

**FILED**  
ALAMEDA COUNTY

OCT 16 2018

CLERK OF THE SUPERIOR COURT

By \_\_\_\_\_ Deputy

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16 Doctors Scientific Organica, LLC, individually and doing business as  
17 Smart for Life; and Lavi Enterprises, LLC, individually and doing  
18 business as Smart for Life

19 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
20 **COUNTY OF ALAMEDA**

21 **ENVIRONMENTAL RESEARCH**  
22 **CENTER, INC., a California non-profit**  
23 **corporation**

24 **Plaintiff,**

25 **vs.**

26 **DOCTORS SCIENTIFIC ORGANICA,**  
27 **LLC, individually and doing business as**  
28 **SMART FOR LIFE; LAVI**  
**ENTERPRISES, LLC, individually and**  
**doing business as SMART FOR LIFE; and**  
**DOES 1-100**

**Defendants.**

**CASE NO. RG18915427**

**STIPULATED CONSENT**  
**JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed:  
Trial Date: None set

**1. INTRODUCTION**

1.1 On Aug. 3, 2018, Plaintiff Environmental Research Center, Inc. ("ERC"), a non-profit corporation, as a private enforcer and in the public interest, initiated this action by

1 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the "Complaint")  
2 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*  
3 ("Proposition 65"), against Doctors Scientific Organica, LLC, individually and doing business as  
4 Smart for Life; and Lavi Enterprises, LLC, individually and doing business as Smart for Life  
5 (collectively "Smart for Life") and Does 1-100. In this action, ERC alleges that a number of  
6 products manufactured, distributed, or sold by Smart for Life contain lead, cadmium and/or  
7 acrylamide, chemicals listed under Proposition 65 as carcinogens and reproductive toxins, and  
8 expose consumers to these chemicals at a level requiring a Proposition 65 warning. These  
9 products (referred to hereinafter individually as a "Covered Product" or collectively as "Covered  
10 Products") are: (1) SmartforLife Vanilla Protein Shake (lead), (2) SmartforLife Chocolate  
11 Protein Shake (lead, cadmium), (3) SmartforLife Vanilla Greens Protein Shake (lead), (4)  
12 SmartforLife Protein Bar S'MORES (lead, cadmium), (5) SmartforLife Protein Bar Chocolate  
13 (lead, cadmium), (6) SmartforLife Protein Bar Peanut Butter Chocolate (lead, cadmium), (7)  
14 SmartforLife Protein Bar Caramel Almond (lead), (8) SmartforLife Banana Chocolate Chip  
15 Square (lead), (9) SmartforLife Protein Bar Strawberry Yogurt (lead), (10) SmartforLife Protein  
16 Bar Luscious Lemon (lead), (11) SmartforLife Protein Bar Blueberry (lead), (12) SmartforLife  
17 Protein Bar Cinnamon Pecan (lead), (13) SmartforLife Protein Bar Choco Crisp (lead,  
18 cadmium), (14) SmartforLife Protein Bar Strawberry & Cream (lead), (15) SmartforLife Protein  
19 Bar Peanut Butter Choco (lead), (16) SmartforLife Chocolate Chip Cookies (lead), (17)  
20 SmartforLife Blueberry Cookies (lead), (18) SmartforLife Oatmeal Raisin Cookie (lead), (19)  
21 SmartforLife Irresistible Winner Peanut Butter Cookie (lead), (20) SmartforLife Irresistible  
22 Winner Chocolate Chip Cookie (lead, cadmium), (21) SmartforLife 1.877.601.SASS Cranberry  
23 Granola Square (lead), (22) SmartforLife Chocolate Protein Shake, (23) SmartforLife Vanilla  
24 Protein Shake, (24) SmartforLife Protein Bar S'MORES, (24) SmartforLife Protein Bar Choco  
25 Crisp, (25) SmartforLife Oatmeal Raisin Cookie, (26) SmartforLife Banana Chocolate Chip  
26 Square, and (27) SmartforLife Chocolate Chip Cookies.

27 1.2 ERC and Smart for Life are hereinafter referred to individually as a "Party" or  
28 collectively as the "Parties."

1           1.3     ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
2 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
3 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
4 and encouraging corporate responsibility.

5           1.4     For purposes of this Consent Judgment, the Parties agree that each defendant is a  
6 business entity each of which has employed ten or more persons at all times relevant to this action,  
7 and qualifies as a "person in the course of business" within the meaning of Proposition 65. Smart  
8 for Life manufactures, distributes, and/or sells the Covered Products.

9           1.5     The Complaint is based on allegations contained in ERC's Notices of Violation  
10 dated February 12, 2018 and May 24, 2018 that were served on the California Attorney  
11 General, other public enforcers, and Smart for Life ("Notices"). True and correct copies of the  
12 60-Day Notices dated February 12, 2018 and May 24, 2018 are attached hereto as **Exhibits A**  
13 **and B** and each is incorporated herein by reference. More than 60 days have passed since the  
14 Notices were served on the Attorney General, public enforcers, and Smart for Life and no  
15 designated governmental entity has filed a complaint against Smart for Life with regard to the  
16 Covered Products or the alleged violations.

17           1.6     ERC's Notices and Complaint allege that use of the Covered Products exposes  
18 persons in California to lead, cadmium and/or acrylamide without first providing clear and  
19 reasonable warnings in violation of California Health and Safety Code section 25249.6. Smart  
20 for Life denies all material allegations contained in the Notices and Complaint.

21           1.7     The Parties have entered into this Consent Judgment in order to settle,  
22 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.  
23 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or  
24 be construed as an admission by any of the Parties or by any of their respective officers,  
25 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,  
26 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or  
27 violation of law.

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1           1.8     Except as expressly set forth herein, nothing in this Consent Judgment shall  
2 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any  
3 current or future legal proceeding unrelated to these proceedings.

4           1.9     The Effective Date of this Consent Judgment is the date on which notice is given  
5 that it has been entered as a Judgment by this Court.

6           **2.     JURISDICTION AND VENUE**

7           For purposes of this Consent Judgment and any further court action that may become  
8 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
9 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction  
10 over Smart for Life as to the acts alleged in the Complaint, that venue is proper in Alameda  
11 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final  
12 resolution of all claims up through and including the Effective Date which were or could have  
13 been asserted in this action based on the facts alleged in the Notices and Complaint.

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

15           3.1     Beginning on the Effective Date, Smart for Life shall be permanently enjoined  
16 from manufacturing for sale in the State of California, "Distributing into the State of  
17 California," or directly selling in the State of California, any Covered Products which expose a  
18 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms of lead per day and/or  
19 "Daily Cadmium Exposure Level" of more than 4.1 micrograms of cadmium per day and/or a  
20 "Daily Acrylamide Exposure Level" of more than 0.2 micrograms of acrylamide per day unless  
21 it meets the warning requirements under Section 3.2.

