

SETTLEMENT AGREEMENT AND RELEASE

This Settlement Agreement and Release ("Agreement") between Environmental Research Center, Inc. ("ERC") and Real Ketones, LLC and Axxess Global Sciences, LLC, individually and dba Real Ketones (collectively "Real Ketones") is effective on the date on which it is fully executed ("Effective Date"). ERC and Real Ketones are referred to individually as a "Party" and collectively as the "Parties." The Parties agree as follows:

1. This matter arises out of the Notices of Violation of California Health & Safety Code §25249.5, *et seq.* (also known as "Proposition 65") that ERC served on Real Ketones on April 9, 2020 and June 18, 2020 (the "Notices") with regard to the following products identified below (referred to as the "Covered Products"):

- **Real Ketones Prime Protein, Protein With Formula 255 Exogenous Ketones Fudge Brownie**
- **Real Ketones MCT Powder Pure C8 MCT Exogenous Ketones**

2. The Parties enter into this Agreement in order to fully resolve all claims, demands, and allegations regarding the Notices and for the purpose of avoiding prolonged litigation. Nothing in this Agreement shall be construed as an admission of the Parties of any fact, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by the Parties of any fact, issue of law or violation of law. Nothing in this Agreement or any document referred to shall be construed as giving rise to any presumption or inference of admission or concession by the Parties as to any fault, wrongdoing or liability. This Section shall not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under this Agreement.

3. **INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

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

3.1 Beginning on the Effective Date, Real Ketones shall be enjoined from manufacturing for sale in the State of California, "Distributing into the State of California," or directly selling in the State of California, any Covered Product which exposes a person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day unless it meets the warning requirements under Section 3.2.

3.1.1 So long as Real Ketones can provide documentation, if requested in writing by ERC, units of the Covered Product manufactured and not in the possession or under the control of Real Ketones on or prior to the Effective Date, or that have been shipped, sold or Distributed into the State of California by Real Ketones prior to the Effective Date, are not bound by the injunctive terms set forth in this Section 3, including but not limited to the Daily

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Lead Exposure Level and Warning and Testing Requirements, and are instead permitted to be sold as is to California consumers and are expressly released by Section 6.

3.1.2 As used in this Agreement, the term "Distributing into the State of California" or "Distributed 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 Real Ketones knows or has reason to know will sell the Covered Product in California.

3.1.3 For purposes of this Agreement, the "Daily Level Exposure Level," shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of recommended daily servings appearing on the label), which equals micrograms of lead exposure per day, excluding, pursuant to Section 3.1.4, amounts of allowances of lead in the ingredients listed in Table 1 below. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one.

3.1.4 In calculating the Daily Lead Exposure Level for a Covered Product, Real Ketones shall be allowed to deduct the amount of lead which is deemed "naturally occurring" in any ingredient listed in **Table 1** that is contained in that Covered Product under the following conditions: For each year that Real Ketones claims entitlement to a "naturally occurring" allowance, Real Ketones shall provide ERC with the following information: (a) Real Ketones must produce to ERC a list of each ingredient in the Covered Product for which a "naturally occurring" allowance is claimed; (b) Real Ketones must provide ERC with documentation of laboratory testing that complies with Sections 3.4.3 and 3.4.4 and that shows the amount of lead, if any, contained in any ingredient listed in **Table 1** that is contained in the Covered Product and for which Real Ketones intends to deduct "naturally occurring" lead; (c) If the laboratory testing reveals the presence of lead in any ingredient listed in **Table 1** that is contained in the Covered Product, Real Ketones shall be entitled to deduct up to the full amount of the allowance for that ingredient, as listed in **Table 1**, but not to exceed the total amount of lead actually contained in that ingredient in the Covered Product; and (d) If the Covered Product does not contain an ingredient listed in **Table 1**, Real Ketones shall not be entitled to a deduction for "naturally occurring" lead in the Covered Product for that ingredient. The information required by Sections 3.1.4 (a) and (b) shall be provided to ERC within thirty (30) days of the Effective Date or anniversary thereof for any year that Real Ketones shall claim entitlement to the "naturally occurring" allowance.

