof within three (3) business days of receipt. If the Settlement Administrator receives any  
2 Requests for Exclusion after the deadline for the submission of such forms and requests, the  
3 Settlement Administrator shall promptly provide Class Counsel and Defense Counsel with copies  
4 thereof and receive and maintain all correspondence from any Class Member regarding the  
5 Settlement.

6 66. The Claim Form will be available for downloading and may be completed and  
7 submitted online at the Settlement Website, and, at Class Counsel's option, the Claim Form will be  
8 available for downloading on Class Counsel's websites. The Claim Form may also be requested by  
9 calling the toll-free number provided by the Settlement Administrator or by writing to the  
10 Settlement Administrator.

11 67. To be eligible for a cash award, each Class Member must submit or postmark a  
12 Claim Form, on or before the Claim Deadline, containing his or her name, mailing address, and e-  
13 mail address, and an attestation, under penalty of perjury, that the Class Member purchased one or  
14 more Subject Products during the Class Period. The Claim Form will also direct Class Members to  
15 submit Proof of Purchase for any awards claimed in excess of \$40.00. The Claim Form will be  
16 deemed to have been submitted when the Claim Form, including any necessary Proof of Purchase,  
17 is posted, if received with a postmark, or equivalent mark by a courier company indicated on the  
18 envelope or mailer and if mailed with pre-paid postage and addressed in accordance with the  
19 instructions set out in the Claim Form. In the case of online claims, the Claim Form shall be  
20 deemed to have been submitted when it is fully uploaded, including any necessary Proof of  
21 Purchase, to the Settlement Website.

22 68. Any Class Member who, in accordance with the terms and conditions of this  
23 Agreement, neither seeks exclusion from the Class nor submits a valid and timely Claim Form, will  
24 not be entitled to receive any relief pursuant to this Agreement, but will be bound together with all  
25 Class Members by the terms of this Agreement, including the terms of the Final Order and Final  
26 Judgment to be entered in the Action and the releases provided for herein, and will be barred from  
27 bringing any action in any forum (state or federal) against any of the Released Parties concerning  
28 the Released Claims.

69. The Settlement Administrator shall use adequate and customary procedures and standards to determine whether a Claim Form meets the requirements set forth in this Agreement and to prevent the payment of fraudulent claims and/or pay only valid and eligible claims. Each Claim Form shall be submitted to and reviewed by the Settlement Administrator, who shall determine the extent, if any, to which each claim shall be allowed. The Settlement Administrator shall use all reasonable efforts and means to identify and reject duplicate and/or fraudulent claims, including, without limitation, indexing all awards provided to Class Members.

70. Claim Forms that do not meet the terms and conditions of this Agreement shall be promptly rejected by the Settlement Administrator. The Settlement Administrator shall have forty-five (45) calendar days from the Effective Date to exercise the right of rejection. The Settlement Administrator shall notify the Class Member of the rejection using the contact information provided in the Claim Form, including via electronic mail. Class Counsel and Defense Counsel shall be provided with copies of all such notifications to Class Members. If any claimant whose Claim Form has been rejected, in whole or in part, desires to contest such rejection, the claimant must, within fifteen (15) business days from receipt of the rejection, transmit to the Settlement Administrator by e-mail or U.S. mail a notice and statement of reasons indicating the claimant's grounds for contesting the rejection, along with any supporting documentation, and requesting further review by the Settlement Administrator, in consultation with Class Counsel and Defense Counsel, of the denial of the claim. If Class Counsel and Defense Counsel cannot agree on a resolution of claimant's notice contesting the rejection, the disputed claim shall be presented to the Court or a referee appointed by the Court for summary and non-appealable resolution.

71. No person shall have any claim against Defendants, Defense Counsel, Plaintiffs, Plaintiffs' Counsel, the Class, Class Counsel, and/or the Settlement Administrator based on any eligibility determinations, distributions, or awards made in accordance with this Agreement. This provision does not affect or limit in any way the right of review by the Court or referee of any disputed Claim Forms as provided in this Agreement.