22           3.1.1   As used in this Consent Judgment, the term "Distributing into the State  
23 of California" shall mean to directly ship a Covered Product into California for sale in  
24 California or to sell a Covered Product to a distributor that Smart for Life knows or has reason  
25 to know will sell the Covered Product in California.

26           3.1.2   For purposes of this Consent Judgment, the "Daily Lead Exposure  
27 Level" shall be measured in micrograms, and shall be calculated using the following formula:  
28 micrograms of lead per gram of product, multiplied by grams of product per serving of the

1 product (using the largest serving size appearing on the product label), multiplied by servings  
2 of the product per day (using the largest number of recommended daily servings appearing on  
3 the label), excluding the amounts of allowances for "Naturally Occurring Lead" (defined  
4 below) in the ingredients listed in **Table 1**, which equals micrograms of lead exposure per day.  
5 If the label contains no recommended daily servings, then the number of recommended daily  
6 servings shall be one.

7           **3.1.3** In calculating the Daily Lead Exposure Level for a Covered Product,  
8 Smart for Life shall be allowed to deduct the amount of lead which is deemed to be Naturally  
9 Occurring Lead in any ingredient listed in **Table 1** ("Lead Ingredient") that is contained in that  
10 Covered Product under the following conditions: (a) Smart for Life itself or from its Lead  
11 Ingredient supplier shall obtain either (i) a valid test result showing lead is present in the Lead  
12 Ingredient at a specific concentration or in a range; or (ii) a certificate of analysis or certificate  
13 of compliance that shows lead is present in the Lead Ingredient at a specific concentration or in  
14 a range; and (b) Smart for Life shall obtain the documentation in Section 3.1.3(a) (i) or (ii) for  
15 at least two delivered lots of a Lead Ingredient listed in **Table 1**, if up to four (4) lots of that  
16 Lead Ingredient are delivered within twelve (12) months of the Effective Date, and  
17 documentation for at least three (3) lots of a Lead Ingredient if up to eight (8) lots of that Lead  
18 Ingredient are delivered within twelve (12) months of the Effective Date, and documentation  
19 for at least four (4) lots of a Lead Ingredient if nine (9) or more lots of that Lead Ingredient are  
20 delivered within twelve (12) months of the Effective Date; and (c) Smart for Life shall  
21 document the total amount (in grams) of each Lead Ingredient contained in the Covered  
22 Product. If the documentation obtained pursuant to Section 3.1.3(a) and (b) documents the  
23 presence of lead in any Lead Ingredient in **Table 1**, Smart for Life shall be entitled to deduct  
24 the amount of the Naturally Occurring Lead for that Lead Ingredient, as listed in **Table 1**. If  
25 the Covered Product does not contain a Lead Ingredient listed in **Table 1**, Smart for Life shall  
26 not be entitled to a deduction for the Naturally Occurring Lead in **Table 1** for that Covered  
27 Product.

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1 To deduct the Naturally Occurring Lead in any Covered Product for purposes of  
 2 determining the Daily Lead Exposure Level under this Consent Judgment, as provided in this  
 3 Section 3.1.3, Smart for Life shall provide to ERC, upon request within thirty (30) days after  
 4 the first anniversary of the Effective Date, the documentation required under Section 3.1.3(a)-  
 5 (c). Thereafter, for three (3) additional consecutive anniversaries after the Effective Date, if  
 6 Smart for Life deducts Naturally Occurring Lead in a Lead Ingredient in calculating the Daily  
 7 Lead Exposure Level, Smart for Life shall provide to ERC, upon request within thirty (30) days  
 8 after each such anniversary date, the documentation for each Lead Ingredient required under  
 9 Section 3.1.3(a)-(c) for each such applicable twelve (12) month period.

10 **TABLE 1**

INGREDIENT	NATURALLY OCCURRING AMOUNTS OF LEAD
Calcium (elemental)	0.8 micograms/gram
Ferrous Fumarate	0.4 micograms/gram
Zinc Oxide	8.0 micograms/gram
Magnesium Oxide	0.4 micograms/gram
Magnesium Carbonate	0.332 micograms/gram
Magnesium Hydroxide	0.4 micograms/gram
Zinc Gluconate	0.8 micograms/gram
Potassium Chloride	1.1 micograms/gram
Cocoa-powder	1.0 micograms/gram

22 **3.1.4** For purposes of this Consent Judgment, the "Daily Cadmium Exposure  
 23 Level" shall be measured in micrograms, and shall be calculated using the following formula:  
 24 micrograms of cadmium per gram of product, multiplied by grams of product per serving of the  
 25 product (using the largest serving size appearing on the product label), multiplied by servings  
 26 of the product per day (using the largest number of recommended daily servings appearing on  
 27 the label), which equals micrograms of cadmium exposure per day. If the label contains no  
 28 recommended daily servings, then the number of recommended daily servings shall be one.

1           3.1.5 For purposes of this Consent Judgment, the "Daily Acrylamide Exposure  
2 Level" shall be measured in micrograms, and shall be calculated using the following formula:  
3 micrograms of acrylamide per gram of product, multiplied by grams of product per serving of  
4 the product (using the largest serving size appearing on the product label), multiplied by  
5 servings of the product per day (using the largest number of recommended daily servings  
6 appearing on the label), which equals micrograms of acrylamide exposure per day. If the label  
7 contains no recommended daily servings, then the number of recommended daily servings shall  
8 be one.

9           **3.2 Clear and Reasonable Warnings**

10           If Smart for Life is required to provide a warning pursuant to Section 3.1, the following  
11 warning must be utilized ("Warning"):

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

15           Smart for Life shall use the phrase "cancer and" in the Warning if Smart for Life has  
16 reason to believe that the "Daily Lead Exposure Level" is greater than 15 micrograms of lead as  
17 determined pursuant to the quality control methodology set forth in Section 3.4, or if the "Daily  
18 Acrylamide Exposure Level" is greater than 0.2 micrograms per day, or if Smart for Life has  
19 reason to believe that another Proposition 65 chemical is present which may require a cancer  
20 warning. As identified in the brackets, the warning shall appropriately reflect whether there is  
21 lead, cadmium, acrylamide or all of these chemicals present in each of the Covered Products.

22           The Warning shall be securely affixed to or printed upon the container or label of each  
23 Covered Product. If the Warning is provided on the label, it must be set off from other  
24 surrounding information and enclosed in a box. In addition, for any Covered Product sold over  
25 the internet by Smart for Life, the Warning shall appear on the checkout page when a California  
26 delivery address is indicated for any purchase of any Covered Product or on the product display  
27 page for the Covered Product. An asterisk or other identifying method must be utilized to  
28 identify which products on the checkout page or product display page are subject to the Warning.

1 The Warning shall be at least the same size as the largest of any other health or safety  
2 warnings also appearing on the respective website page or on the label or container of Smart for  
3 Life's product packaging and the word "WARNING" shall be in all capital letters and in bold  
4 print. Statements supplemental to the Warning shall comply with Tit. 27, Cal. Code Regs. §  
5 25601(e), as it may be amended from time to time. Presently, statements supplemental to the  
6 Warning are allowed only to the extent they identify the source of the exposure or provide  
7 information on how consumers of the Covered Products may avoid or reduce exposure to the  
8 identified chemical or chemicals.