TABLE 1

INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
Calcium (elemental)	Up to 0.8 micrograms/gram
Ferrous Fumarate	Up to 0.4 micrograms/gram
Zinc Oxide	Up to 8.0 micrograms/gram
Magnesium Oxide	Up to 0.4 micrograms/gram

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INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
Magnesium Carbonate	Up to 0.332 micrograms/gram
Magnesium Hydroxide	Up to 0.4 micrograms/gram
Zinc Gluconate	Up to 0.8 micrograms/gram
Potassium Chloride	Up to 1.1 micrograms/gram

3.2 Clear and Reasonable Warnings

If Real Ketones is required to provide a warning pursuant to Section 3.1, the following warning must be utilized (“Warning”):

WARNING: Consuming this product can expose you to chemicals including [lead] which is [are] known to the State of California to cause [cancer and] birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

Real Ketones shall use the phrase “cancer and” in the Warning only if the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as determined pursuant to the quality control methodology set forth in Section 3.4 or if Real Ketones has reason to believe that another Proposition 65 chemical is present in an amount requiring a cancer warning. As identified in the brackets, the warning shall reflect at least one Proposition 65 substance for each end point (cancer and/or reproductive harm) that is present in the Covered Product.

The Warning shall be securely affixed to or printed upon the label of any Covered Product. In addition, the Warning may be provided either (1) via a leaflet containing only the Warning and an identification of the associated Covered Product (a representation on a leaflet that all products in a shipment are associated with the Warning is compliant with this Consent Judgment so long as all products in the shipment would require a Warning), with each online order of Covered Product shipped into California, or (2) by a product-specific Warning provided on a shelf tag for the Covered Product at each point of display of the Covered Product in brick and mortar locations. If the Warning is provided on the label, it must be set off from other surrounding information and enclosed in a box and must be securely affixed using adhesives or printed upon the label. In addition, for any Covered Product sold over the internet to a California address, the Warning shall appear on the Covered Product’s primary display page or checkout page. If the Warning is provided on the checkout page, it must be clearly linked to the Covered Product by use of an asterisk or other identifying method. If the Warning is provided on the Covered Product’s primary display page, it must be inserted either directly onto the Covered Product’s primary display page or with a conspicuous hyperlink stating “**WARNING**” in all capital and bold letters so long as the hyperlink goes directly to a page prominently displaying the Warning without content that detracts from the Warning. A Warning is not prominently displayed if the purchaser has to search for it in the general content of the website. Given Real Ketones’s lack of control over third-party websites, the online warning requirements expressed in this Section apply only to Covered Products sold through Real Ketones’s website so long as Real Ketones complies with the requirements of 27 CCR 25600.2 (in effect on the date of execution of this Agreement).

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The Warning shall be at least the same size as the largest of any other health or safety warnings also appearing on Real Ketones's website or on the label or container of Real Ketones's product packaging and the word "**WARNING**" shall be in all capital letters and in bold print. No statements intended to or likely to have the effect of diminishing the impact of, or reducing the clarity of, the Warning on the average lay person shall accompany the Warning. Further, no statements may accompany the Warning that state or imply that the source of the listed chemical has an impact on or results in a less harmful effect of the listed chemical.

Real Ketones must display the above Warning with such conspicuousness, as compared with other words, statements or designs on the label, or on its website, as applicable, to render the Warning likely to be read and understood by an ordinary individual under customary conditions of purchase or use of the product.

For purposes of this Agreement, the term "label" means a display of written, printed or graphic material that is printed on or affixed to a Covered Product or its immediate container or wrapper.

