

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

**IF YOU BOUGHT HEALTH-ADE KOMBUCHA PRODUCTS BETWEEN  
MARCH 6, 2014 AND MAY 24, 2019, YOU COULD RECEIVE A CASH  
PAYMENT FROM A CLASS ACTION SETTLEMENT.**

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

- This notice informs you of a proposed settlement in a class action lawsuit alleging that Defendants Health-Ade LLC and Whole Foods Market California, Inc. (“Defendants”) mislabeled or misrepresented the alcohol and sugar content of Health-Ade kombucha products.
- The settlement will provide up to \$3,997,500 to pay claims for those who purchased one or more flavors of Health-Ade Kombucha beverages. Class members can receive up to \$40 in cash without Proof of Purchase. Class members can receive up to \$80 in cash with Proof of Purchase. To qualify, you must have purchased one or more beverages from any Health-Ade Kombucha product lines, including but not limited to the following flavors of the following beverages from March 6, 2014 through May 24, 2019:
  - **Flavors:** Beet; Blood Orange-Carrot-Ginger; California Grape; Cayenne Cleanse; Ginger-Lemon; Holiday Cheers; Jalapeño-Kiwi-Cucumber; Maca-Berry; Matcha+Cold Brew Coffee; The Original; Pink Lady Apple; Plum; Pomegranate; Power Greens; Reishi-Chocolate; Sweet Thorn.
- Defendants deny any wrongdoing or unlawful conduct and assert that the product labels at issue were truthful, not misleading, and were consistent with the law. The Court has not decided who is right. Both sides have agreed to settle the dispute and give benefits to Class Members.

<b>SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>SUBMIT A CLAIM FORM BY AUGUST 27, 2019</b>	This is the only way to receive a cash award.
<b>EXCLUDE YOURSELF BY AUGUST 27, 2019</b>	Exclude yourself by <b>August 27, 2019</b> and get no award from the proposed settlement. This is the only choice that allows you to participate in another lawsuit against Defendants about the claims at issue in this case for the products and claims covered by the Class Period.
<b>OBJECT BY AUGUST 27, 2019</b>	You can write to the Court by <b>August 27, 2019</b> about why you don’t like the settlement.
<b>GO TO A HEARING</b>	You can ask by <b>August 27, 2019</b> to speak in Court about the fairness of the proposed settlement.
<b>DO NOTHING</b>	Get no payment. Give up your rights to sue Defendants regarding any of the claims at issue in this case.

- The Court in charge of this case still must decide whether to approve the proposed settlement. Payments will be made if the Court approves the settlement and after any appeal is resolved.
- Please be patient. Your legal rights are affected whether you act or not. **Read this notice carefully because it explains decisions you must make and actions you must take now.**

**QUESTIONS? VISIT [www.hakombuchasettlement.com](http://www.hakombuchasettlement.com), OR CALL 1-866-742-4955 TOLL FREE**  
*Para una notificación en Español, por favor llame o visite nuestro website.*

## WHAT THIS NOTICE CONTAINS

<b>BASIC INFORMATION.....</b>	<b>3</b>
1. Why was this notice issued?	
2. What is this lawsuit about?	
3. Why is this a class action?	
4. Why is there a settlement?	
<b>WHO IS PART OF THE SETTLEMENT?.....</b>	<b>4</b>
5. Who is included in the proposed settlement?	
6. Are there exceptions to being included?	
7. Which products are included?	
8. What if I'm still not sure if I'm included?	
<b>THE SETTLEMENT BENEFITS – WHAT YOU CAN GET.....</b>	<b>5</b>
9. What does the settlement provide?	
10. What can I get from the settlement?	
11. What am I giving up if I stay in the Class?	
12. When will I get my payment, if any?	
<b>HOW TO RECEIVE A PAYMENT.....</b>	<b>8</b>
13. How can I get a payment?	
14. What is the claim process?	
15. What if I do nothing?	
<b>EXCLUDING YOURSELF FROM THE SETTLEMENT.....</b>	<b>10</b>
16. How can I get out of the settlement?	
17. If I exclude myself, can I still get a payment?	
18. If I don't exclude myself, can I sue Defendants for the same thing later?	
<b>THE LAWYERS REPRESENTING THE CLASS.....</b>	<b>11</b>
19. Do I have a lawyer in this case?	
20. How will the lawyers be paid?	
<b>OBJECTING TO THE SETTLEMENT.....</b>	<b>12</b>
21. How can I tell the Court if I do not like the settlement?	
22. What is the difference between objecting and asking to be excluded?	
<b>THE COURT'S FAIRNESS HEARING.....</b>	<b>13</b>
23. When and where will the Court decide whether to approve the settlement?	
24. Do I have to come to the hearing?	
25. May I speak at the fairness hearing?	
<b>GETTING ADDITIONAL INFORMATION.....</b>	<b>14</b>
26. How can I get more information?	