9 Smart for Life must display the above Warning with such conspicuousness, as compared  
10 with other words, statements or designs on the label or container, or on its website, if applicable, to  
11 render the Warning likely to be read and understood by an ordinary individual under customary  
12 conditions of purchase or use of the product.

### 13 3.3 Reformulated Covered Products

14 A Reformulated Covered Product is a Covered Product for which the "Daily Lead  
15 Exposure Level" is no greater than 0.5 micrograms of lead per day and/or "Daily Cadmium  
16 Exposure Level" is no more than 4.1 micrograms of cadmium per day and/or "Daily Acrylamide  
17 Exposure Level" is no more than 0.2 micrograms of acrylamide per day as determined by the  
18 quality control methodology described in Section 3.4.

### 19 3.4 Testing and Quality Control Methodology

20 3.4.1 Beginning within one year of the Effective Date, Smart for Life shall  
21 arrange for lead and/or cadmium testing of the Covered Products at least once a year for a  
22 minimum of five consecutive years by arranging for testing of five randomly selected samples  
23 of each of the Covered Products, in the form intended for sale to the end-user, which Smart for  
24 Life intends to sell or is manufacturing for sale in California, directly selling to a consumer in  
25 California or "Distributing into the State of California." If tests conducted pursuant to this  
26 Section demonstrate that no Warning is required for a Covered Product during each of five  
27 consecutive years, then the testing requirements of this Section will no longer be required as to  
28 that Covered Product. However, if during or after the five-year testing period, Smart for Life



1 changes ingredient suppliers for any of the Covered Products and/or reformulates any of the  
2 Covered Products, Smart for Life shall test that Covered Product annually for at least four (4)  
3 consecutive years after such change is made.

4           3.4.2 For purposes of measuring the "Daily Lead Exposure Level" and/or  
5 "Daily Cadmium Exposure Level" and/or "Daily Acrylamide Exposure Level," the highest lead  
6 and/or cadmium detection result of the five (5) randomly selected samples of the Covered  
7 Products will be controlling.

8           3.4.3 All testing pursuant to this Consent Judgment shall be performed using a  
9 laboratory method that complies with the performance and quality control factors appropriate  
10 for the method used, including limit of detection, qualification, accuracy, and precision that  
11 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")  
12 achieving a limit of quantification of less than or equal to 0.010 mg/kg.

13           3.4.4 All testing pursuant to this Consent Judgment shall be performed by an  
14 independent third party laboratory certified by the California Environmental Laboratory  
15 Accreditation Program or an independent third-party laboratory that is registered with the  
16 United States Food & Drug Administration.

17           3.4.5 Nothing in this Consent Judgment shall limit Smart for Life's ability to  
18 conduct, or require that others conduct, additional testing of the Covered Products, including  
19 the raw materials used in their manufacture.

20           3.4.6 Within thirty (30) days of ERC's written request, which shall not be  
21 made more than once per year within the first five years after the Effective Date, Smart for Life  
22 shall deliver lab reports obtained pursuant to Section 3.4 to ERC. Smart for Life shall retain all  
23 test results and documentation for a period of five years from the date of each test.

#### 24 **4. SETTLEMENT PAYMENT**

25           4.1 In full satisfaction of all potential civil penalties, additional settlement payments,  
26 attorney's fees, and costs, Smart for Life shall make a total payment of \$90,000.00 ("Total  
27 Settlement Amount") in four monthly payments according to the following payment schedule  
28 ("Due Dates"):

- Payment 1 -- \$35,000.00 within 5 days of the Effective Date
- Payment 2 -- \$18,333.33 within 35 days of the Effective Date
- Payment 3 -- \$18,333.33 within 65 days of the Effective Date
- Payment 4 -- \$18,333.34 within 95 days of the Effective Date

Smart for Life shall make these payments by wire transfer to ERC's account, for which ERC will give Smart for Life the necessary account information. The Total Settlement Amount shall be apportioned as follows:

4.2 \$19,673.44 shall be considered a civil penalty pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$14,755.08) 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 section 25249.12(c). ERC will retain the remaining 25% (\$4,918.36) of the civil penalty.

4.3 \$6,144.76 shall be distributed to ERC as reimbursement to ERC for reasonable costs incurred in bringing this action.

4.4 \$14,755.08 shall be distributed to ERC as an Additional Settlement Payment ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly caused by Defendant in this matter. ERC represents that these activities are detailed below and support ERC's overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary supplement products in California. ERC represents that its activities have had, and will continue to have, a direct and primary effect within the State of California because California consumers will be benefitted by the reduction and/or elimination of exposure to lead, cadmium and/or acrylamide in dietary supplements and/or by providing clear and reasonable warnings to California consumers prior to ingestion of the products.

Based on a review of past years' actual budgets, ERC represents that it is providing the following list of activities ERC engages in to protect California consumers through Proposition 65 citizen enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing

1 dietary supplement products that may contain lead, cadmium and/or acrylamide and are sold to  
2 California consumers. This work includes continued monitoring and enforcement of past consent  
3 judgments and settlements to ensure companies are in compliance with their obligations  
4 thereunder, with a specific focus on those judgments and settlements concerning lead, cadmium  
5 and/or acrylamide. This work also includes investigation of new companies that ERC does not  
6 obtain any recovery through settlement or judgment; (2) VOLUNTARY COMPLIANCE  
7 PROGRAM (10-20%): maintaining ERC's Voluntary Compliance Program by acquiring  
8 products from companies, developing and maintaining a case file, testing products from these  
9 companies, providing the test results and supporting documentation to the companies, and  
10 offering guidance in warning or implementing a self-testing program for lead, cadmium and/or  
11 acrylamide in dietary supplement products; and (3) "GOT LEAD" PROGRAM (up to 5%):  
12 maintaining ERC's "Got Lead?" Program which reduces the numbers of contaminated products  
13 that reach California consumers by providing access to free testing for lead in dietary supplement  
14 products (Products submitted to the program are screened for ingredients which are suspected to  
15 be contaminated, and then may be purchased by ERC, catalogued, sent to a qualified laboratory  
16 for testing, and the results shared with the consumer that submitted the product).

17 ERC shall be fully accountable in that it will maintain adequate records to document and  
18 will be able to demonstrate how the ASP funds will be spent and can assure that the funds are  
19 being spent only for the proper, designated purposes described in this Consent Judgment. ERC  
20 shall provide the Attorney General, within thirty days of any request, copies of documentation  
21 demonstrating how such funds have been spent.

22 4.5 \$2,115.00 shall be distributed to Michael Freund as reimbursement of ERC's  
23 attorney's fees, \$9,165.00 shall be distributed to Ryan Hoffman as reimbursement of ERC's  
24 attorney's fees, while \$38,146.72 shall be distributed to ERC for its in-house legal fees. Except  
25 as explicitly provided herein, each Party shall bear its own fees and costs.