3.3 Conforming Covered Products

A Conforming Covered Product is a Covered Product for which the "Daily Lead Exposure Level" is no greater than 0.5 micrograms of lead per day as determined by the quality control methodology described in Section 3.4, and that is not known by Real Ketones to contain other chemicals that violate Proposition 65's safe harbor thresholds.

3.4 Testing and Quality Control Methodology

3.4.1 Beginning within one year of the Effective Date, Real Ketones shall arrange for lead testing of the Covered Products at least once a year for a minimum of four (4) consecutive years by arranging for testing of one (1) randomly selected sample of each of the Covered Products, in the form intended for sale to the end-user, which Real Ketones intends to sell or is manufacturing for sale in California, directly selling to a consumer in California or "Distributing into the State of California." If tests conducted pursuant to this Section demonstrate that no Warning is required for the Covered Products during each of the four (4) consecutive years, then the testing requirements of this Section will no longer be required as to the Covered Products.

3.4.2 For purposes of measuring the "Daily Lead Exposure Level," the highest lead detection result of the randomly selected sample of each of the Covered Products will be controlling.

3.4.3 All testing pursuant to this Agreement shall be performed using a laboratory method that complies with the performance and quality control factors appropriate for the method used, including limit of detection, qualification and limit of quantification, sensitivity, accuracy, and precision that meets the following criteria: Inductively Coupled

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Plasma-Mass Spectrometry ("ICP-MS") achieving a limit of quantification of less than or equal to 0.010 mg/kg.

3.4.4 All testing pursuant to this Agreement shall be performed by an independent third-party laboratory certified by the California Environmental Laboratory Accreditation Program or an independent third-party laboratory that is registered with the United States Food & Drug Administration.

3.4.5 Nothing in this Agreement shall limit Real Ketones' ability to conduct, or require that others conduct, additional testing of the Covered Products, including the raw materials used in its manufacture.

3.4.6 Within thirty (30) days of ERC's written request, Real Ketones shall deliver lab reports obtained pursuant to Section 3.4, and related documentation, to ERC. Real Ketones shall retain all such lab reports and related documentation for a period of three years from the date of each test. Any request by ERC for lab reports and related documentation shall be made prior to the expiration of the three-year time period identified in this section 3.4.6. ERC shall treat all documents provided by Real Ketones pursuant to this Section as confidential.

3.4.7 The testing requirements of Section 3.4 do not apply to any Covered Product Distributed into the State of California for which Real Ketones has provided the Warning specified in Section 3.2 in a continuous and uninterrupted fashion since the Effective Date. However, in the event Real Ketones ceases to provide the Warning specified in Section 3.2 as to the Covered Product, Real Ketones shall be required to comply with the testing requirements of this Section as to the Covered Product beginning immediately after the date the Warning ceases to be provided or one year after the Effective Date, whichever date is later.

3.4.8 During each yearly testing period required by Section 3.4.1, when the required randomly selected testing for the Covered Product results in a "Daily Lead Exposure Level" that is more than 0.5 micrograms of lead per day, Real Ketones shall have the right to test other lots of that Covered Product, from which lots no randomly selected samples were tested pursuant to Section 3.4.1, to determine if those lots may be excepted from the Warning requirements of Section 3.2 during that yearly testing period. For each such lot that is tested, Real Ketones shall test at least two randomly selected samples of the Covered Product from that lot, and the highest lead detection result will be controlling in determining the "Daily Lead Exposure Level." Lots that result in a "Daily Lead Exposure Level" of less than .5 micrograms of lead per day may be sold in California without a Warning.

