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ENVIRONMENTAL RESEARCH CENTER, INC.

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11 Attorney for Defendants
12 SAGA SCIENCES USA INC., SAGA SCIENCES
INTERNATIONAL, INC., and SAGA SCIENCES
13 CANADA INC.

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF ALAMEDA**

16 ENVIRONMENTAL RESEARCH
17 CENTER, INC. a non-profit California
corporation,

18 Plaintiff,

19 v.
20

21 SAGA SCIENCES USA INC., SAGA
SCIENCES INTERNATIONAL, INC., SAGA
22 SCIENCES CANADA INC. and DOES 1-25,
inclusive,
23 Defendants.

CASE NO. RG17846734

STIPULATED CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: January 24, 2017

Trial Date: None set

24
25 **1. INTRODUCTION**

26 **1.1** On January 24, 2017, Plaintiff Environmental Research Center, Inc. (“ERC”), a
27 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
28 filing a Complaint for Injunctive Relief and Civil Penalties (the “Complaint”) pursuant to the

1 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),
2 against SAGA SCIENCES USA INC., SAGA SCIENCES INTERNATIONAL, INC., and
3 SAGA SCIENCES CANADA INC. (collectively referred to hereinafter as “SAGA
4 SCIENCES”) and DOES 1-25. In this action, ERC alleges that a number of products
5 manufactured, distributed, or sold by SAGA SCIENCES contain lead, a chemical listed under
6 Proposition 65 as a carcinogen and reproductive toxin, and expose consumers to this chemical at
7 a level requiring a Proposition 65 warning. These products (referred to hereinafter individually
8 as a “Covered Product” or collectively as “Covered Products”) are:

- 9 1) SAGA Sciences USA Inc. Pharmafreak Vegan Freak Vf Natural Chocolate Flavor
- 10 2) SAGA Sciences USA Inc. Pharmafreak Vegan Freak Vf Natural Vanilla Flavor
- 11 3) SAGA Sciences USA Inc. Pharmafreak Vita Freak Vf Packs
- 12 4) SAGA Sciences USA Inc. Pharmafreak Greens Freak gf Sweet Apple
- 13 5) SAGA Sciences USA Inc. Pharmafreak Amino Freak af Blue Raspberry
- 14 6) PharmaFreak Sciences Inc. Super Freak sf Fruit Punch
- 15 7) SAGA Sciences USA Inc. Pharmafreak Greens Freak gf Vanilla Chai (52 G)
- 16 8) SAGA Sciences USA Inc. Pharmafreak Anabolic Freak af 28 Capsules
- 17 9) SAGA Sciences USA Inc. SD Pharmaceuticals Citrulline Malate 2000 (330 G)
- 18 10) LBRX Sciences Inc. SD Pharmaceuticals BCAA Pineapple Flavor (170 G)
- 19 11) LBRX Sciences Inc. SD Pharmaceuticals Garcinia Cambogia 500
- 20 12) SAGA Sciences USA Inc. SD Pharmaceuticals Shilajit 250
- 21 13) SAGA Sciences USA Inc. SD Pharmaceuticals Cissus 800
- 22 14) PharmaFreak Sciences Inc. Flex Freak Ff Packs
- 23 15) SAGA Sciences USA Inc. PharmaFreak Protein Freak pf Chocolate Flavor
- 24 16) SAGA Sciences USA Inc. Amino Freak af

25 **1.2** ERC and SAGA SCIENCES are hereinafter referred to individually as a “Party”
26 or collectively as the “Parties.”

27 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
28 causes, helping safeguard the public from health hazards by reducing the use and misuse of

1 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
2 and encouraging corporate responsibility.

3 **1.4** For purposes of this Consent Judgment, the Parties agree that each defendant is a
4 business entity each of which has employed ten or more persons at all times relevant to this action,
5 and qualifies as a “person in the course of business” within the meaning of Proposition 65. SAGA
6 SCIENCES manufactures, distributes, and/or sells the Covered Products.