26 4.6 In the event that Smart for Life fails to remit a payment pursuant to Section 4.1  
27 on or before the respective Due Date, Smart for Life shall be deemed to be in material breach  
28 of its obligations under this Consent Judgment. ERC shall provide written notice of the

1 delinquency to Smart for Life via electronic mail. If Smart for Life fails to deliver the  
2 delinquent payment within fifteen (15) days from the written notice, the Total Settlement  
3 Amount, less any amounts previously paid pursuant to Section 4.1, shall be immediately due  
4 and owing and shall accrue interest at the statutory judgment interest rate provided in the  
5 California Code of Civil Procedure section 685.010. Additionally, Smart for Life agrees to pay  
6 ERC's reasonable attorney's fees and costs for any efforts to collect the payment due under this  
7 Consent Judgment.

#### 8 **5. MODIFICATION OF CONSENT JUDGMENT**

9 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by  
10 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or  
11 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a  
12 modified consent judgment.

13 **5.2** If either party seeks to modify this Consent Judgment under Section 5.1, then  
14 that party must provide written notice to the other party of its intent ("Notice of Intent"). The  
15 parties shall meet and confer regarding the proposed modification in the Notice of Intent  
16 Within thirty (30) days of that meeting, if there remains a dispute over the proposed  
17 modification, the Party disputing the modification shall provide the other Party a written basis  
18 for its position. The Parties shall continue to meet and confer for an additional thirty (30) days  
19 in an effort to resolve any remaining disputes. Should it become necessary, the Parties may  
20 agree in writing to different deadlines for the meet-and-confer period.

21 **5.3** In the event that a party initiates or otherwise requests a modification under  
22 Section 5.1, and the meet and confer process leads to a joint motion or application for a  
23 modification of the Consent Judgment, that party shall reimburse the other party its costs and  
24 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and  
25 arguing the motion or application. No party shall be reimbursed for costs or attorney's fees for  
26 an uncontested motion, or for a ministerial motion (such as a change in name or contact  
27 information) or if the party does not expend more than two (2) hours of attorney time on the  
28 joint motion.

1           5.4     Where the meet-and-confer process does not lead to a joint motion or  
2 application in support of a modification of the Consent Judgment, then either Party may seek  
3 judicial relief on its own.

4     **6.     RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
5     **JUDGMENT**

6           6.1     This Court shall retain jurisdiction of this matter to enforce, modify, or terminate  
7 this Consent Judgment.

8           6.2     If ERC alleges that any Covered Product fails to qualify as a Reformulated  
9 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall  
10 inform Smart for Life in a reasonably prompt manner of its test results, including information  
11 sufficient to permit Smart for Life to identify the Covered Products at issue. Smart for Life  
12 shall, within thirty (30) days following such notice, provide ERC with testing information, from  
13 an independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,  
14 demonstrating Smart for Life's compliance with the Consent Judgment, if warranted. The  
15 Parties shall first attempt to resolve the matter prior to ERC taking any further legal action.

16     **7.     APPLICATION OF CONSENT JUDGMENT**

17           This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
18 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
19 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,  
20 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no  
21 application to any Covered Product which is distributed or sold exclusively outside the State of  
22 California and which is not used by California consumers.

23     **8.     BINDING EFFECT, CLAIMS COVERED AND RELEASED**

24           8.1     This Consent Judgment is a full, final, and binding resolution between ERC,  
25 on behalf of itself and in the public interest, and Smart for Life and its respective officers,  
26 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,  
27 franchisees, licensees, customers (not including private label customers of Smart for Life),  
28 distributors, wholesalers, retailers, and all other upstream and downstream entities in the

1 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any  
2 of them (collectively, "Released Parties"). ERC, on behalf of itself and in the public interest,  
3 hereby fully releases and discharges the Released Parties from any and all claims, actions,  
4 causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses  
5 asserted, or that could have been asserted from the handling, use, or consumption of the  
6 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations  
7 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding  
8 lead, cadmium and/or acrylamide up to and including the Effective Date.

9       **8.2**       ERC on its own behalf only, and Smart for Life on its own behalf only,  
10 further waive and release any and all claims they may have against each other for all actions or  
11 statements made or undertaken in the course of seeking or opposing enforcement of Proposition  
12 65 in connection with the Notices and Complaint up through and including the Effective Date,  
13 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to  
14 enforce the terms of this Consent Judgment.

15       **8.3**       It is possible that other claims not known to the Parties, arising out of the facts  
16 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be  
17 discovered. ERC on behalf of itself only, and Smart for Life on behalf of itself only,  
18 acknowledge that this Consent Judgment is expressly intended to cover and include all such  
19 claims up through and including the Effective Date, including all rights of action therefore.  
20 ERC and Smart for Life acknowledge that the claims released in Sections 8.1 and 8.2 above  
21 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to  
22 any such unknown claims. California Civil Code section 1542 reads as follows:

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

28 ERC on behalf of itself only, and Smart for Life on behalf of itself only, acknowledge and  
understand the significance and consequences of this specific waiver of California Civil Code  
section 1542.

1           **8.4** Compliance with the terms of this Consent Judgment shall be deemed to  
2 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead,  
3 cadmium and/or acrylamide in the Covered Products as set forth in the Notices and Complaint.

4           **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or  
5 environmental exposures arising under Proposition 65, nor shall it apply to any of Smart for  
6 Life's products other than the Covered Products.

7           **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

8           In the event that any of the provisions of this Consent Judgment are held by a court to be  
9 unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

10          **10. GOVERNING LAW**

11          The terms and conditions of this Consent Judgment shall be governed by and construed in  
12 accordance with the laws of the State of California.

13          **11. PROVISION OF NOTICE**

14          All notices required to be given to either Party to this Consent Judgment by the other shall  
15 be in writing and sent to the following agents listed below via first-class mail. Courtesy copies via  
16 email may also be sent.

17          **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

18 Chris Heptinstall, Executive Director, Environmental Research Center  
19 3111 Camino Del Rio North, Suite 400  
20 San Diego, CA 92108  
21 Tel: (619) 500-3090  
22 Email: chris\_erc501c3@yahoo.com

23          With a copy to:

24 Michael Freund  
25 Ryan Hoffman  
26 Michael Freund & Associates  
27 1919 Addison Street, Suite 105  
28 Berkeley, CA 94704  
Telephone: (510) 540-1992  
Facsimile: (510) 540-5543

///

///

1 **FOR DOCTORS SCIENTIFIC ORGANICA, LLC, individually and doing**  
2 **business as SMART FOR LIFE; LAVI ENTERPRISES, LLC, individually**  
3 **and doing business as SMART FOR LIFE:**

4 Dr. Sasson Moulavi  
5 Smart for Life  
6 1210 West 13th Street  
7 Riviera Beach, FL 33404

8 With a copy to:  
9 Amy P. Lally  
10 Sidley Austin LLP  
11 1999 Avenue of the Stars, 17<sup>th</sup> Floor  
12 Los Angeles, CA 90067  
13 Telephone: (310) 595 9662  
14 Email: alally@sidley.com

## 11 **12. COURT APPROVAL**

12 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
13 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
14 Consent Judgment.