## BASIC INFORMATION

### 1. Why was this notice issued?

This notice, given pursuant to an Order of the Court dated **April 26, 2019**, describes a proposed settlement of a class action against Defendants Health-Ade LLC and Whole Foods Market California, Inc. (“Defendants”), *Bayol, et al. v. Health-Ade LLC, et al.*, Case No. 3:18-cv-01462 MMC (N.D. Cal. 2018). The Court in charge of this lawsuit is the United States District Court for the Northern District of California. The people who sued are called the “Plaintiffs,” and Health-Ade and Whole Foods are the “Defendants.”

This notice is provided because you have the right to know about a proposed settlement of a class action lawsuit, and about your rights and options, before the Court decides whether to approve the proposed settlement.

Plaintiffs’ Amended Class Action Complaint and the settlement agreement, called the “Stipulation of Class Action Settlement” or “Agreement,” are available at [www.hakombuchasettlement.com](http://www.hakombuchasettlement.com) and provide greater detail concerning this lawsuit and the rights and duties of the parties and Class Members.

This notice summarizes the proposed settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at [www.hakombuchasettlement.com](http://www.hakombuchasettlement.com), by contacting class counsel (see Section 19 below), by accessing the Court docket in this case, for a fee, through the Court’s Public Access to Court Electronic Records (PACER) system at <https://ecf.cand.uscourts.gov>, or by visiting the office of the Clerk of the Court for the United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT CLERK’S OFFICE TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

**If you are a Class Member, your legal rights are affected whether you act or do not act, so please read this notice carefully.**

### 2. What is this lawsuit about?

The lawsuit claims that Health-Ade mislabeled the Subject Products by:

(i) labeling and advertising Health-Ade kombucha products as non-alcoholic when the fermentation of the products allegedly causes the products to contain more than the amount of alcohol permitted for non-alcoholic beverages.

(ii) understating the sugar content of the Subject Products on the labels of the Subject Products.

The lawsuit also alleges that Whole Foods violated the law by reselling the Subject Products allegedly mislabeled by Health-Ade. Defendants deny that they did anything wrong or unlawful and assert that the product labels at issue were truthful, not misleading, and were consistent with the law. Plaintiffs believe the alleged claims are strong. The Court did not rule in favor of either party. Plaintiffs entered into the settlement to avoid the delay, risks, and increased costs associated with continued litigation and believe the settlement is in the best interests of the Class. Defendants entered into a settlement solely to avoid the further expense, inconvenience, and distraction of any burdensome and protracted litigation and to eliminate future controversy with respect to this lawsuit. Accordingly, the parties have agreed to a proposed

settlement, and Defendants agreed, under the terms of the settlement, to provide you with an opportunity to submit a valid and timely Claim Form through which you may be eligible to receive monetary compensation.

### **3. Why is this a class action?**

In a class action, one or more people called “Class Representatives” (in this case, Gabriela Bayol and Bruce Verbeck) sue on behalf of themselves and other people who have similar claims. Together, all of these people are “Class Members.” One Court resolves the issues for all Class Members in a class action, except for those who exclude themselves from the Class. A District Judge of the United States District Court for the Northern District of California presides over this action.

### **4. Why is there a settlement?**

The Court has not decided in favor of the Plaintiffs or the Defendants. Instead, both sides have agreed to the proposed settlement. By agreeing to the proposed settlement, they avoid the costs and uncertainty of a trial, and Class Members receive the benefits described in this notice. The proposed settlement does not mean that any law was broken or that Defendants did anything wrong, or that the Plaintiffs and the Class would or would not win their case if it were to go to trial. The parties believe that the proposed settlement is fair, reasonable, and adequate, and will provide substantial benefits to the Class.