4. Real Ketones shall make a total payment of \$22,500.00 ("Total Settlement Amount") by wire transfer to ERC's account within 10 days of the Effective Date ("Due Date"), for which ERC will give Real Ketones the necessary account information. The Total Settlement Amount shall be allocated as follows:

- a. \$2,000.00 shall be considered a civil penalty pursuant to California Health and

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Safety Code §25249.7(b)(1). ERC shall remit 75% (\$1,500.00) 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% (\$500.00) of the civil penalty.

b. \$3,018.63 shall be considered a reimbursement to ERC for its costs incurred as a result of bringing this matter to Real Ketones' attention and negotiating a settlement.

c. \$9,389.00 shall be distributed to Michael Freund as reimbursement of ERC's attorney fees, while \$8,092.37 shall be distributed to ERC's in-house legal fees.

d. In the event that Real Ketones fails to remit the Total Settlement Amount owed under Section 4 of this Agreement on or before the Due Date, Real Ketones shall be deemed to be in material breach of its obligations under this Agreement. ERC shall provide written notice of the delinquency to Real Ketones via electronic mail. If Real Ketones fails to deliver the Total Settlement Amount within five days from the written notice, the Total Settlement Amount shall become immediately due and payable and shall accrue interest at the statutory judgment interest rate provided in the Code of Civil Procedure section 685.010. Additionally, Real Ketones agrees to pay ERC's reasonable attorneys' fees and costs for any efforts to collect the payment due under this Agreement.

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

6. Binding Effect; Claims Covered and Released

6.1. This Agreement is a full, final, and binding resolution between ERC, on behalf of itself, and Real Ketones and its respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers, franchisees, licensees, customers (not including private label customers of Real Ketones), distributors, wholesalers, retailers, and all other upstream and downstream entities in the distribution chain of the Covered Products, and the predecessors, successors, and assigns of any of them (collectively, "Released Parties") with respect to the Covered Products. ERC, on behalf of itself and in the public interest, hereby fully releases and discharges the Released Parties from all claims including without limitation, all actions, causes of action, in law or in equity, suits, demands, liabilities, obligations, damages, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), and costs asserted, against Real Ketones and its parents, subsidiaries, affiliated entities, shareholders, directors, officers, agents, employees, attorneys, successors, and assignees, and each entity to whom Real Ketones directly or indirectly distributes or sells the Covered Products, from all claims for violations of Proposition 65 prior to the Effective Date.

6.2 ERC on its own behalf only, and Real Ketones on its own behalf only, further waive and release any and all claims they may have against each other for all actions or

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statements made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in connection with the Notices up through and including the Effective Date, provided, however, that nothing in Section 6 shall affect or limit any Party's right to seek to enforce the terms of this Agreement.

6.3 It is possible that other claims not known to the Parties, arising out of the facts alleged in the Notices, and relating to violations of Proposition 65 with respect to the Covered Products, will develop or be discovered, including Covered Products that were sold to third-party distributors and/or retailers, without a warning, prior to the Effective Date. ERC, on behalf of itself only, and Real Ketones, on behalf of itself only, acknowledge that this Agreement is expressly intended to cover and include all such claims up through and including the Effective Date, including all rights of action arising therefrom. The Parties acknowledge that the claims released in Sections 6.1 and 6.2 above may include unknown claims, and the Parties nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

ERC, on behalf of itself only, and Real Ketones, on behalf of itself only, acknowledge and understand the significance and consequences of this specific waiver of California Civil Code section 1542.

6.4 Compliance with the terms of this Agreement shall be deemed to constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead in the Covered Products as set forth in the Notices.

6.5 The Parties understand that the commitments Real Ketones has agreed to herein, and actions to be taken by Real Ketones under this Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of the Parties that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Real Ketones's failure to provide a warning concerning exposure to lead prior to use of the Covered Products it has manufactured, distributed, sold, or offered for sale in California prior to the Effective Date, as outlined more thoroughly in Section 3, above, such private party action would not confer a significant benefit on the general public as to the Covered Products addressed in this Agreement, provided that Real Ketones is in material compliance with this Agreement. The Parties agree that the understandings and intentions expressed in this Section are applicable only to the Notices and the Covered Products at issue and are not to be construed as a general understanding or intention with respect to other products manufactured, distributed, sold or offered for sale in California by any other entity.

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6.6 Nothing in this Agreement is intended to apply to products other than the Covered Products.