15 **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
16 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
17 prior to the hearing on the motion.

18 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
19 void and have no force or effect.

## 20 **13. EXECUTION AND COUNTERPARTS**

21 This Consent Judgment may be executed in counterparts, which taken together shall be  
22 deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid  
23 as the original signature.

## 24 **14. DRAFTING**

25 The terms of this Consent Judgment have been reviewed by the respective counsel for each  
26 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and  
27 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and  
28 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,



1 and no provision of this Consent Judgment shall be construed against any Party, based on the fact  
2 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any  
3 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated  
4 equally in the preparation and drafting of this Consent Judgment.

5 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

6 If a dispute arises with respect to either Party's compliance with the terms of this Consent  
7 Judgment entered by the Court, the Parties shall meet and confer in person, by telephone, and/or in  
8 writing and endeavor to resolve the dispute in an amicable manner. No action or motion may be  
9 filed in the absence of such a good faith attempt to resolve the dispute beforehand.

10 **16. ENFORCEMENT**

11 ERC may, by motion or order to show cause before the Superior Court of Alameda  
12 County, enforce the terms and conditions contained in this Consent Judgment. In any action  
13 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,  
14 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.  
15 To the extent the failure to comply with the Consent Judgment constitutes a violation of  
16 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,  
17 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by  
18 law for failure to comply with Proposition 65 or other laws.

19 **17. ENTIRE AGREEMENT, AUTHORIZATION**

20 **17.1** This Consent Judgment contains the sole and entire agreement and  
21 understanding of the Parties with respect to the entire subject matter herein, and any and all  
22 prior discussions, negotiations, commitments, and understandings related hereto. No  
23 representations, oral or otherwise, express or implied, other than those contained herein have  
24 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
25 herein, shall be deemed to exist or to bind any Party.

26 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
27 authorized by the Party he or she represents to stipulate to this Consent Judgment.

28 ///

1 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
2 **CONSENT JUDGMENT**

3 This Consent Judgment has come before the Court upon the request of the Parties. The  
4 Parties request the Court to fully review this Consent Judgment and, being fully informed  
5 regarding the matters which are the subject of this action, to:

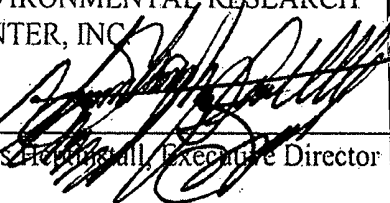
6 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
7 equitable settlement of all matters raised by the allegations of the Complaint that the matter has  
8 been diligently prosecuted, and that the public interest is served by such settlement; and

9 (2) Make the findings pursuant to California Health and Safety Code section  
10 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

11  
12 **IT IS SO STIPULATED:**

13 Dated: 7/20/, 2018

ENVIRONMENTAL RESEARCH  
CENTER, INC

14  
15 By:   
16 Chris Hopps, Executive Director

17  
18 Dated: \_\_\_\_\_, 2018

DOCTORS SCIENTIFIC ORGANICA,  
LLC, individually and doing  
business as SMART FOR LIFE

19  
20 \_\_\_\_\_  
21 By:  
22 Its:

23 Dated: \_\_\_\_\_, 2018

LAVI ENTERPRISES, LLC, individually  
and doing business as SMART FOR LIFE

24  
25 \_\_\_\_\_  
26 By:  
27 Its:  
28

1 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
2 **CONSENT JUDGMENT**

3 This Consent Judgment has come before the Court upon the request of the Parties. The  
4 Parties request the Court to fully review this Consent Judgment and, being fully informed  
5 regarding the matters which are the subject of this action, to:

6 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
7 equitable settlement of all matters raised by the allegations of the Complaint that the matter has  
8 been diligently prosecuted, and that the public interest is served by such settlement; and

9 (2) Make the findings pursuant to California Health and Safety Code section  
10 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

11  
12 **IT IS SO STIPULATED:**

13 Dated: \_\_\_\_\_, 2018

ENVIRONMENTAL RESEARCH  
CENTER, INC.

14  
15 By: \_\_\_\_\_  
16 Chris Heptinstall, Executive Director

17  
18 Dated: July 19, 2018

DOCTORS SCIENTIFIC ORGANICA,  
LLC, individually and doing  
business as SMART FOR LIFE

19  
20 \_\_\_\_\_  
21 By: Sasson Moulavi  
22 Its: Member

23 Dated: July 19, 2018

LAVI ENTERPRISES, LLC, individually  
and doing business as SMART FOR LIFE

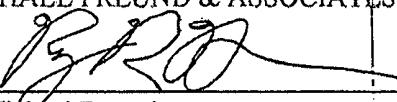
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26 By: Sasson Moulavi  
27 Its: Member  
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APPROVED AS TO FORM:

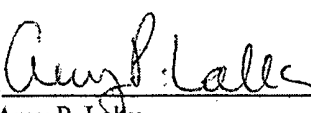
Dated: 8/6, 2018

MICHAEL FREUND & ASSOCIATES

By:   
Michael Freund  
Ryan Hoffman  
Attorneys for Plaintiff Environmental  
Research Center, Inc.

Dated: July 23, 2018

SIDLEY AUSTIN LLP

By:   
Amy P. Lally  
Attorney for Defendants Doctors Scientific  
Organica, LLC, individually and doing  
business as Smart for Life; and Lavi  
Enterprises, LLC, individually and doing  
business as Smart for Life

1 APPROVED AS TO FORM:

2 Dated: \_\_\_\_\_, 2018

MICHAEL FREUND & ASSOCIATES

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

4 Michael Freund  
5 Ryan Hoffman  
6 Attorneys for Plaintiff Environmental  
7 Research Center, Inc.

8 Dated: \_\_\_\_\_, 2018

SIDLEY AUSTIN LLP

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

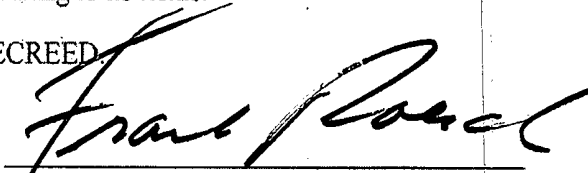
10 Amy P. Lally  
11 Attorney for Defendants Doctors Scientific  
12 Organica, LLC, individually and doing  
13 business as Smart for Life; and Lavi  
14 Enterprises, LLC, individually and doing  
15 business as Smart for Life

1  
2 **ORDER AND JUDGMENT**

3 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is  
4 approved and Judgment is hereby entered according to its terms.