72. Class Counsel and Defense Counsel shall have the right to inspect the Claim Forms and supporting documentation received by the Settlement Administrator at any time upon

1 reasonable notice.

2 73. No later than seven (7) calendar days before the date of the Fairness Hearing, the  
3 Settlement Administrator shall file with the Court: (a) a list of those persons who have opted out or  
4 excluded themselves from the Settlement; and (b) the details regarding the number of valid Claim  
5 Forms received and processed by the Settlement Administrator.

6 74. The Settlement Administrator may retain one or more persons to assist in the  
7 completion of its responsibilities.

8 75. The Settlement Administrator shall distribute benefits to eligible Class Members  
9 only after the Effective Date and pursuant to the deadlines set forth in paragraph 45 of this  
10 Agreement.

11 76. If the Settlement is not approved or for any reason the Effective Date does not occur,  
12 no payments or distributions of any kind shall be made pursuant to this Agreement, except for the  
13 costs and expenses of the Settlement Administrator, for which Plaintiffs and/or Plaintiffs' Counsel  
14 are not responsible.

15 77. In the event the Settlement Administrator fails to perform its duties, and/or makes a  
16 material or fraudulent misrepresentation to, or conceals requested material information from, Class  
17 Counsel, Defendants, and/or Defense Counsel, then the party to whom the misrepresentation is  
18 made shall, in addition to any other appropriate relief, have the right to demand that the Settlement  
19 Administrator immediately be replaced. No party shall unreasonably withhold consent to remove  
20 the Settlement Administrator. The Parties will attempt to resolve any disputes regarding the  
21 retention or dismissal of the Settlement Administrator in good faith, and, if they are unable to do so,  
22 will refer the matter to the Court for resolution.

23 78. The Settlement Administrator shall coordinate with Defense Counsel and Plaintiffs'  
24 Counsel to provide notice as required by 28 U.S.C. § 1715, and the costs of such notice shall be  
25 considered Settlement Administration Expenses.

26 79. Defendants and the Released Parties are not obligated to (and will not be obligated  
27 to) compute, estimate, or pay any taxes on behalf of any Plaintiffs, any Class Member, Plaintiffs'  
28 Counsel, Class Counsel, and/or the Settlement Administrator.

## IX. OBJECTIONS AND REQUESTS FOR EXCLUSION

80. Members of the Class who fail to file or send to the Court by the Objection Deadline written objections in the manner specified in this Agreement and the Class Notice shall be deemed to have waived all objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

81. Any Class Member who intends to object to the fairness, reasonableness, and/or adequacy of the Settlement must submit their written objection, and all supporting documents, to the Court either by mailing them to the Class Action Clerk, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, or by filing them in person at any location of the United States District Court for the Northern District of California. To be considered, all objections should be in writing and be filed or postmarked on or before the Objection Deadline. Class Members who object must set forth in their written objection: (a) their full name; (b) current address; (c) a written statement of their objection(s) and the reasons for each objection; (d) a statement of whether they intend to appear at the Fairness Hearing (with or without counsel); (e) their signature; (f) a statement, sworn to under penalty of perjury, attesting to the fact that he or she purchased one or more of the Subject Products during the Class Period; (f) details of their purchase of the Subject Products, including the Subject Products purchased, and the date and location of purchase; and (g) the case name and number of the Action.

82. The Parties shall request that the Court allow any interested party to file a response to any objection no later than seven (7) calendar days before the Fairness Hearing, or as the Court may otherwise direct.