## **WHO IS PART OF THE SETTLEMENT?**

### **5. Who is included in the proposed settlement?**

The Class includes all persons in the United States and United States Territories who bought at retail one or more of the Subject Products (defined further under Question 7) during the period March 6, 2014 through May 24, 2019 (the “Class Period”).

### **6. Are there exceptions to being included?**

Specifically excluded from the Class are:

- (a) Defendants and their employees, principals, officers, directors, agents, affiliated entities, legal representatives, successors, and assigns;
- (b) The judges to whom the Action has been or is assigned and any members of their immediate families;
- (c) those who purchased the Subject Products for the purpose of resale; and
- (d) All persons who have filed a timely Request for Exclusion from the Class.  
(Explained further under Questions 16-18 below.)

The proposed settlement does not include a release of any claims for personal injury relating to the use of the Subject Products.

### **7. Which products are included?**

The Subject Products in this settlement are the following products sold by Defendants during the Class Period under **Health-Ade Kombucha** product lines, including but not limited to the following flavors:

- Beet; Blood Orange-Carrot-Ginger; California Grape; Cayenne Cleanse; Ginger-Lemon; Holiday

Cheers; Jalapeño-Kiwi-Cucumber; Maca-Berry; Matcha+Cold Brew Coffee; The Original; Pink Lady Apple; Plum; Pomegranate; Power Greens; Reishi-Chocolate; Sweet Thorn.

#### **8. What if I'm still not sure if I'm included?**

If you are not sure whether you are a Class Member, or have any other questions about the settlement, visit the website, [www.hakombuchasettlement.com](http://www.hakombuchasettlement.com), or call the toll free number, 1-866-742-4955. You may also send questions to the Settlement Administrator at Bayol v. Health-Ade LLC, RG/2 Claims Administration LLC, P.O. Box 59479, Philadelphia, PA 19102-9479.

### **THE SETTLEMENT BENEFITS – WHAT YOU CAN GET**

#### **9. What does the settlement provide?**

If the settlement is approved and becomes final, the settlement provides a maximum fund of up to \$3,997,500 to resolve the lawsuit. This represents Defendants' total financial commitment under the settlement, and will be used to make payments to Class Members who file valid and timely claims by submitting a Claim Form (*see* Question 13), as well as to pay for costs associated with the notice and administration of the Settlement, Attorneys' Fees and Expenses (*see* Question 20), and a special service payment (or "Incentive Award") to the Class Representatives (*see* Question 20).

While Defendants believe that the Subject Products' labels and packaging were truthful and not in violation of the law, the settlement also provides the following relief:

(i) For a minimum of one calendar year following the date on which the settlement was executed, Health-Ade LLC shall maintain on its kombucha products' labels 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."

(ii) No later than 120 days after the Effective Date, Health-Ade LLC 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 or alcohol content on that products' labels do not vary to a greater extent than allowed by federal or state labeling standards.

(iii) Health-Ade LLC will regularly (every 120 days) test the alcohol by volume and sugar content of samples of every flavor of Health-Ade kombucha, 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 LLC 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.

The settlement agreement, called the "Stipulation of Class Action Settlement" or "Agreement," available at [www.hakombuchasettlement.com](http://www.hakombuchasettlement.com), has more information regarding the settlement.

#### **10. What can I get from the Settlement?**

You may be entitled to a \$4.00 cash payment for each Subject Product you purchased during the Class Period, up to a maximum of \$40.00 in cash if you do not have Proof of Purchase. Class Members who claim more than \$40.00 in cash awards must submit Proof of Purchase establishing purchase(s) during the

Class Period for each Subject Product claimed in excess of \$40.00 and may receive up to \$80.00 in cash awards based on the retail value of the Subject Products shown in the Proofs of Purchase.

If the total value of all approved claims is greater than the amount of money available to pay claims (after costs and fees have been deducted), eligible Class Members' payments will be reduced proportionally. Thus, the amount of your payment will depend on the total amount of money you spent on the Subject Products during the Class Period, whether you have Proof of Purchase for the products you bought, and on the number of Class Members who choose to make a claim.