5 IT IS SO ORDERED, ADJUDGED AND DECREED.

6 Dated: 10/16, 2018

  
7 \_\_\_\_\_  
8 Judge of the Superior Court

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# EXHIBIT A

**Michael Freund & Associates**

1919 Addison Street, Suite 105  
Berkeley, CA 94704  
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.

Ryan Hoffman, Esq.

February 12, 2018

**NOTICE OF VIOLATION OF  
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.  
(PROPOSITION 65)**

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violators identified below.

**Alleged Violators.** The names of the companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

- Doctors Scientific Organica, LLC, individually and doing business as Smart for Life**
- Lavi Enterprises, LLC, individually and doing business as Smart for Life**
- Lawee Enterprises, L.L.C., individually and doing business as Smart for Life**
- U.S. Medical Care Holdings, L.L.C., individually and doing business as Smart for Life**

**Consumer Products and Listed Chemicals.** The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

- 1. SmartforLife Vanilla Protein Shake – Lead**
- 2. SmartforLife Chocolate Protein Shake – Lead, Cadmium**
- 3. SmartforLife Vanilla Greens Protein Shake - Lead**
- 4. SmartforLife Protein Bar S'MORES – Lead, Cadmium**
- 5. SmartforLife Protein Bar Chocolate – Lead, Cadmium**
- 6. SmartforLife Protein Bar Peanut Butter Chocolate – Lead, Cadmium**
- 7. SmartforLife Protein Bar Caramel Almond - Lead**

**Exhibit A**



8. SmartforLife Banana Chocolate Chip Square - Lead
9. SmartforLife Protein Bar Strawberry Yogurt - Lead
10. SmartforLife Protein Bar Luscious Lemon - Lead
11. SmartforLife Protein Bar Blueberry - Lead
12. SmartforLife Protein Bar Cinnamon Pecan - Lead
13. SmartforLife Protein Bar Choco Crisp - Lead, Cadmium
14. SmartforLife Protein Bar Strawberry & Cream - Lead
15. SmartforLife Protein Bar Peanut Butter Choco - Lead
16. SmartforLife Chocolate Chip Cookies - Lead
17. SmartforLife Blueberry Cookies - Lead
18. SmartforLife Oatmeal Raisin Cookie - Lead
19. SmartforLife Irresistible Winner Peanut Butter Cookie - Lead
20. SmartforLife Irresistible Winner Chocolate Chip Cookie - Lead, Cadmium
21. SmartforLife 1.877.601.SASS Cranberry Granola Square -Lead

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997, while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to these chemicals has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least February 12, 2015, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time-consuming litigation.

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*  
February 12, 2018  
Page 3

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead or at rrhoffma@gmail.com.**

Sincerely,



---

Ryan Hoffman

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Doctors Scientific Organica, LLC, individually and doing business as Smart for Life; Lavi Enterprises, LLC, individually and doing business as Smart for Life; Lawee Enterprises, L.L.C., individually and doing business as Smart for Life; U.S. Medical Care Holdings, L.L.C., individually and doing business as Smart for Life; and their Registered Agents for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Dctors Scientific Organica, LLC, individually and doing business as Smart for Life; Lavi Enterprises, LLC, individually and doing business as Smart for Life; Lawee Enterprises, L.L.C., individually and doing business as Smart for Life; and U.S. Medical Care Holdings, L.L.C., individually and doing business as Smart for Life**

I, Ryan Hoffman, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: February 12, 2018

  
\_\_\_\_\_  
Ryan Hoffman

**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On February 12, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Doctors Scientific Organica, LLC, individually  
and doing business as Smart for Life  
1210 West 13<sup>th</sup> Street  
Riviera Beach, FL 33404

Current President or CEO  
Lawee Enterprises, L.L.C., individually  
and doing business as Smart for Life  
4800 North Federal Highway, Suite 300B  
Boca Raton, FL 33431

Current President or CEO  
Lavi Enterprises, LLC, individually and  
doing business as Smart for Life  
1210 West 13<sup>th</sup> Street  
Riviera Beach, FL 33404

Current President or CEO  
U.S. Medical Care Holdings, L.L.C., individually  
and doing business as Smart for Life  
4800 North Federal Highway, Suite 300B  
Boca Raton, FL 33431

Current President or CEO  
Lawee Enterprises, L.L.C., individually  
and doing business as Smart for Life  
1210 West 13<sup>th</sup> Street  
Riviera Beach, FL 33404

Current President or CEO  
Doctors Scientific Organica, LLC, individually  
and doing business as Smart for Life  
3196 North Federal Highway  
Boca Raton, FL 33431

Current President or CEO  
U.S. Medical Care Holdings, L.L.C., individually  
and doing business as Smart for Life  
1210 West 13<sup>th</sup> Street  
Riviera Beach, FL 33404

Current President or CEO  
Lavi Enterprises, LLC, individually and  
doing business as Smart for Life  
3196 North Federal Highway  
Boca Raton, FL 33431

Current President or CEO  
Lavi Enterprises, LLC, individually and  
doing business as Smart for Life  
4800 North Federal Highway, Suite 300B  
Boca Raton, FL 33431

Current President or CEO  
Lawee Enterprises, L.L.C., individually  
and doing business as Smart for Life  
3196 North Federal Highway  
Boca Raton, FL 33431

Current President or CEO  
Doctors Scientific Organica, LLC, individually  
and doing business as Smart for Life  
4800 North Federal Highway, Suite 300B  
Boca Raton, FL 33431

Current President or CEO  
U.S. Medical Care Holdings, L.L.C., individually  
and doing business as Smart for Life  
c/o Sasson Moulavi  
3196 North Federal Highway  
Boca Raton, FL 33431

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

February 12, 2018

Page 6

Sasson Moulavi  
(U.S. Medical Care Holdings, L.L.C., individually  
and doing business as Smart for Life's  
Registered Agent for Service of Process)  
591 Phillips Drive  
Boca Raton, FL 33431

Palm Law Partners, PA  
(Doctors Scientific Organica, LLC, individually  
and doing business as Smart for Life's  
Registered Agent for Service of Process)  
1801 North Military Trail, Suite 120  
Boca Raton, FL 33431

Sasson Moulavi  
(Lavi Enterprises, LLC, individually and  
doing business as Smart for Life's  
Registered Agent for Service of Process)  
3196 North Federal Highway  
Boca Raton, FL 33431

Dr. Sasson Moulavi  
(Lawee Enterprises, L.L.C., individually and  
doing business as Smart for Life's  
Registered Agent for Service of Process)  
3196 North Federal Highway  
Boca Raton, FL 33431

On February 12, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550

On February 12, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

Allison Haley, District Attorney  
Napa County  
1127 First Street, Suite C  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mлатimer@co.lassen.ca.us](mailto:mлатimer@co.lassen.ca.us)

Paul E. Zellerbach, District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501  
[Prop65@rivcoda.org](mailto:Prop65@rivcoda.org)

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
[Prop65@sacda.org](mailto:Prop65@sacda.org)