83. Members of the Class may also elect to opt out of the Settlement, relinquishing their rights to benefits hereunder. Members of the Class who opt out of the Settlement will not release their claims pursuant to this Agreement. Proposed Class Members wishing to opt out of the Settlement must send to the Settlement Administrator by U.S. Mail a Request for Exclusion postmarked no later than the Opt Out Date. The Request for Exclusion must be a personally signed letter from the Class Member including (a) their full name; (b) current address; (c) a clear statement communicating that they elect to be excluded from the Class, do not wish to be a Class Member,

1 and elect to be excluded from any judgment entered pursuant to the Settlement; (d) their signature;  
2 and (e) the case name and number of the Action. Members of the Class who fail to submit a valid  
3 Request for Exclusion on or before the Opt Out Date shall, in accordance with Paragraph 68 of this  
4 Agreement, be bound by all terms of this Agreement and the Final Order and Final Judgment,  
5 regardless of whether they have requested exclusion from the Settlement.

6 84. Any member of the Class who submits a timely Request for Exclusion or opt out  
7 may not file an objection to the Settlement and shall be deemed to have waived any rights or  
8 benefits under this Agreement. So-called “mass” or “class” opt outs shall not be allowed.

9 85. The Settlement Administrator shall promptly provide copies of all Requests for  
10 Exclusion, objections, and/or related correspondence to Class Counsel and Defense Counsel. No  
11 later than three (3) business days after the deadline for submission of Requests for Exclusion, the  
12 Settlement Administrator shall provide to Class Counsel and Defense Counsel a complete list of  
13 Class Members requesting exclusion from the Settlement together with copies of the Requests for  
14 Exclusion.

15 86. On the date set forth in the Preliminary Approval Order, a Fairness Hearing shall be  
16 conducted to determine final approval of the Settlement. A Motion in support of the Fairness  
17 Hearing shall be filed no later than fourteen (14) calendar days after the deadline to object to or opt  
18 out of the Settlement. Upon final approval of the Settlement by the Court at or after the Fairness  
19 Hearing, the Parties shall present the Final Order and Final Judgment, substantially in the form  
20 attached to this Agreement as Exhibits A and B, and a final order approving Attorneys’ Fees and  
21 Expenses and incentive award, to the Court for approval and entry. Class Members who wish to be  
22 heard at the Fairness Hearing (whether individually or through separate counsel) and are objecting  
23 to the Settlement shall comply with the provisions of this Agreement. Class Members who wish to  
24 be heard at the Fairness Hearing (whether individually or through separate counsel) and are not  
25 objecting to the Settlement shall file a notice of appearance with the Court’s CM/ECF system or  
26 through any other method in which the Court will accept filings, if any, and serve such notice upon  
27 Class Counsel and Defense Counsel at the addresses indicated above at least seven (7) calendar  
28 days before the Fairness Hearing.

**X. SCOPE AND EFFECT OF CONDITIONAL CERTIFICATION OF THE CLASS**  
**SOLELY FOR PURPOSES OF SETTLEMENT**

87. For purposes of settlement only, the Parties agree to seek preliminary certification, pursuant to Federal Rules of Civil Procedure 23(b)(2) and 23(b)(3), of a damages and injunctive relief Class on a nationwide basis, including United States territories. The Parties further agree that the Court should make preliminary findings and enter the Preliminary Approval Order (substantially in the form attached at Exhibit D) granting preliminary certification of the Class subject to final findings and ratification in the Final Order and Final Judgment, and appointing Plaintiffs as the representatives of the Class and Class Counsel as counsel for the Class.

88. Defendants do not consent to certification of the Class for any purpose other than to effectuate the Settlement of the Action and do not otherwise admit that the litigation of any claims that have or could have been asserted in the Action on a classwide basis is appropriate under applicable laws and standards. Defendants' agreement to conditional certification does not constitute an admission of wrongdoing, fault, liability, or damage of any kind to Plaintiffs or any of the putative class members.

