

SETTLEMENT AND RELEASE AGREEMENT

1. **INTRODUCTION**

1.1. **Keep America Safe and Beautiful and Onnit Labs, Inc.:**

This Settlement Agreement is entered into by and between Keep America Safe and Beautiful ("KASB"), represented by its attorneys KJT Law Group, LLP on the one hand, and Onnit Labs, Inc. ("ONNIT"), on the other hand, with KASB and ONNIT collectively referred to as the "Parties."

1.2. **General Allegations**

KASB alleges that ONNIT manufactured, distributed, and offered for sale in the State of California certain products, containing lead and that such sales have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* ("Proposition 65"). California has identified and listed lead under Proposition 65 as a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

1.3. **Product Description**

The product covered by this Settlement Agreement is defined as: Onnit – Total Nitric Oxide – Formulated to Help Support Performance & Pump – Citrulline, Arginine & Beet; UPC #: 8 19444 01602 3, that ONNIT has sold, offered for sale, manufactured, or distributed in California. All such items shall be referred to herein as the "Covered Product."

1.4. **Notice of Violation**

On March 19, 2024, KASB served ONNIT and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California with documents entitled "60-Day Notice of Violation" ("Notice") that provided ONNIT and such

public enforcers with notice that ONNIT was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Covered Product exposed users in California to lead. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

1.5. **No Admission**

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notice concerning ONNIT's compliance with Proposition 65. Specifically, ONNIT denies the allegations contained in KASB's Notice and maintains that all products that it has placed for sale and distribution in California, including the Covered Product, have been and are in compliance with Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by ONNIT of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by ONNIT of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by ONNIT. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of ONNIT under this Settlement Agreement.

1.6. **Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is fully executed.

1.7 **Compliance Date**

For purposes of this Settlement Agreement, the term "Compliance Date" shall mean ninety (90) days after the Effective Date.

2. INJUNCTIVE RELIEF:

2.1 Beginning on the Compliance Date, ONNIT shall be permanently enjoined from manufacturing for sale in the State of California, "Distributing into the State of California," or directly selling in the State of California, any Covered Product that expose 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 2.2.

As used in this Settlement Agreement, the term "Distributing into the State of California" shall mean to directly ship a Covered Product into California for sale in California or to sell a Covered Product to a distributor that ONNIT knows or has reason to know will sell the Covered Product in California. The injunctive relief in Section 2 does not apply to any Covered Product that has left the possession, and is no longer under the control of ONNIT prior to the Effective Date and all claims as to such Covered Product is released in this Settlement Agreement.

For purposes of this Settlement Agreement, the "Daily Lead Exposure Level" shall be measured in micrograms, and shall be calculated using the following formula: micrograms of lead per gram of product, multiplied by grams of product per serving of the product (using the largest serving size appearing on the product label), multiplied by servings of the product per day (using the largest number of recommended daily servings appearing on the label), which equals micrograms of lead exposure per day. If the label contains no recommended daily servings, then the number of recommended daily servings shall be one.

2.2 Clear and Reasonable Warnings

If ONNIT is required to provide a warning pursuant to Section 2.1, one of the following warnings must be utilized ("Warning").

Option 1:

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

Option 2:

WARNING: [Cancer and] Reproductive Harm <http://www.p65warnings.ca.gov/food>

ONNIT shall use the phrase "cancer and" in the Warning if the exposure level is greater than 15 micrograms of lead per day.

The Warning shall be securely affixed to or printed upon the label of each Covered Product and it must be set off from other surrounding information. For purposes of this Settlement 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. The warning must be set off from other surrounding information, enclosed in a box. If consumer information on the package is in a foreign language, the warning must also be provided in the foreign language. In addition, for any Covered Product sold over the internet, the Warning shall appear on the checkout page in full text or through a clearly marked hyperlink using the word "WARNING" in all capital and bold letters when a California delivery address is indicated for any purchase of any Covered Product. If a hyperlink is used, the hyperlink must go directly to a page prominently displaying either the Option 1 Warning or the Option 2 Warning without content that detracts from the Warning. An asterisk or other identifying method must be utilized to identify which products on the checkout page are subject to the Warning. In the event that the Office of Environmental Health Hazard Assessment promulgates regulations permitting

alternative Proposition 65 warning text and/or methods of transmission applicable to the Covered Product and chemical at issue, ONNIT shall be entitled to use, at its discretion, such other warning text and/or methods of transmission without being deemed in breach of this Settlement.