7 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
8 dated August 30, 2016 that was served on the California Attorney General, other public
9 enforcers, and SAGA SCIENCES (“Notice”). A true and correct copy of the 60-Day Notice
10 dated August 30, 2016 is attached hereto as **Exhibit A** and incorporated herein by reference.
11 More than 60 days have passed since the Notice was served on the Attorney General, public
12 enforcers, and SAGA SCIENCES and no designated governmental entity has filed a complaint
13 against SAGA SCIENCES with regard to the Covered Products or the alleged violations.

14 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products exposes
15 persons in California to lead without first providing clear and reasonable warnings in violation
16 of California Health and Safety Code section 25249.6. SAGA SCIENCES denies all material
17 allegations contained in the Notice and Complaint.

18 **1.7** The Parties have entered into this Consent Judgment in order to settle,
19 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
20 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
21 be construed as an admission by any of the Parties or by any of their respective officers,
22 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,
23 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or
24 violation of law.

25 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
26 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
27 current or future legal proceeding unrelated to these proceedings.

1 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
2 a Judgment by this Court.

3 **2. JURISDICTION AND VENUE**

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

11 **3. INJUNCTIVE RELIEF AND WARNINGS**

12 **3.1** Beginning thirty (30) days after the Effective Date, SAGA SCIENCES shall be
13 permanently enjoined from manufacturing for sale in the State of California, “Distributing into
14 the State of California”, or directly selling in the State of California, any Covered Products
15 which exposes a person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead
16 per day unless it meets the warning requirements under Section 3.2.

17 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
18 of California” shall mean to directly ship a Covered Product into California for sale in
19 California or to sell a Covered Product to a distributor that SAGA SCIENCES knows or has
20 reason to know will sell the Covered Product in California.

21 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
22 Level” shall be measured in micrograms, and shall be calculated using the following formula:
23 micrograms of lead per gram of product, multiplied by grams of product per serving of the
24 product (using the largest serving size appearing on the product label), multiplied by servings of
25 the product per day (using the largest number of servings in a recommended dosage appearing
26 on the product label), which equals micrograms of lead exposure per day.

27 **3.2 Clear and Reasonable Warnings**

1 If SAGA SCIENCES is required to provide a warning pursuant to Section 3.1, the
2 warning (“Warning”) must be provided as follows:

3 Prior to August 30, 2018 either of the following Warnings may be utilized:

4 **WARNING:** This product contains chemicals known to the State of California to cause
5 [cancer and] birth defects or other reproductive harm.

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

8 After August 30, 2018 the following Warning must be utilized:

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

11 SAGA SCIENCES shall use the phrase “cancer and” in the Warning only if the “Daily Lead
12 Exposure Level” is greater than 15 micrograms of lead.

13 The Warning shall be provided on the invoice accompanying the Covered Products shipped to
14 California. SAGA SCIENCES shall provide one invoice Warning for each Covered Product or
15 one invoice Warning that lists all of the Covered Products. The Covered Products may be
16 returned by the consumer for a refund within 30 days of the invoice date at no cost to the
17 consumer if the consumer references the Warning as a reason for the return. The Warning must
18 be present on the front of the invoice.

19 The Warning shall be at least the same size as the largest of any other health or safety
20 warnings also appearing on its website or on the label or container of SAGA SCIENCES’ product
21 packaging and the word “**WARNING**” shall be in all capital letters and in bold print. No
22 statements intended to or likely to have the effect of diminishing the impact of, or reducing the
23 clarity of, the Warning on the average lay person shall accompany the Warning. Further, no
24 statements may accompany the Warning that state or imply that the source of the listed chemical
25 has an impact on or results in a less harmful effect of the listed chemical.

26 SAGA SCIENCES must display the above Warning with such conspicuousness, as
27 compared with other words, statements, design of the label, container, or on its website, as
28 applicable, to render the Warning likely to be read and understood by an ordinary individual under

1 customary conditions of purchase or use of the product.

2 **4. SETTLEMENT PAYMENT**

3 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
4 attorney's fees, and costs, SAGA SCIENCES shall make a total payment of \$55,000.00 ("Total
5 Settlement Amount") according to the following payment schedule:

- 6 • Payment 1 -- \$20,000.00 within 14 days of the Effective Date ("Due Date")
- 7 • Payment 2 -- \$20,000.00 within 45 days of the Effective Date ("Due Date")
- 8 • Payment 3 -- \$15,000.00 within 75 days of the Effective Date ("Due Date").