The actual amount available for each eligible Class Member who submits a valid and timely Claim Form (or "Authorized Claimant"), whether or not Proof of Purchase is submitted with a Claim Form, will not be determined until after all Claims Forms have been received and may not be determined until after the proposed settlement is final. The maximum claim values above are the maximum amounts a Class Member could receive assuming there is no reduction in the value of the claims as explained above.

### **11. What am I giving up if I stay in the Class?**

**If you meet the definition of a Class Member, you are part of the Class, unless you exclude yourself.**

This means that you can't sue, continue to sue, or be part of any other lawsuit, arbitration, or other proceeding against Defendants or any other "Released Party" about the legal issues in this case. It also means that all of the Court's orders will apply to you and legally bind you. **You are a Class Member and bound by the settlement whether or not you file a Claim Form or receive a payment.**

When and if the settlement is approved, Plaintiffs and Class Members who do not validly exclude themselves from the Class pursuant to the settlement will be deemed to have released Defendants and other "Released Parties" (as defined in the Agreement) from any and all Released Claims (as defined in the Agreement).

**A word-for-word copy of the Release sections from the Agreement are copied below. Please carefully read** the following excerpts from the Agreement regarding "Released Claims":

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

(ii) were asserted or that could have been reasonably asserted by any Class Member against the Released Parties, 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, including all claims for monetary, injunctive, or equitable relief that relate in any way to communications, disclosures, representations, statements, claims, nondisclosures and/or omissions, packaging, advertising, labeling, and/or marketing of or concerning the Subject Products, in the Related Action; or

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

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

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

Notwithstanding any other provision of this Agreement, “Released Claims” do not include claims for personal injuries. Plaintiffs and Class Members are not releasing any claims, demands, rights, damages, obligations, suits, debts, liens, and causes of action relating to personal injuries.

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

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

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.**

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

The Agreement is available at [www.hakombuchasettlement.com](http://www.hakombuchasettlement.com) and describes in further detail the claims that you give up if you remain in the settlement.

**12. When will I get my payment, if any?**

The Court will hold a Fairness Hearing on October 11, 2019 during which it will decide whether it will finally approve all terms of the settlement. If the Court approves the settlement, there may be appeals or other challenges. Payment is contingent upon the Court's final approval of the proposed settlement. After the Court enters an order and judgment finally approving the settlement and all objections and appeals (if any) are resolved, the checks will be mailed within forty-five (45) calendar days.

The progress of the approval process and expected dates of payment will be updated periodically on [www.hakombuchasettlement.com](http://www.hakombuchasettlement.com) and can also be obtained by calling 1-866-742-4955 toll free.

If there are appeals, resolving them can take time (potentially more than a year). Please be patient.

**HOW TO RECEIVE A PAYMENT**

**13. How can I get a payment?**

To get a payment under the settlement, you must mail in a Claim Form or submit a Claim Form electronically at [www.hakombuchasettlement.com](http://www.hakombuchasettlement.com). A Claim Form and directions are attached as **Appendix A** to this notice. You may also obtain and print a Claim Form and other relevant documents by visiting [www.hakombuchasettlement.com](http://www.hakombuchasettlement.com).

Please read the instructions carefully and fill out the form completely and accurately.

Claim Forms can be submitted two ways: electronically or by mail. Your Claim Form must be submitted electronically at [www.hakombuchasettlement.com](http://www.hakombuchasettlement.com) no later than August 27, 2019 or by mail postmarked no later than August 27, 2019 and mailed to: Bayol v. Health-Ade LLC, RG/2 Claims Administration LLC, P.O. Box 59479, Philadelphia, PA 19102-9479.

#### 14. What is the claim process?

The Settlement Administrator will review each Claim Form.

Claim Forms that do not meet the terms and conditions of the Agreement shall be rejected by the Settlement Administrator. The Settlement Administrator shall have forty-five (45) days from the date the settlement is final (if there have been no appeals, or if any appeals have been withdrawn or rejected) to exercise the right of rejection. The Settlement Administrator shall notify the Class Member using the contact information provided in the Claim Form of the rejection, including via electronic mail.