In the event that Proposition 65 or its implementing regulations are repealed or otherwise rendered inapplicable by reason of law generally, or as to the Covered Product, then ONNIT may modify this Settlement Agreement to reflect such changes, as set forth in Section 13.

3. CONSIDERATION

In settlement of all the claims referred to in this Settlement Agreement, the Parties reached an accord on the compensation due, under the private attorney general doctrine and principles of contract law. Under these legal principles, ONNIT shall pay \$19,500.00 as settlement and for fees and costs, incurred as a result of investigating and bringing this matter to ONNIT's attention.

4. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, \$1,500.00 shall be considered a "civil penalty." The civil penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds (\$1,125.00) remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty (\$375.00) shall be remitted to KASB. ONNIT shall make these payments on or before January 31, 2025, at which time such payments shall be made as follows:

All payments owed to KASB shall be delivered to KASB's counsel as described in Section 5 of this Settlement.

All payments owed to OEHHA shall be delivered directly to OEHHA at the following addresses:

For United States Postal Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA. 95812-0410

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street, MS #19B
Sacramento, CA 95814.

4.1 Tax Documentation

KASB agrees to provide ONNIT IRS W-9 forms for itself and KASB's counsel within five (5) days of the Effective Date. The Parties acknowledge that ONNIT cannot issue any settlement payments pursuant to Sections 4 and 5 until after ONNIT receives the requisite W-9 forms from KASB's counsel.

5. REIMBURSEMENT OF FEES AND COSTS

In settlement of all the claims referred to in this Settlement Agreement, \$18,000.00 shall be considered reimbursement of KASB's attorneys' fees, expert and investigation fees, and related costs associated with this matter and the Notice. The Parties reached an accord on the compensation due to KASB and its counsel under the private attorney general doctrine and principles of contract law. ONNIT shall make this payment, in addition to the civil penalty payment owed to KASB, for a total of \$18,375.00, by means of one check on or before January 31, 2025 to the following address:

KJT LAW GROUP LLP
230 Maryland Avenue, Suite 306
Glendale, CA 91206.

6. RELEASE OF ALL CLAIMS

6.1. Release of ONNIT, Downstream Customers and Upstream Vendors

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 through 6 above, KASB, on behalf of itself, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to the Covered Product, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) against ONNIT, its equity owners, parent companies, corporate affiliates, subsidiaries, predecessors, successors and assigns (collectively "Releasees") and each of its distributors, wholesalers, licensors, licensees, auctioneers, and retailers, for any alleged violations of Proposition 65, or any other alleged violations of statutory or common law, arising from alleged exposure to lead in relation to the Covered Product, up through the Effective Date.

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Covered Product will develop or be discovered. This Settlement Agreement is expressly intended to cover and include all such claims up through the Effective Date. KASB, in its capacity, expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of California Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to

the released matters, and does so understanding and acknowledging the significance and consequences of the specific waiver of such a provision, which reads 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.

7. PUBLIC BENEFIT

It is the Parties' understanding that the commitments ONNIT has agreed to herein and the actions to be taken by ONNIT under this Settlement Agreement would confer a significant benefit to the general public. As such, it is the Parties' intent, to the extent any other private party initiates an action alleging a violation of Proposition 65 based on ONNIT's or Releases' alleged failure to provide a warning concerning actual or alleged exposure to lead from use of the Covered Product it has manufactured, distributed, sold, or offered for sale in California, such private party action would not confer a significant benefit on the general public, provided that ONNIT is in material compliance with this Settlement Agreement.

8. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

9. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California.

10. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

For ONNIT: Trenton H. Norris, Esq.
Hogan Lovells US LLP
4 Embarcadero Center, Suite 3500
San Francisco, CA 94111

For KASB: Tro Krikorian, Esq.
KJT Law Group, LLP
230 N. Maryland Ave., Suite 306
Glendale, CA 91206

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

11. COUNTERPARTS; FACSIMILE/E-SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or e-signatures, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

12. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments, and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

13. MODIFICATION

This Settlement Agreement may be modified only by a written agreement signed by the Parties.

14. DRAFTING

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.

15. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Settlement Agreement.

IN WITNESS WHEREOF, the Parties have agreed, accepted, and executed this Agreement on the date written.

Executed on 1/15/2025.

Keep America Safe and Beautiful



By: _____

Executed on 1/13/2025.

Onnit Labs, inc.

Signed by: *James Bove*

By: _____
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Its: Interim CEO