89. If this Agreement is terminated pursuant to its terms, disapproved by any court (including any appellate court), and/or not consummated for any reason, or the Effective Date for any reason does not occur, the order certifying the Class for purposes of effectuating this Agreement, and all preliminary and/or final findings regarding that class certification order, shall be automatically vacated upon notice of the same to the Court, the Action shall proceed as though the Class had never been certified pursuant to this Agreement and such findings had never been made, the Action shall return to the procedural status quo in accordance with this paragraph, and nothing in this Agreement or other papers or proceedings related to the Settlement shall be used as evidence or argument by any Party concerning whether the Action may properly be maintained as a class action, whether the purported class is ascertainable, or whether Class Counsel or the Plaintiffs can adequately represent the Class Members under applicable law.

**XI. MODIFICATION OR TERMINATION OF THE SETTLEMENT**

90. If the preconditions necessary to trigger the Effective Date (as set forth in Paragraph

1 13 of this Agreement) are not met, this Agreement shall be cancelled and terminated unless Defense  
2 Counsel and Class Counsel mutually agree in writing to proceed with and effectuate this  
3 Agreement.

4 91. The terms and provisions of this Agreement may be amended, modified, or expanded  
5 by written agreement of the Parties and approval of the Court; provided, however that, after entry of  
6 the Final Order and Final Judgment, the Parties may by written agreement effect such amendments,  
7 modifications, or expansions of this Agreement and its implementing documents (including all  
8 exhibits hereto) without further notice to the Class or approval by the Court if such changes are  
9 consistent with the Court's Final Order and Final Judgment and do not materially alter, reduce or  
10 limit the rights of Class Members under this Agreement.

11 92. Either Party may terminate this Agreement by providing written notice to the other  
12 Party and the Court within ten (10) days of the occurrence of the following: (a) the preliminary or  
13 final approval of this Agreement is not obtained without substantial modification, which  
14 modification the Parties did not agree to and which modification the terminating Party deems in  
15 good faith to be material (*e.g.*, because it significantly increases the costs of the settlement or  
16 deprives the terminating party of an expressly stated benefit of the settlement); or (b) the Final  
17 Order and/or Final Judgment are reversed, vacated, or modified in any material respect by another  
18 court, except that it is expressly agreed by the Parties that any reduction of the Court's award of  
19 Attorneys' Fees and Expenses shall not be grounds to terminate this Agreement.

20 93. In the event that this Agreement is not approved by the Court or the Settlement set  
21 forth in this Agreement is terminated or fails to become effective in accordance with its terms, the  
22 Parties shall be restored to their respective pre-settlement positions in the Action, including with  
23 regard to any agreements concerning tolling and similar agreements, and this entire Agreement shall  
24 be null and void, shall have no further force and effect with respect to any Party in the Action, and  
25 shall not be offered in evidence or used in any litigation for any purpose, including the existence,  
26 certification, or maintenance of any purported class or Defendants' liability with respect to the  
27 claims that are, were or could have been asserted in the Action. In such an event, this Agreement  
28 and all negotiations, proceedings, documents prepared, and statements made in connection with it

1 shall be without prejudice to the Parties, and shall not be deemed or construed to be an admission or  
2 confession by any Party of any fact, matter, or proposition of law, and shall not be used in any  
3 manner for any purpose, and all Parties to the Action shall stand in the same position as if this  
4 Agreement had not been negotiated, made, or filed with the Court.

5 94. In the event of termination, the terminating Party shall cause the Settlement  
6 Administrator to post information regarding the termination on the Settlement Website.

7 95. In the event of termination, all Parties shall be restored to their respective positions  
8 as of immediately prior to the date of execution of this Agreement. Upon termination, Paragraphs  
9 88-99 herein shall survive and be binding on the Parties, but this Agreement shall otherwise be null  
10 and void.