Plaintiffs' 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 Plaintiffs' Counsel and Defense Counsel, of the denial of the claim. If Plaintiffs' Counsel and Defense Counsel cannot agree on a resolution of the 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. No person shall have any claim against Defendants, Defense Counsel, Plaintiffs, Plaintiffs' Counsel, the Class, and/or the Settlement Administrator based on any eligibility determinations, distributions, or awards made in accordance with this Agreement.

If a Claim is not contested, you will receive payment for that Claim in accordance with the terms of the Agreement. All usual and customary steps to prevent fraud and abuse in the Claim Process will be taken. This includes denying claims in whole or in part to prevent fraud or abuse. Plaintiffs' Counsel and Defense Counsel will be provided a report on the denial of any claim due to insufficient documentation and may recommend additional action, including payment.

The Court will hold a Fairness Hearing on October 11, 2019 at 9:00 a.m. to decide whether or not to approve the proposed settlement. The Court must finally approve the proposed settlement before any payments can be made. The Court will grant its approval only if it finds that the proposed settlement is fair, reasonable, and adequate. In addition, the Court's order may be subject to appeals. It is always uncertain whether these appeals can be resolved, and resolving them takes time, sometimes more than a year.

#### 15. What if I do nothing?

If you are a Class Member and you do nothing, you will not get any awards from the settlement and you will be bound by the Court's decisions and the settlement's release. (*See* Question 11.)

To receive an award, you must submit a Claim Form on or before August 27, 2019. (*See* Question 13.)

Unless you exclude yourself from the Class, if the settlement is approved, you won't be able to start a lawsuit, continue with a lawsuit, or be part of any other lawsuit against Defendants or the "Released Parties" about the claims in this lawsuit, **ever again**, regardless of whether you submit a Claim Form.

### EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment from this settlement, but you want to keep the right to sue or continue to sue Defendants on your own about the legal issues in this case, then you must take steps to get out of the Class. This is called excluding yourself—or it is sometimes referred to as “opting out” of the Class.

#### **16. How can I get out of the settlement?**

To exclude yourself from the Class (or “opt out”), you must send by U.S. mail a letter or written request to the Settlement Administrator. Your request must include all of the following:

1. Your full name and current address;
2. A clear statement that you wish to be excluded from the Class;
3. The case name and case number: *Bayol, et al. v. Health-Ade LLC, et al.*, Case No. 3:18-cv-01462 MMC; and
4. Your signature (you must personally sign the letter).

Please write “**REQUEST FOR EXCLUSION**” on the lower left-hand corner of the front of the envelope.

Your exclusion request must be postmarked no later than August 27, 2019. Send your request to: Bayol v. Health-Ade LLC, RG/2 Claims Administration LLC, P.O. Box 59479, Philadelphia, PA 19102-9479.

#### **17. If I exclude myself, can I still get a payment?**

No. You will not get a payment if you exclude yourself from the settlement.

If you request exclusion from the Class, then:

- You will not be eligible for payment under the proposed settlement;
- You will not be allowed to object to the terms of the proposed settlement; and
- You will not be bound by any subsequent rulings entered in this case if the proposed settlement is finally approved.

However, if your request for exclusion is late or not complete, you will still be a part of the Class, you will be bound by the settlement and by all other orders and judgments in this lawsuit, and you will not be able to participate in any other lawsuits based on the claims in this case.

#### **18. If I don't exclude myself, can I sue Defendants for the same thing later?**

No. If the Court approves the proposed settlement and you do not exclude yourself from the Class, you give up (or “fully, finally and forever release, relinquish, and discharge”) all Released Claims against the Released Parties, as set forth above in response to Question 11.

As part of this settlement, the Court has preliminarily stopped all Class Members and/or their representatives (who do not timely exclude themselves from the Class) from filing, participating in, or continuing litigation against Defendants (or against any of their related parties or affiliates), and/or from receiving any benefits from any other lawsuit relating to the claims being resolved in this case.

If you have a pending lawsuit, arbitration, or other proceeding against Health-Ade, Whole Foods, or another retailer selling the Subject Products, speak to your lawyer in that lawsuit or proceeding. You must exclude yourself from the Class to continue litigating the claims this settlement resolves. Remember, the exclusion

deadline (or “Opt-Out Date”) is August 27, 2019.