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

February 12, 2018

Page 7

Gregory Alker, Assistant District Attorney  
San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
gregory.alker@sfgov.org

Tori Verber Salazar, District Attorney  
San Joaquin County  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney  
San Luis Obispo County  
County Government Center Annex, 4<sup>th</sup> Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

Yen Dang, Supervising Deputy District Attorney  
Santa Clara County  
70 W Hedding St  
San Jose, CA 95110  
EPU@da.sccgov.org

Jeffrey S. Rosell, District Attorney  
Santa Cruz County  
701 Ocean Street  
Santa Cruz, CA 95060  
Prop65DA@santacruzcounty.us

Stephan R. Passalacqua, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
jbarnes@sonoma-county.org

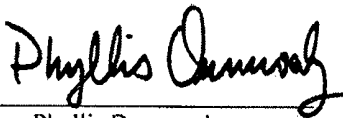
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney  
Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

Jeff W. Reisig, District Attorney  
Yolo County  
301 Second Street  
Woodland, CA 95695  
cfepd@yolocounty.org

On February 12, 2018 between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on February 12, 2018, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

February 12, 2018

Page 8

Service List

District Attorney, Alameda  
County  
1225 Fallon Street, Suite 900  
Oakland, CA 94612

District Attorney, Alpine  
County  
P.O. Box 248  
Markleeville, CA 96120

District Attorney, Amador  
County  
708 Court Street, Suite 202  
Jackson, CA 95642

District Attorney, Butte  
County  
25 County Center Drive, Suite  
245  
Oroville, CA 95965

District Attorney, Calaveras  
County  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney, Colusa  
County  
346 Fifth Street Suite 101  
Colusa, CA 95932

District Attorney, Del Norte  
County  
450 H Street, Room 171  
Crescent City, CA 95531

District Attorney, El Dorado  
County  
515 Main Street  
Placerville, CA 95667

District Attorney, Fresno  
County  
2220 Tulare Street, Suite 1000  
Fresno, CA 93721

District Attorney, Glenn  
County  
Post Office Box 430  
Willows, CA 95988

District Attorney, Humboldt  
County  
825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

District Attorney, Imperial  
County  
940 West Main Street, Ste 102  
El Centro, CA 92243

District Attorney, Inyo County  
P.O. Drawer D  
Independence, CA 93526

District Attorney, Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Kings  
County  
1400 West Lacey Boulevard  
Hanford, CA 93230

District Attorney, Lake County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney, Los Angeles  
County  
Hall of Justice  
211 West Temple St., Ste 1200  
Los Angeles, CA 90012

District Attorney, Madera  
County  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney, Marin  
County  
3501 Civic Center Drive,  
Room 130  
San Rafael, CA 94903

District Attorney, Mariposa  
County  
Post Office Box 730  
Mariposa, CA 95338

District Attorney, Mendocino  
County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney, Merced  
County  
550 W. Main Street  
Merced, CA 95340

District Attorney, Modoc  
County  
204 S Court Street, Room 202  
Alturas, CA 96101-4020

District Attorney, Mono  
County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, Nevada  
County  
201 Commercial Street  
Nevada City, CA 95959

District Attorney, Orange  
County  
401 West Civic Center Drive  
Santa Ana, CA 92701

District Attorney, Placer  
County  
10810 Justice Center Drive,  
Ste 240  
Roseville, CA 95678

District Attorney, Plumas  
County  
520 Main Street, Room 404  
Quincy, CA 95971

District Attorney, San Benito  
County  
419 Fourth Street, 2nd Floor  
Hollister, CA 95023

District Attorney, San  
Bernardino County  
303 West Third Street  
San Bernardino, CA 92415

District Attorney, San Diego  
County  
330 West Broadway, Suite  
1300  
San Diego, CA 92101

District Attorney, San Mateo  
County  
400 County Ctr., 3rd Floor  
Redwood City, CA 94063

District Attorney, Santa  
Barbara County  
1112 Santa Barbara Street  
Santa Barbara, CA 93101

District Attorney, Shasta  
County  
1355 West Street  
Redding, CA 96001

District Attorney, Sierra  
County  
100 Courthouse Square, 2<sup>nd</sup>  
Floor  
Downieville, CA 95936

District Attorney, Siskiyou  
County  
Post Office Box 986  
Yreka, CA 96097

District Attorney, Solano  
County  
675 Texas Street, Ste 4500  
Fairfield, CA 94533

District Attorney, Stanislaus  
County  
832 12th Street, Ste 300  
Modesto, CA 95354

District Attorney, Sutter  
County  
463 2<sup>nd</sup> Street  
Yuba City, CA 95991

District Attorney, Tehama  
County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity  
County  
Post Office Box 310  
Weaverville, CA 96093

District Attorney, Tuolumne  
County  
423 N. Washington Street  
Sonora, CA 95370

District Attorney, Yuba  
County  
215 Fifth Street, Suite 152  
Marysville, CA 95901

Los Angeles City Attorney's  
Office  
City Hall East  
200 N Main Street, Suite 800  
Los Angeles, CA 90012

San Diego City Attorney's  
Office  
1200 3<sup>rd</sup> Avenue, Ste 1620  
San Diego, CA 92101

San Francisco, City Attorney  
City Hall, Room 234  
1 Dr Carlton B Goodlett PL  
San Francisco, CA 94102

San Jose City Attorney's  
Office  
200 East Santa Clara Street,  
16th Floor  
San Jose, CA 95113

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

#### THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

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<sup>1</sup> All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.



**The "Proposition 65 List."** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

**Clear and reasonable warnings.** A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

**Prohibition from discharges into drinking water.** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### **DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?**

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

**Grace Period.** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

**Governmental agencies and public water utilities.** All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

**Businesses with nine or fewer employees.** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

**Exposures that pose no significant risk of cancer.** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures that will produce no observable reproductive effect at 1,000 times the level in question.** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures to Naturally Occurring Chemicals in Food.** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

**Discharges that do not result in a "significant amount" of the listed chemical entering any source of drinking water.** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for

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<sup>2</sup> See Section 25501(a)(4).

chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

#### *HOW IS PROPOSITION 65 ENFORCED?*

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:  
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

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EXHIBIT B

**Michael Freund & Associates**

1919 Addison Street, Suite 105  
Berkeley, CA 94704  
Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.

Ryan Hoffman, Esq.

May 24, 2018

**NOTICE OF VIOLATION OF  
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.  
(PROPOSITION 65)**

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violators identified below.