## 11 **XII. SETTLEMENT NOT EVIDENCE AGAINST PARTIES**

12 96. The Parties expressly acknowledge and agree that this Agreement and its exhibits,  
13 along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence,  
14 constitute an offer of compromise and a compromise within the meaning of Federal Rule of  
15 Evidence 408 and any equivalent state law or rule. In no event shall this Agreement, any of its  
16 provisions, or any negotiations, statements or court proceedings relating to its provisions in any way  
17 be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the  
18 Action, any other action, or in any judicial, administrative, regulatory or other proceeding, except in  
19 a proceeding to enforce this Agreement or the rights of the Parties or their counsel. Without  
20 limiting the foregoing, neither this Agreement nor any related negotiations, statements, or court  
21 proceedings shall be construed as, offered as, received as, used as, or deemed to be evidence or an  
22 admission or concession of any liability or wrongdoing whatsoever on the part of any person or  
23 entity, including, but not limited to, Defendants, the Released Parties, Plaintiffs, or the Class, or as a  
24 waiver by Defendants, the Released Parties, Plaintiffs, or the Class of any applicable privileges,  
25 claims, or defenses.

26 97. The provisions contained in this Agreement are not and shall not be deemed a  
27 presumption, concession, or admission by Defendants of any default, liability or wrongdoing as to  
28 any facts or claims alleged or asserted in the Action, or in any actions or proceedings, nor shall they



be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any person in the Action, or in any other action or proceeding, whether civil, criminal or administrative. Defendants expressly deny the allegations in the Action. Defendants do not admit that they or any of the Released Parties have engaged in any wrongful activity or that any person has sustained any damage by reason of any of the facts complained of in the Action. And Defendants do not consent to certification of the Class for any purpose other than to effectuate the Settlement of the Action or otherwise admit that the treatment of any claims that have been or could have been asserted in the Action on a classwide basis is appropriate.

### **XIII. BEST EFFORTS**

98. Class Counsel shall take all necessary actions to accomplish approval of the Settlement, the Class Notice, and dismissal of the Action. The Parties (including their counsel, successors, and assigns) agree to cooperate fully and in good faith with one another and to use their best efforts to effectuate the Settlement, including without limitation in seeking preliminary and final Court approval of the Agreement and the Settlement embodied herein, carrying out the terms of this Agreement, and promptly agreeing upon and executing all such other documentation as may be reasonably required to obtain final approval of the Settlement by the Court. In the event that the Court fails to approve the Settlement or fails to issue the Final Order and Final Judgment, the Parties agree to use all reasonable efforts, consistent with this Agreement and subject to Section XI, to cure any defect identified by the Court.

99. Each Party will cooperate with the other Party in connection with effectuating the Settlement or the administration of claims thereunder. Any requests for cooperation shall be narrowly tailored and reasonably necessary for the requesting Party to recommend the Settlement to the Court, and to carry out its terms.

### **XIV. MISCELLANEOUS PROVISIONS**

100. The Parties agree that the recitals are contractual in nature and form a material part of this Agreement.

101. This Agreement and its accompanying exhibits set forth the entire understanding of the Parties. No change or termination of this Agreement shall be effective unless in writing and

1 signed by Plaintiffs' Counsel and Defense Counsel. No extrinsic evidence or parol evidence shall  
2 be used to interpret this Agreement.

3 102. Any and all previous agreements and understandings between or among the Parties  
4 regarding the subject matter of this Agreement, whether written or oral, are superseded and hereby  
5 revoked by this Agreement. The Parties expressly agree that the terms or conditions of this  
6 Agreement will control over any other written or oral agreements.

7 103. All of the Parties warrant and represent that they are agreeing to the terms of this  
8 Agreement based upon the legal advice of their respective attorneys, that they have been afforded  
9 the opportunity to discuss the contents of this Agreement with their attorneys, and that the terms and  
10 conditions of this document are fully understood and voluntarily accepted.

11 104. The waiver by any party of a breach of any term of this Agreement shall not operate  
12 or be construed as a waiver of any subsequent breach by any party. The failure of a party to insist  
13 upon strict adherence to any provision of the Agreement shall not constitute a waiver or thereafter  
14 deprive such party of the right to insist upon strict adherence.

15 105. The headings in this Agreement are inserted merely for the purpose of convenience  
16 and shall not affect the meaning or interpretation of this document.