9 SAGA SCIENCES shall make this payment by wire transfer to ERC's escrow account, for
10 which ERC will give SAGA SCIENCES the necessary account information. The Total
11 Settlement Amount shall be apportioned as follows:

12 **4.2** \$10,827.13 shall be considered a civil penalty pursuant to California Health and
13 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$8,120.35) of the civil penalty to the
14 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
15 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
16 Code section 25249.12(c). ERC will retain the remaining 25% (\$2,706.78) of the civil penalty.

17 **4.3** \$3,754.38 shall be distributed to ERC as reimbursement to ERC for reasonable
18 costs incurred in bringing this action.

19 **4.4** \$8,120.34 shall be distributed to ERC as an Additional Settlement Payment
20 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
21 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
22 caused by SAGA SCIENCES in this matter. These activities are detailed below and support
23 ERC's overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary
24 supplement products in California. ERC's activities have had, and will continue to have, a direct
25 and primary effect within the State of California because California consumers will be benefitted
26 by the reduction and/or elimination of exposure to lead in dietary supplements and/or by
27 providing clear and reasonable warnings to California consumers prior to ingestion of the
28 products.

1 Based on a review of past years' actual budgets, ERC is providing the following list of
2 activities ERC engages in to protect California consumers through Proposition 65 citizen
3 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
4 activities: (1) ENFORCEMENT (65-80%): obtaining, shipping, analyzing, and testing dietary
5 supplement products that may contain lead and are sold to California consumers. This work
6 includes continued monitoring and enforcement of past consent judgments and settlements to
7 ensure companies are in compliance with their obligations thereunder, with a specific focus on
8 those judgments and settlements concerning lead. This work also includes investigation of new
9 companies that ERC does not obtain any recovery through settlement or judgment; (2)
10 VOLUNTARY COMPLIANCE PROGRAM (10-20%): maintaining ERC's Voluntary
11 Compliance Program by acquiring products from companies, developing and maintaining a case
12 file, testing products from these companies, providing the test results and supporting
13 documentation to the companies, and offering guidance in warning or implementing a self-testing
14 program for lead in dietary supplement products; and (3) "GOT LEAD" PROGRAM (up to 5%):
15 maintaining ERC's "Got Lead?" Program which reduces the numbers of contaminated products
16 that reach California consumers by providing access to free testing for lead in dietary supplement
17 products (Products submitted to the program are screened for ingredients which are suspected to
18 be contaminated, and then may be purchased by ERC, catalogued, sent to a qualified laboratory
19 for testing, and the results shared with the consumer that submitted the product).

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

25 **4.5** \$9,765.00 shall be distributed to William F. Wraith as reimbursement of ERC's
26 attorney's fees, while \$22,533.15 shall be distributed to ERC for its in-house legal fees. Except
27 as explicitly provided herein, each Party shall bear its own fees and costs.

28 **4.6** In the event that SAGA SCIENCES fails to remit any of the payments set forth

1 in Section 4.1 on or before their respective Due Dates, SAGA SCIENCES shall be deemed to be
2 in material breach of its obligations under this Consent Judgment. ERC shall provide written
3 notice of the delinquency to SAGA SCIENCES via electronic mail. If SAGA SCIENCES fails
4 to deliver the delinquent payment within five (5) days from the written notice, the Total
5 Settlement Amount shall be immediately due and owing and shall accrue interest at the statutory
6 judgment interest rate provided in the California Code of Civil Procedure section 685.010.
7 Additionally, SAGA SCIENCES agrees to pay ERC's reasonable attorney's fees and costs for
8 any efforts to collect the payment due under this Consent Judgment.

9 **5. MODIFICATION OF CONSENT JUDGMENT**

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

13 **5.2** If SAGA SCIENCES seeks to modify this Consent Judgment under Section 5.1,
14 then SAGA SCIENCES must provide written notice to ERC of its intent ("Notice of Intent"). If
15 ERC seeks to meet and confer regarding the proposed modification in the Notice of Intent, then
16 ERC must provide written notice to SAGA SCIENCES within thirty (30) days of receiving the
17 Notice of Intent. If ERC notifies SAGA SCIENCES in a timely manner of ERC's intent to
18 meet and confer, then the Parties shall meet and confer in good faith as required in this Section.
19 The Parties shall meet in person or via telephone within thirty (30) days of ERC's notification
20 of its intent to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the
21 proposed modification, ERC shall provide to SAGA SCIENCES a written basis for its position.
22 The Parties shall continue to meet and confer for an additional thirty (30) days in an effort to
23 resolve any remaining disputes. Should it become necessary, the Parties may agree in writing
24 to different deadlines for the meet-and-confer period.