7. Nothing herein shall be construed as diminishing Real Ketones' continuing obligations to comply with Proposition 65.

8. All notices required to be given to either Party to this Agreement by the other shall be in writing and sent to the following agents listed below via first-class mail, or via electronic mail where required. Courtesy copies of notices sent via first-class mail may also be sent via email.

FOR ENVIRONMENTAL RESEARCH CENTER, INC.:

Chris Heptinstall, Executive Director, Environmental Research Center
3111 Camino Del Rio North, Suite 400
San Diego, CA 92108
Tel: (619) 500-3090
Email: chris.heptinstall@erc501c3.org

With a copy to:

Michael Freund
Michael Freund & Associates
1919 Addison Street, Suite 105
Berkeley, CA 94704
Ph: (510) 540-1992
Email: freund1@aol.com

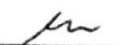
FOR REAL KETONES, LLC; AXCESS GLOBAL SCIENCES, LLC, individually and dba REAL KETONES:

Gary Millet
2157 Lincoln Street
Salt Lake City, Utah 84106
garymillet@axcess-global.com

With a copy to:

Willis M. Wagner
Greenberg Traurig, LLP
1201 K St, Ste 1100
Sacramento, CA 95814
Email: wagnerw@gtlaw.com

9. After executing this Agreement, ERC will submit to the California Attorney General a Report of Settlement. In addition, ERC will provide to the California Attorney General a signed copy of this Agreement. The Parties acknowledge and agree that the Parties shall provide as much information as is requested by the California Attorney General, or any other governmental agency, regarding the Notices, the settlement, and this Agreement.

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

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

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

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

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

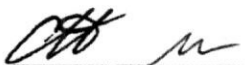
15. The Parties acknowledge by signing this Agreement that they have a right to consult an attorney and that they have either consulted their attorney(s) with respect to the Notices and the terms and conditions of this Agreement or have made the decision not to consult with an attorney regarding the Notices and the terms and conditions of this Agreement. The Parties further acknowledge that they fully understand this Agreement and the effect of signing and executing this Agreement.

16. The terms and provisions of the Agreement represent a fair and equitable settlement of all matters raised by ERC's Notices, that the matter has been diligently pursued, and that the public interest is served by such settlement.

17. Any legal action to enforce this Agreement shall be brought in the county of Alameda of the State of California. ERC shall be entitled to recover its reasonable attorneys' fees and costs that are necessary and required to enforce the Agreement pursuant to California Code of Civil Procedure section 1021.5.

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.

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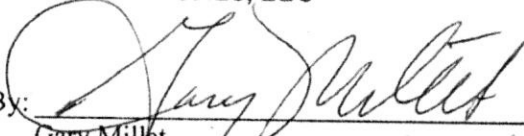


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19. Each of the individuals who execute this Agreement represents and warrants they have the authority to execute this document and bind the respective Parties to the terms and conditions of this Agreement, and have read, understand, and agree to all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

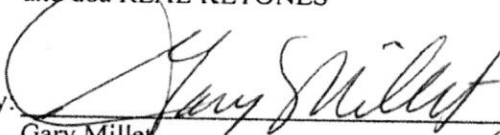
DATED: 8/18/20

REAL KETONES, LLC

By: 
Gary Millet
Title: Managing partner

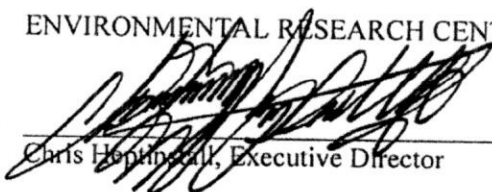
DATED: 8/18/20

ACCESS GLOBAL SCIENCES, LLC, individually
and dba REAL KETONES

By: 
Gary Millet
Title: Managing partner

DATED: 8/18/20

ENVIRONMENTAL RESEARCH CENTER, INC.

By: 
Chris Hopwood, Executive Director

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