17 106. This Agreement may be executed by facsimile signature and in counterparts, each of  
18 which shall be deemed an original and all of which, when taken together, shall constitute one and  
19 the same instrument. The date of execution shall be the latest date on which any party signs the  
20 Agreement.

21 107. This Agreement has been negotiated among and drafted by Class Counsel and  
22 Defense Counsel. Plaintiffs, Plaintiffs' Counsel, Class Members, and Defendants shall not be  
23 deemed to be the drafter of this Agreement or of any particular provision, nor shall they argue that  
24 any particular provision should be construed against its drafter or otherwise resort to the contra  
25 proferentem canon of construction. Accordingly, this Agreement should not be construed in favor  
26 of or against one party as to the drafter, and the Parties agree that the provisions of California Civil  
27 Code § 1654 and common law principles of construing ambiguities against the drafter shall have no  
28 application. All Parties agree that counsel for the Parties drafted this Agreement during extensive

1 arm's-length negotiations. No parol or other evidence may be offered to explain, construe,  
2 contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under  
3 which this Agreement was made or executed.

4 108. Plaintiffs and Class Counsel agree not to disparage Defendants, Defense Counsel, or  
5 the Settlement in the media, through any public statements, or otherwise. Defendants agree not to  
6 disparage Plaintiffs, Class Counsel, or the Settlement.

7 109. Each individual Defendant represents and warrants that the individual(s) executing  
8 this Agreement on behalf of that Defendant are authorized to enter into this Agreement on behalf of  
9 that Defendant.

10 110. Any disagreement and/or action to enforce this Agreement shall be commenced and  
11 maintained only in the Court in which this Action is pending.

12 111. Whenever this Agreement requires or contemplates that one of the Parties shall or  
13 may give notice to the other, such notice shall be provided by e-mail and/or next-day (excluding  
14 Saturdays, Sundays and Legal Holidays) express delivery service.

15 112. The Parties reserve the right, subject to the Court's approval, to agree to any  
16 reasonable extensions of time that might be necessary to carry out any of the provisions of this  
17 Agreement.

18 113. Plaintiffs expressly affirm that the allegations contained in the complaints filed in the  
19 Action were made in good faith and have a basis in fact, but consider it desirable for the Action to  
20 be settled and dismissed because of the substantial benefits that the proposed Settlement will  
21 provide to Class Members.

22 114. In the event any one of the provisions contained in this Agreement shall for any  
23 reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or  
24 unenforceability shall not affect other provisions if Defense Counsel and Class Counsel, on behalf  
25 of the Parties, mutually elect to proceed as if such invalid, illegal, or unenforceable provision had  
26 never been included in this Agreement.

27 **[SIGNATURES ON NEXT PAGE]**  
28

1 IN WITNESS WHEREOF, the Parties hereto, by and through their respective attorneys, and  
2 intending to be legally bound hereby, have duly executed this Agreement as of the date set forth  
3 below.

4  
5 **AGREED AND ACCEPTED:**

**PLAINTIFFS**

6  
7 Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Gabriela Bayol  
Plaintiff

8  
9  
10 Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Bruce Verbeck  
Plaintiff

11  
12  
13 **DEFENDANTS**

14  
15 Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Health-Ade LLC

16  
17 By: \_\_\_\_\_

18 Its: \_\_\_\_\_

19  
20 Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Whole Foods Market California, Inc.

21 By: \_\_\_\_\_

22 Its: \_\_\_\_\_  
23  
24  
25  
26  
27  
28

**AGREED AS TO FORM:**

**PLAINTIFFS' COUNSEL**

Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
By: Yeremey Krivoshey  
Bursor & Fisher P.A.  
Attorneys for Plaintiffs and the Class

**DEFENSE COUNSEL**

Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
By: Robert J. Herrington  
Greenberg Traurig, LLP  
Attorneys for Health-Ade LLC and Whole Foods  
Market California, Inc.