25 **5.3** In the event that SAGA SCIENCES initiates or otherwise requests a
26 modification under Section 5.1, and the meet and confer process leads to a joint motion or
27 application of the Consent Judgment, SAGA SCIENCES shall reimburse ERC its costs and
28 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and

1 arguing the motion or application.

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

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

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

9 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

17 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
18 on behalf of itself and in the public interest, and SAGA SCIENCES and its respective officers,
19 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
20 franchisees, licensees, customers (not including private label customers of SAGA SCIENCES),
21 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
22 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
23 of them (collectively, "Released Parties"). ERC hereby fully releases and discharges the
24 Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities,
25 damages, penalties, fees, costs, and expenses asserted, or that could have been asserted from the
26 handling, use, or consumption of the Covered Products, as to any alleged violation of
27 Proposition 65 or its implementing regulations arising from the failure to provide Proposition
28 65 warnings on the Covered Products regarding lead up to and including the Effective Date.

1 **8.2** ERC on its own behalf only, and SAGA SCIENCES on its own behalf only,
2 further waive and release any and all claims they may have against each other for all actions or
3 statements made or undertaken in the course of seeking or opposing enforcement of Proposition
4 65 in connection with the Notice and Complaint up through and including the Effective Date,
5 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
6 enforce the terms of this Consent Judgment.

7 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
8 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
9 discovered. ERC on behalf of itself only, and SAGA SCIENCES on behalf of itself only,
10 acknowledge that this Consent Judgment is expressly intended to cover and include all such
11 claims up through and including the Effective Date, including all rights of action therefore.
12 ERC and SAGA SCIENCES acknowledge that the claims released in Sections 8.1 and 8.2
13 above may include unknown claims, and nevertheless waive California Civil Code section 1542
14 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

20 ERC on behalf of itself only, and SAGA SCIENCES on behalf of itself only, acknowledge and
21 understand the significance and consequences of this specific waiver of California Civil Code
22 section 1542.

23 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
24 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
25 in the Covered Products as set forth in the Notice and Complaint.

26 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
27 environmental exposures arising under Proposition 65, nor shall it apply to any of SAGA
28 SCIENCES' products other than the Covered Products.

1 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

4 **10. GOVERNING LAW**

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

7 **11. PROVISION OF NOTICE**

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

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

12 Chris Heptinstall, Executive Director, Environmental Research Center
13 3111 Camino Del Rio North, Suite 400
14 San Diego, CA 92108
15 Tel: (619) 500-3090
16 Email: chris_erc501c3@yahoo.com

17 WILLIAM F. WRAITH
18 WRAITH LAW
19 24422 Avenida de la Carlota, Suite 400
20 Laguna Hills, CA 92653
21 Tel: (949) 452-1234
22 Fax: (949) 452-1102

23 **FOR SAGA SCIENCES USA INC., SAGA SCIENCES INTERNATIONAL, INC., AND**
24 **SAGA SCIENCES CANADA INC.**

25 Donald Gauvreau
26 319 Pender Street West, Suite 310
27 Vancouver BC V6B 1T3

28 With a copy to:
Daniel S. Silverman
Venable LLP
2049 Century Park East, Suite 2300
Los Angeles, CA 90067
Tel: (310) 229-0373
Fax: (310) 229-9901
Email: dssilverman@venable.com

1 **12. COURT APPROVAL**

2 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
3 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
4 Consent Judgment.

5 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
6 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
7 prior to the hearing on the motion.

8 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
9 void and have no force or effect.

10 **13. EXECUTION AND COUNTERPARTS**

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

14 **14. DRAFTING**

15 The terms of this Consent Judgment have been reviewed by the respective counsel for each
16 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms and
17 conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
18 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
19 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
20 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
21 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
22 equally in the preparation and drafting of this Consent Judgment.

