

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release (this "Agreement") between Environmental Research Center, Inc. ("ERC") and Onnit Labs LLC ("Onnit") is made effective on the date on which it is fully executed (the "Effective Date"). ERC and Onnit are hereinafter referred to individually as a "Party" and collectively as the "Parties." The Parties agree as follows:

1. This Agreement is intended to fully resolve all claims, demands, and allegations set forth in or related to the Notice of Violation of California Health & Safety Code §25249.5, *et seq.* (also known as "Proposition 65") that ERC served on Onnit on August 29, 2014 (the "Notice") with regard to each of the following products identified below (referred to hereinafter individually as "Covered Product" or collectively as "Covered Products"):

- **Onnit Labs LLC Alpha Brain**
- **Onnit Labs LLC New Mood**
- **Onnit Labs LLC Shroom Tech Immune**
- **Onnit Labs LLC Live Coral Calcium**
- **Onnit Labs LLC Spirulina & Chlorella**
- **Onnit Labs LLC 180 Turn It Around! Drink Mix**
- **Onnit Labs LLC Hemp Force ChocoMaca**
- **Onnit Labs LLC Earth Grown Nutrients PowerFood**
- **Onnit Labs LLC Hemp Force Hemp Protein Powerfood Vanill-Acai**
- **Onnit Labs LLC Onnit Vitamin Packs TPC Total Primate Care Day Pack**
- **Onnit Labs LLC Onnit Vitamin Packs TPC Total Primate Care Night Pack**

2. The Parties enter into this Agreement in order to achieve a settlement of the claims as stated in Section 1 (collectively "this Matter") and for the purpose of avoiding prolonged litigation. Nothing in this Agreement shall be construed as an admission of the Parties of any fact, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by the Parties of any fact, issue of law or violation of law. Nothing in this Agreement or any document referred to herein, shall be construed as giving rise to any presumption or inference of admission or concession by the Parties as to any fault, wrongdoing or liability whatsoever. The Parties agree that this Section shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Agreement.

3. In consideration of the following covenants and conditions contained in this Agreement, the Parties have provided the releases as set forth in Section 6 below:

- a. Onnit agrees that all Covered Products produced and offered for sale in California (and offered for sale to a third party for retail sale in California) on and after the Effective Date, shall comply with California law, including Proposition 65.
- b. Beginning on the Effective Date, Onnit shall not manufacture for sale in the State

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of California, "Distribute into the State of California", or directly sell in the State of California, any Covered Product which exposes a person to a "Daily Exposure Level" of more than 0.5 micrograms of lead per day when the maximum suggested dose is taken as directed on the Covered Product's label, unless Onnit shall provide the warning via the following methods: 1) for Covered Products sold online through Onnit's website to consumers in the state of California: (a) on Onnit's checkout page, prior to the consumer's completing purchase of the Covered Products, upon the consumer entering a California delivery address and (b) on the packing slip accompanying the shipment of Covered Products to a California purchaser; or 2) for Covered Products sold via retail stores in the State of California, on the label or container of Onnit's product packaging for each Covered Product.

"WARNING: This product contains lead, a chemical known to the State of California to cause [cancer and] birth defects or other reproductive harm."

i. As used in this Settlement Agreement and Release, the term "Distribute into the State of California" shall mean to directly ship a Covered Product into California for sale in California or to sell a Covered Product to a distributor that Onnit knows will sell the Covered Product in California.

ii. For the purposes of this Agreement, "Daily Lead Exposure Level" shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of servings in a recommended dosage appearing on the product label), which equals micrograms of lead exposure per day.

iii. The phrase "cancer and" must be included in the warning only if the maximum recommended daily dose causes an exposure to more than 15 micrograms of lead when taken as directed on the Covered Product's label.

c. The warning statement set forth in Section 3b. shall be displayed clearly and conspicuously, as compared with other words, statements, or designs so as to render it likely to be read and understood by an ordinary individual purchasing or using the Covered Products. Any warning appearing on the label or container shall be at least the same size as the largest of any other health or safety warnings correspondingly appearing on the label or container, as applicable, or such product. No other statements may accompany the warning.

d. For purposes of Section 3, the term "no more than 0.5 micrograms of lead per day" means that the second highest lead detection result of the samples tested pursuant to Section 3g. indicates that there is not more than 0.5 micrograms of lead, when calculated using the formula in Section 3b(ii) and after subtracting the amount of lead deemed to be "naturally occurring" for each ingredient listed in Table 1A below. The amount of lead deemed "naturally occurring" in each of the Covered Products is the sum of the amounts of "naturally occurring" lead supplied by the quantity of each ingredient listed in Table 1A that is present in each Covered Product. For each ingredient listed in Table 1A, the amount of lead deemed "naturally

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occurring" is listed in Table 1A in micrograms of "naturally occurring" lead per gram of the ingredient that is contained in the Covered Product.