**Alleged Violators.** The names of the companies covered by this notice that violated Proposition 65 (hereinafter the "Violators") are:

**Doctors Scientific Organica, LLC, individually and doing business as Smart for Life**  
**Lavi Enterprises, LLC, individually and doing business as Smart for Life**  
**Lawee Enterprises, L.L.C., individually and doing business as Smart for Life**  
**U.S. Medical Care Holdings, L.L.C., individually and doing business as Smart for Life**

**Consumer Products and Listed Chemical.** The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

- 1. SmartforLife Chocolate Protein Shake - acrylamide**
- 2. SmartforLife Vanilla Protein Shake - acrylamide**
- 3. SmartforLife Protein Bar S'MORES - acrylamide**
- 4. SmartforLife Protein Bar Choco Crisp - acrylamide**
- 5. SmartforLife Oatmeal Raisin Cookie - acrylamide**
- 6. SmartforLife Banana Chocolate Chip Square - acrylamide**
- 7. SmartforLife Chocolate Chip Cookies - acrylamide**

On January 1, 1990, the State of California officially listed acrylamide as a chemical known to cause cancer. On February 25, 2011, the State of California officially listed acrylamide as a chemical known to cause developmental toxicity and male reproductive toxicity.

**Exhibit B**

May 24, 2018

Page 2

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

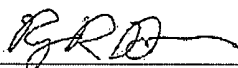
**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least May 24, 2015, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead or at [rrhoffma@gmail.com](mailto:rrhoffma@gmail.com).**

Sincerely,



Ryan Hoffman

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Doctors Scientific Organica, LLC, individually and doing business as Smart for Life; Lavi Enterprises, LLC, individually and doing business as Smart for Life; Lawee Enterprises, L.L.C., individually and doing business as Smart for Life; U.S. Medical Care Holdings, L.L.C., individually and doing business as Smart for Life; and their Registered Agents for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Doctors Scientific Organica, LLC, individually and doing business as Smart for Life; Lavi Enterprises, LLC, individually and doing business as Smart for Life; Lawee Enterprises, L.L.C., individually and doing business as Smart for Life; and U.S. Medical Care Holdings, L.L.C., individually and doing business as Smart for Life**

I, Ryan Hoffman, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: May 24, 2018



\_\_\_\_\_  
Ryan Hoffman



**CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On May 24, 2018, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Doctors Scientific Organica, LLC, individually  
and doing business as Smart for Life  
1210 West 13<sup>th</sup> Street  
Riviera Beach, FL 33404

Current President or CEO  
Lawee Enterprises, L.L.C., individually  
and doing business as Smart for Life  
4800 North Federal Highway, Suite 300B  
Boca Raton, FL 33431

Current President or CEO  
Lavi Enterprises, LLC, individually and  
doing business as Smart for Life  
1210 West 13<sup>th</sup> Street  
Riviera Beach, FL 33404

Current President or CEO  
U.S. Medical Care Holdings, L.L.C., individually  
and doing business as Smart for Life  
c/o Sasson Moulavi  
4800 North Federal Highway, Suite 300B  
Boca Raton, FL 33431

Current President or CEO  
Lawee Enterprises, L.L.C., individually  
and doing business as Smart for Life  
1210 West 13<sup>th</sup> Street  
Riviera Beach, FL 33404

Current President or CEO  
Doctors Scientific Organica, LLC, individually  
and doing business as Smart for Life  
3196 North Federal Highway  
Boca Raton, FL 33431

Current President or CEO  
U.S. Medical Care Holdings, L.L.C., individually  
and doing business as Smart for Life  
c/o Sasson Moulavi  
1210 West 13<sup>th</sup> Street  
Riviera Beach, FL 33404

Current President or CEO  
Lavi Enterprises, LLC, individually and  
doing business as Smart for Life  
3196 North Federal Highway  
Boca Raton, FL 33431

Current President or CEO  
Lavi Enterprises, LLC, individually and  
doing business as Smart for Life  
4800 North Federal Highway, Suite 300B  
Boca Raton, FL 33431

Current President or CEO  
Lawee Enterprises, L.L.C., individually  
and doing business as Smart for Life  
3196 North Federal Highway  
Boca Raton, FL 33431

Current President or CEO  
Doctors Scientific Organica, LLC, individually  
and doing business as Smart for Life  
4800 North Federal Highway, Suite 300B  
Boca Raton, FL 33431

Current President or CEO  
U.S. Medical Care Holdings, L.L.C., individually  
and doing business as Smart for Life  
c/o Sasson Moulavi  
3196 North Federal Highway  
Boca Raton, FL 33431

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

May 24, 2018

Page 5

Sasson Moulavi  
(U.S. Medical Care Holdings, L.L.C., individually  
and doing business as Smart for Life's  
Registered Agent for Service of Process)  
591 Phillips Drive  
Boca Raton, FL 33431

Palm Law Partners, PA  
(Doctors Scientific Organica, LLC, individually  
and doing business as Smart for Life's  
Registered Agent for Service of Process)  
1801 North Military Trail, Suite 120  
Boca Raton, FL 33431

Sasson Moulavi  
(Lavi Enterprises, LLC, individually and  
doing business as Smart for Life's  
Registered Agent for Service of Process)  
1210 West 13<sup>th</sup> Street  
Riviera Beach, FL 33404

Dr. Sasson Moulavi  
(Lawee Enterprises, L.L.C., individually and  
doing business as Smart for Life's  
Registered Agent for Service of Process)  
1210 West 13<sup>th</sup> Street  
Riviera Beach, FL 33404

On May 24, 2018, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550

On May 24, 2018, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

Paul E. Zellerbach, District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501  
[Prop65@rivcoda.org](mailto:Prop65@rivcoda.org)

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

Anne Marie Schubert, District Attorney  
Sacramento County  
901 G Street  
Sacramento, CA 95814  
[Prop65@sacda.org](mailto:Prop65@sacda.org)

Dije Ndreu, Deputy District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

Kathryn L. Turner, Chief Deputy City Attorney  
San Diego City Attorney  
1200 Third Avenue  
San Diego, CA 92101  
[CityAttyCrimProp65@sandiego.gov](mailto:CityAttyCrimProp65@sandiego.gov)

Allison Haley, District Attorney  
Napa County  
1127 First Street, Suite C  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

Gregory Alker, Assistant District Attorney  
San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
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Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

May 24, 2018

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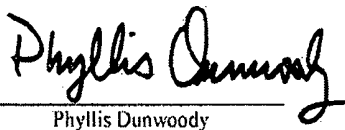
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On May 24, 2018, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.**; **CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on May 24, 2018, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

May 24, 2018

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## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

#### THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

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<sup>1</sup> All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

**The "Proposition 65 List."** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

**Clear and reasonable warnings.** A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

**Prohibition from discharges into drinking water.** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### **DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?**

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

**Grace Period.** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

**Governmental agencies and public water utilities.** All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

**Businesses with nine or fewer employees.** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

**Exposures that pose no significant risk of cancer.** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at:

<http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures that will produce no observable reproductive effect at 1,000 times the level in question.** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures to Naturally Occurring Chemicals in Food.** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

**Discharges that do not result in a "significant amount" of the listed chemical entering any source of drinking water.** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for

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<sup>2</sup> See Section 25501(a)(4).

chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

#### *HOW IS PROPOSITION 65 ENFORCED?*

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.



If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:  
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

*FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.