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

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

1 **16. ENFORCEMENT**

2 ERC may, by motion or order to show cause before the Superior Court of Alameda
3 County, enforce the terms and conditions contained in this Consent Judgment. In any action
4 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
5 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
6 To the extent the failure to comply with the Consent Judgment constitutes a violation of
7 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,
8 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by
9 law for failure to comply with Proposition 65 or other laws.

10 **17. ENTIRE AGREEMENT, AUTHORIZATION**

11 **17.1** This Consent Judgment contains the sole and entire agreement and
12 understanding of the Parties with respect to the entire subject matter herein, and any and all
13 prior discussions, negotiations, commitments, and understandings related hereto. No
14 representations, oral or otherwise, express or implied, other than those contained herein have
15 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
16 herein, shall be deemed to exist or to bind any Party.

17 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
18 authorized by the Party he or she represents to stipulate to this Consent Judgment.

19 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
20 **CONSENT JUDGMENT**

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


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

27 (2) Make the findings pursuant to California Health and Safety Code section
28 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

1 **IT IS SO STIPULATED:**

2
3 Dated: 3/14/, 2017

ENVIRONMENTAL RESEARCH CENTER, INC.

4
5 By: 
Chris Heptinstall, Executive Director

6 Dated: 3/15, 2017

SAGA SCIENCES USA INC.

7
8 By: Asavva
9 Its: Alex Savva, Co-CEO

10 Dated: 3/15, 2017

SAGA SCIENCES INTERNATIONAL, INC.

11
12 By: Asavva
13 Its: Alex Savva, Co-CEO

14 Dated: 3/15, 2017

SAGA SCIENCES CANADA INC.

15 By: Asavva
16 Its: Alex Savva, Co-CEO

17
18 **APPROVED AS TO FORM:**

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20 Dated: _____, 2017

WRAITH LAW

21
22 By: _____
23 William F. Wraith
24 Attorney for Plaintiff Environmental
25 Research Center, Inc.

1 **IT IS SO STIPULATED:**

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Dated: _____, 2017

ENVIRONMENTAL RESEARCH CENTER, INC.

By: _____
Chris Heptinstall, Executive Director

Dated: 3/15, 2017

SAGA SCIENCES USA INC.

By: Asavva
Its: Alex Savva, Co-CEO

Dated: 3/15, 2017

SAGA SCIENCES INTERNATIONAL, INC.

By: Asavva
Its: Alex Savva, Co-CEO

Dated: 3/15, 2017

SAGA SCIENCES CANADA INC.

By: Asavva
Its: Alex Savva, Co-CEO

APPROVED AS TO FORM:

Dated: March 14, 2017

WRAITH LAW

By: William F. Wraith
William F. Wraith
Attorney for Plaintiff Environmental
Research Center, Inc.

1 Dated: 3/16, 2017

VENABLE LLP

2
3 By: 

4 Daniel S. Silverman
5 Attorney for Defendants SAGA Sciences
6 USA Inc., SAGA Sciences International
7 Inc., and SAGA Sciences Canada Inc.

8 **ORDER AND JUDGMENT**

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

11 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

12 Dated: _____, 2017

13 _____
14 Judge of the Superior Court

EXHIBIT “A”

WRAITH LAW
24422 AVENIDA DE LA CARLOTA
SUITE 400
LAGUNA HILLS, CA 92653
Tel (949) 452-1234
Fax (949) 452-1102

August 30, 2016

**NOTICE OF VIOLATIONS 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 Section 25249.7(d) of the statute, 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 attached with the copy of 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:

**SAGA Sciences USA Inc.
SAGA Sciences International Inc.
SAGA Sciences Canada Inc.**

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. SAGA Sciences USA Inc. Pharmafreak Vegan Freak Vf Natural Chocolate Flavor - Lead**