TABLE 1A

INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
Calcium (elemental)	.8 mcg/g

e. If Onnit uses Table 1A to calculate the amount of naturally occurring lead in a Covered Product, then Onnit must submit to ERC, prior to the Effective Date, a complete list showing all the ingredients in that Covered Product including the ingredients from Table 1A, that are being used in the Covered Product as well as the percentage and the amount in grams of each ingredient contained in the Covered Product. Onnit may update this list from time to time. Onnit will be entitled to submit this information to ERC confidentially.

f. Onnit shall arrange, for at least five (5) consecutive years and at least once per year, commencing one year from the Effective Date, for the lead testing of five (5) randomly-selected samples of five separate lots each year for each Covered Product to confirm whether the Daily Exposure Level is more or less than 0.5 micrograms of lead when the maximum suggested dose is taken pursuant to the directions on the Covered Product's label or container.

g. If Onnit is successful with reformulation for any of the Covered Products, and reduces the Daily Exposure Level to 0.5 micrograms of lead or below when taken pursuant to the maximum suggested dose as directed on the Covered Product's label, the Parties agree that the Covered Products may be offered for sale in California without the warning stated in Section 3b. If Onnit is successful with reformulation on any of the Covered Products, Onnit shall notify ERC and provide any test results for the Covered Products that document this change in formulation, no longer than 10 business days after Onnit's receipt of the test results and prior to Onnit manufacturing for sale in the State of California, distributing into the State of California, or directly selling in the State of California, any Covered Products without the warning set forth in Section 3b.

(1) Pursuant to Sections 3f. and 3g., any such testing shall be performed by an independent third-party laboratory certified by the California Environmental Laboratory Accreditation Program or an independent third-party laboratory that is registered with the United States Food & Drug Administration. The method of selecting samples for testing must comply with the regulations of the Food & Drug Administration as set forth in Title 21, Part 111, Subpart E of the Code of Federal Regulations, including Section 111.80(c). Testing for lead shall be performed using Inductively Coupled Plasma-Mass Spectrometry (ICP-MS) achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing method agreed upon in writing by the Parties. Nothing in this Agreement shall limit Onnit's ability to conduct or require that others conduct additional testing of the Covered Products, including raw materials used in their manufacture.

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(2) Pursuant to Sections 3f. and 3g., Onnit shall retain copies of its test data from the date testing commenced and shall provide all test data to ERC within fifteen (15) days of receipt of said data after conducting the required testing as set forth above. The requirement to provide all test data to ERC shall cease after five (5) years from the Effective Date.

(3) All testing, test data, and related information under this Agreement shall be for ERC's internal use only and shall be deemed confidential. ERC shall maintain as confidential all information provided to it and shall implement the same confidentiality procedures for safeguarding this information as used for its own confidential information.

4. Onnit shall make a total settlement payment of \$129,999.00 ("Total Settlement Payment") by wire transfer to ERC's escrow account within 5 days of the Effective Date, for which ERC will give Onnit the necessary account information. The Total Settlement Payment shall be allocated as follows:

a. \$43,412.00 shall be considered a civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$32,559.00) of the civil penalty to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code §25249.12(c). ERC will retain the remaining 25% (\$10,853.00) of the civil penalty.

b. \$1,650.53 shall be considered a reimbursement to ERC for its reasonable costs associated with the enforcement of Proposition 65 and other expenses and costs incurred as a result of bringing this matter to Onnit's attention and negotiating a settlement.

c. \$64,998.51 shall be considered payment in lieu of civil penalties, for day-to-day business activities such as (1) continued enforcement of Proposition 65, which includes work, analyzing, researching and testing consumer products that may contain Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are the subject of this Matter; and (2) the continued monitoring of past consent judgments and settlements to ensure companies are in compliance with Proposition 65.

d. \$10,620.00 shall be considered reimbursement of attorney fees for Michael Freund while \$9,317.96 shall be considered reimbursement for ERC's in-house legal fees.

e. In the event that Onnit fails to remit the Total Settlement Payment owed under Section 4 of this Settlement Agreement on or before the due date, Onnit shall be deemed to be in material breach of its obligations under this Agreement.