Upon final approval of the settlement, Plaintiffs and Defendants will ask the Court to enter a permanent ruling forbidding all Class Members and/or their representatives and/or personnel from suing, or continuing to sue, Defendants regarding any of the Released Claims. All Class Members will be bound by this order.

The representative Plaintiffs and their lawyers will not represent you as to any claims you choose to pursue against Defendants.

## THE LAWYERS REPRESENTING THE CLASS

### 19. Do I have a lawyer in this case?

The Court has appointed attorneys at the law firm of Bursor & Fisher, P.A. to represent you and the other Class Members in this lawsuit. The lawyers representing you and the Class Members are called “Plaintiffs’ Counsel.” You will not be charged for the services of these lawyers.

You may contact Plaintiffs’ Counsel as follows:

L. Timothy Fisher  
Yeremey Krivoshey  
BURSOR & FISHER, P.A.  
1990 North California Blvd., Suite 940  
Walnut Creek, California 94596  
info@bursor.com  
Tel: 925-300-4455

You have the right to retain your own lawyer to represent you in this case, but you are not obligated to do so. If you do hire your own lawyer, you will have to pay his or her fees and expenses. You also have the right to represent yourself before the Court without a lawyer.

Plaintiffs’ Counsel, Defense Counsel, or the Settlement Administrator may **not** advise you on the tax consequences of participating or not participating in the settlement.

### 20. How will the lawyers be paid?

Plaintiffs’ Counsel have diligently worked on this case and have not been paid anything to date for their work on this case. Plaintiffs’ Counsel will request attorneys’ fees and reimbursement of costs and expenses, which will be paid using a portion of the \$3,997,500.00 settlement fund, prior to the distribution of settlement benefits to Class Members who submit valid and timely Claim Forms. In particular, Plaintiffs’ Counsel will request as attorney’s fees twenty-five percent of the settlement fund. Defendants will have the right to challenge the amount of attorneys’ fees and expenses requested.

Plaintiffs’ Counsel will also ask the Court for an incentive award of up to \$2,000.00 for each of the two Plaintiffs for their work on behalf of the Class. Any incentive awards must be approved by the Court, and any awarded amounts will be paid using a portion of the \$3,997,500.00 settlement fund prior to the distribution of settlement benefits to Class Members who submit valid and timely Claim Forms.

The Court has to approve any Attorneys’ Fees and Expenses and Incentive Awards requested by Plaintiffs’

Counsel and Plaintiffs in this case. Plaintiffs' Counsel's motions for these Attorneys' Fees and Expenses or Incentive Awards will be filed on or before May 24, 2019 and posted at [www.hakombuchasettlement.com](http://www.hakombuchasettlement.com).

## OBJECTING TO THE SETTLEMENT

You have the right to tell the Court that you do not agree with the Settlement or any or all of its terms.

### 21. How can I tell the Court if I do not like the Settlement?

If you are a Class Member but do not like the proposed settlement and think the Court should not approve it, you may object. Objecting is simply telling the Court that you don't like something about the settlement. The Court will consider your views. You can ask the Court to deny approval by filing an objection. You can't ask the Court to order a different settlement; the Court can only approve or reject the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue. If that is what you want to happen, you must object.

**You can only object if you stay in the Class (i.e., if you do not "opt out" or exclude yourself).** As a Class Member, you will be bound to the Agreement and Court orders regardless of your objection and regardless of whether you believe the terms of the settlement are favorable to the Class. You will be bound even if you have another claim, lawsuit, arbitration or other proceeding pending against Health-Ade, Whole Foods, or other retailers selling the Subject Products.

Any objection to the proposed settlement must be in writing. If you file a timely written objection, you may, but are not required to, appear at the Final Approval Hearing, either in person or through your own attorney. If you appear through your own attorney, you are responsible for hiring and paying that attorney. All written objections and supporting papers must be submitted to the Court either by mailing them to the Clerk of Court, 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 that location. All objections must be filed or postmarked on or before August 27, 2019.

Your written objection **must** include:

- (1) your full name;
- (2) your current address;
- (3) a written statement of your objection(s) and the reasons for each objection;
- (4) a statement of whether you intend to appear at the Fairness Hearing;
- (5) your signature;
- (6) a statement, sworn to under penalty of perjury attesting to the fact that you purchased one or more of the Subject Products during the Class Period;
- (7) details of your purchase of the Subject Products, including the Subject Products purchased, and the date and location of purchase; and
- (8) the case name and case number: *Bayol, et al. v. Health-Ade LLC, et al.*, Case No. 3:18-cv-01462 MMC.