IN WITNESS WHEREOF, the Parties hereto, by and through their respective attorneys, and intending to be legally bound hereby, have duly executed this Agreement as of the date set forth below.

**AGREED AND ACCEPTED:**

**PLAINTIFFS**

Dated: 1/25, 2019

  
\_\_\_\_\_  
Gabriela Bayol  
Plaintiff

Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Bruce Verbeck  
Plaintiff

**DEFENDANTS**

Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Health-Ade LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Whole Foods Market California, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

1 IN WITNESS WHEREOF, the Parties hereto, by and through their respective attorneys, and  
2 intending to be legally bound hereby, have duly executed this Agreement as of the date set forth  
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4  
5 **AGREED AND ACCEPTED:**

**PLAINTIFFS**

6  
7 Dated: \_\_\_\_\_, 2019

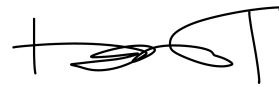
\_\_\_\_\_  
Gabriela Bayol  
Plaintiff

8  
9  
10 Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Bruce Verbeck  
Plaintiff

11  
12  
13 **DEFENDANTS**

14  
15 Dated: Jan 25 \_\_\_\_\_, 2019



\_\_\_\_\_  
Health-Ade LLC

16  
17 By: Daina Trout

18 Its: CEO

19  
20 Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Whole Foods Market California, Inc.


21 By: \_\_\_\_\_

22 Its: \_\_\_\_\_

1 **AGREED AS TO FORM:**

2  
3 **PLAINTIFFS' COUNSEL**

4  
5 Dated: 1/28, 2019

6   
By: Yeremey Krivoshey  
Bursor & Fisher P.A.  
Attorneys for Plaintiffs and the Class

7  
8 **DEFENSE COUNSEL**

9  
10 Dated: \_\_\_\_\_, 2019

11 \_\_\_\_\_  
By: Robert J. Herrington  
Greenberg Traurig, LLP  
Attorneys for Health-Ade LLC and Whole Foods  
Market California, Inc.



1 IN WITNESS WHEREOF, the Parties hereto, by and through their respective attorneys, and  
2 intending to be legally bound hereby, have duly executed this Agreement as of the date set forth  
3 below.

4  
5 AGREED AND ACCEPTED:

PLAINTIFFS

6  
7 Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Gabriela Bayol  
Plaintiff

8  
9  
10 Dated: Jan 28, 2019

\_\_\_\_\_  
Bruce Verbeck  
Plaintiff

DEFENDANTS

11  
12  
13  
14  
15 Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Health-Ade LLC

By: \_\_\_\_\_

Its: \_\_\_\_\_

16  
17  
18  
19 Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Whole Foods Market California, Inc.

By: \_\_\_\_\_

Its: \_\_\_\_\_

1 **AGREED AS TO FORM:**

2  
3 **PLAINTIFFS' COUNSEL**

4  
5 Dated: \_\_\_\_\_, 2019

6 By: Yeremey Krivoshey  
7 Bursor & Fisher P.A.  
8 Attorneys for Plaintiffs and the Class

9 **DEFENSE COUNSEL**

10 Dated: January 29, 2019

11 Robert J. Herrington (M.V.)  
12 By: Robert J. Herrington  
13 Greenberg Traurig, LLP  
14 Attorneys for Health-Ade LLC and Whole Foods  
15 Market California, Inc.  
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28



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3 below.

4  
5 **AGREED AND ACCEPTED:**

**PLAINTIFFS**

6  
7 Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Gabriela Bayol  
Plaintiff

8  
9  
10 Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Bruce Verbeck  
Plaintiff

11  
12  
13 **DEFENDANTS**

14  
15 Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Health-Ade LLC

16  
17 By: \_\_\_\_\_

18 Its: \_\_\_\_\_

19 Dated: 1/30, 2019

20   
\_\_\_\_\_  
Whole Foods Market California, Inc.

21 By: John H. Hempfling II

22 Its: AGC, Ltd. WFM