5. Except as expressly set forth in Section 4, the Parties shall bear their own costs, expenses, and attorneys' fees related to this Matter.

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6. Binding Effect; Claims Covered and Released

a. ERC, on behalf of itself and its respective owners, principals, shareholders, officers, directors, employees, agents, affiliates, parents, subsidiaries, servants, heirs, executors, administrators, successors, assigns, and legal representatives fully releases Onnit and its respective owners, principals, shareholders, officers, directors, employees, agents, affiliates, parents, subsidiaries, servants, heirs, executors, administrators, successors, assigns, and legal representatives (collectively the "Releasing Parties") from any and all claims for violations of Proposition 65 up through and including the Effective Date based on exposure to lead from the Covered Products as set forth in the Notice.

b. The Releasing Parties further waive and release any and all claims they may have against each other for all actions or statements made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notice.

c. It is possible that other claims not known to the Parties arising out of the facts alleged in the Notices or the Complaint and relating to the Covered Products will develop or be discovered. ERC on behalf of itself only, on the one hand, and Onnit, on the other hand, acknowledge that this settlement is expressly intended to cover and include all such claims up through and including the Effective Date, including all rights of action therefore, and further acknowledge that the claims released in Section 6 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

ERC on behalf of itself only, on the one hand, and Onnit, on the other hand, acknowledge and understand the significance and consequences of this specific waiver of California Civil Code Section 1542.

7. Nothing in this Release is intended to apply to any occupational or environmental exposures arising under Proposition 65, except as otherwise provided in this agreement, nor shall it apply to any of Onnit's products other than the Covered Products.

8. Nothing herein shall be construed as diminishing Onnit's continuing obligations to comply with Proposition 65.

9. After execution of this Agreement, ERC will submit to the California Attorney General a Report of Settlement. In addition, ERC will provide to the California Attorney General a signed copy of this Agreement. The Parties acknowledge and agree that the Parties shall provide as

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much information as is requested by the California Attorney General, or any other governmental agency, regarding this Matter, its settlement, and this Agreement.

10. This Agreement contains the entire agreement between the Parties with regard to settlement of this Matter, and supersedes all prior or contemporaneous agreements or understandings, written or oral, with regard to the matters set forth in this Agreement. This Agreement may be amended or modified in whole or in part at any time only by an agreement in writing executed by the Parties.

11. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective owners, principals, shareholders, members, managers, affiliates, officers, directors, employees, agents, servants, heirs, executors, successors, and assigns.

12. No inference, assumption or presumption shall be drawn, and no provision of this Agreement shall be construed against any of the Parties, based upon the fact that one of the Parties and/or one of the Parties' attorneys prepared and/or drafted all or any portion of this Agreement. It is conclusively presumed that the Parties participated equally in the preparation and drafting of this Agreement.

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

14. This Agreement shall be deemed to have been entered into in the State of California, and governed and interpreted by the laws of the State of California, regardless of the physical locations of the individuals executing this Agreement at the time of execution.

15. The Parties acknowledge that they have a right to consult an attorney and they have consulted their attorneys with respect to the terms and conditions of this Agreement or by signing this Agreement hereby acknowledge they have made the decision not to consult with an attorney in this Matter. The Parties further acknowledge that they fully understand this Agreement and the effect of signing and executing this Agreement.

16. The Parties are aware and acknowledge that this Agreement is an out-of-court settlement and that they will not receive the protections afforded by a court-approved consent judgment. The Parties are entering into this Agreement in good faith and in an effort to settle all claims and allegations related to the Notice, and this Agreement applies only to the claims made by ERC and to the products identified in the Notice.

17. Any legal action to enforce this Agreement shall be brought in any county of the State of California, any of which is deemed to be the proper venue for such legal action. The prevailing party in any such legal action shall be entitled to recover its attorneys' fees in addition to any other legally recoverable costs.

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

19. Each of the individuals who execute this Agreement represents and warrants they have the authority to execute this document and bind the respective Parties to the terms and conditions of this Agreement, and have read, understand, and agree to all the terms and conditions in this Agreement.


DATED: _____

ONNIT LABS LLC

By: _____
Aubrey Marcus
Title: Chief Executive Officer

DATED: 3/2/2015

ENVIRONMENTAL RESEARCH CENTER, INC.

By:  _____
Chris Heptinstall, Executive Director

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DATED: 2/27/15

ONNIT LABS LLC

By:



Aubrey Marcus

Title: Chief Executive Officer

DATED: _____

ENVIRONMENTAL RESEARCH CENTER, INC.

By:

Chris Heptinstall, Executive Director

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