Objections that are not filed with or mailed to the Court, or objections that are served on the Parties but not filed with or sent to the Court, shall not be received or considered by the Court at the Fairness Hearing. Objections that do not contain all of the information itemized above shall not be considered by the Court at the Fairness Hearing.

Class Members or their attorneys who intend to make an appearance at the Fairness Hearing must file a

Notice of Intention to Appear with the Court, no later than August 27, 2019, or as the Court may otherwise direct.

If you file objections, but the Court approves the settlement as proposed, you will still be eligible for payment under the settlement if you submit a claim form within the time and in the manner set forth above under Question 13.

#### **22. What is the difference between objecting and asking to be excluded?**

Objecting is simply a way of telling the Court that you don't like something about the settlement. You can only object if you stay in the Class. You will also be bound by any subsequent rulings in this case, and you will not be able to file or participate in any other lawsuit based upon or relating to the claims of this lawsuit. If you object to the settlement, you still remain a Class Member and you will still be eligible to submit a Claim Form. Excluding yourself is telling the Court that you don't want to be a part of the Class. If you exclude yourself, you have no basis to object to the settlement and appear at the Fairness Hearing because it no longer affects you.

### **THE COURT'S FAIRNESS HEARING**

The Court will hold a final hearing (called a Fairness Hearing) to decide whether to finally approve the settlement. You may attend and ask to speak, but you don't have to.

#### **23. When and where will the Court decide whether to approve the settlement?**

The Court will hold a hearing in this case on October 11, 2019 at 9:00 a.m. in Courtroom 7 – 19th Floor, San Francisco Courthouse, 450 Golden Gate Avenue, San Francisco, CA 94102.

The hearing may be moved to a different date or time without additional notice, so it is a good idea to check [www.hakombuchasettlement.com](http://www.hakombuchasettlement.com) for updates. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. The Court will also decide whether to award Attorneys' Fees and Expenses and Plaintiffs' Incentive Awards.

If there are objections, the Court will consider them at that time. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

#### **24. Do I have to come to the hearing?**

No. Plaintiffs' Counsel will answer questions the Court may have at the Fairness Hearing. But you are welcome to come at your own expense. Please note that the Court has the right to change the date and/or time of the Fairness Hearing without further notice, so it is a good idea to check the settlement website [www.hakombuchasettlement.com](http://www.hakombuchasettlement.com) for updates or check the Court's PACER site to confirm that the date has not changed. If you are planning to attend the hearing, you should confirm the date and time on this website or on PACER before going to the Court.

#### **25. May I speak at the fairness hearing?**

Yes, you may ask the Court for permission to speak at the hearing. To do so, you must **file** a document called a "Notice of Intention to Appear" by mailing it to Clerk of Court, United States District Court for the Northern District of California, 450 Golden Gate Avenue, San Francisco, CA 94102, or by filing it in

person at that location.

If you or your attorney wants to appear and speak at the Fairness Hearing, you (or your attorney) must also mail a Notice of Intention to Appear at the Fairness Hearing to Plaintiffs' Counsel and Defense Counsel.

Your Notice of Intention to Appear at the Fairness Hearing must be filed and received by the Court, and mailed and/or e-mailed to the Settlement Administrator, Defense Counsel, and Plaintiffs' Counsel no later than August 27, 2019.

## **GETTING ADDITIONAL INFORMATION**

### **26. How can I get more information?**

This notice summarizes the proposed settlement. More details are in the settlement agreement which is called the "Stipulation of Class Action Settlement" or "Agreement." For a complete, definitive statement of the settlement terms, refer to the Agreement at [www.hakombuchasettlement.com](http://www.hakombuchasettlement.com). You also may write with questions to the Settlement Administrator at Bayol v. Health, Ade LLC, RG/2 Claims Administration LLC, P.O. Box 59479, Philadelphia, PA 19102-9479 or call 1-866-742-4955 toll free.

**PLEASE DO NOT CALL THE COURT**