2. **SAGA Sciences USA Inc. Pharmafreak Vegan Freak Vf Natural Vanilla Flavor – Lead**
3. **SAGA Sciences USA Inc. Pharmafreak Vita Freak Vf Packs – Lead**
4. **SAGA Sciences USA Inc. Pharmafreak Greens Freak gf Sweet Apple – Lead**
5. **SAGA Sciences USA Inc. Pharmafreak Amino Freak af Blue Raspberry – Lead**
6. **PharmaFreak Sciences Inc. Super Freak sf Fruit Punch – Lead**
7. **SAGA Sciences USA Inc. Pharmafreak Greens Freak gf Vanilla Chai (52 G) – Lead**
8. **SAGA Sciences USA Inc. Pharmafreak Anabolic Freak af 28 Capsules – Lead**
9. **SAGA Sciences USA Inc. SD Pharmaceuticals Citrulline Malate 2000 (330 G) – Lead**
10. **LBRX Sciences Inc. SD Pharmaceuticals BCAA Pineapple Flavor (170 G) - Lead**
11. **LBRX Sciences Inc. SD Pharmaceuticals Garcinia Cambogia 500 – Lead**
12. **SAGA Sciences USA Inc. SD Pharmaceuticals Shilajit 250 – Lead**
13. **SAGA Sciences USA Inc. SD Pharmaceuticals Cissus 800 – Lead**
14. **PharmaFreak Sciences Inc. Flex Freak Ff Packs – Lead**
15. **SAGA Sciences USA Inc. PharmaFreak Protein Freak pf Chocolate Flavor – Lead**
16. **SAGA Sciences USA Inc. Amino Freak af - 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.

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

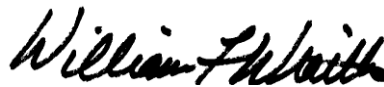
Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to this chemical has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least August 30, 2013, 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 handling and/or using 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 Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to SAGA Sciences USA Inc., SAGA Sciences International Inc., and SAGA Sciences Canada Inc.)

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 SAGA Sciences USA Inc., SAGA Sciences International Inc., and SAGA Sciences Canada Inc.

I, William F. Wraith, declare:

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

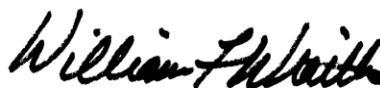
2. I am an attorney for the noticing party.

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: August 30, 2016



William F. Wraith

CERTIFICATE OF SERVICE

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, over the age of 18 years of age, and am not a party to the within entitled action. 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 August 30, 2016, I served the following documents: **NOTICE OF VIOLATIONS 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 the party 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
SAGA Sciences USA Inc.
310-319 West Pender Street
Vancouver BC V6B 1T3
Canada

Current President or CEO
SAGA Sciences International Inc.
Suite 750 Office #3
700 West Pender Street
Vancouver BC V6C 1G8
Canada

Current President or CEO
SAGA Sciences International Inc.
310-319 West Pender Street
Vancouver BC V6B 1T3
Canada

Current President or CEO
SAGA Sciences Canada Inc.
Suite 750 Office #3
700 West Pender Street
Vancouver BC V6C 1G8
Canada

Current President or CEO
SAGA Sciences Canada Inc.
310-319 West Pender Street
Vancouver BC V6B 1T3
Canada

Current President or CEO
SAGA Sciences USA Inc.
1500-701 West Georgia Street
Vancouver BC V7Y 1C6
Canada

Current President or CEO
SAGA Sciences USA Inc.
2900-500 Burrard Street
Vancouver BC V6C 0A3
Canada

Current President or CEO
SAGA Sciences International Inc.
1500-701 West Georgia Street
Vancouver BC V7Y 1C6
Canada

Current President or CEO
SAGA Sciences International Inc.
2900-500 Burrard Street
Vancouver BC V6C 0A3
Canada

Current President or CEO
SAGA Sciences Canada Inc.
1500-701 West Georgia Street
Vancouver BC V7Y 1C6
Canada

Current President or CEO
SAGA Sciences Canada Inc.
2900-500 Burrard Street
Vancouver BC V6C 0A3
Canada

Current President or CEO
SAGA Sciences USA Inc.
1 Yonge Street Unit 1801
Toronto ON M5E 1W7
Canada

Current President or CEO
SAGA Sciences USA Inc.
Suite 750 Office #3
700 West Pender Street
Vancouver BC V6C 1G8
Canada

Current President or CEO
SAGA Sciences International Inc.
1 Yonge Street Unit 1801
Toronto ON M5E 1W7
Canada

Current President or CEO
SAGA Sciences Canada Inc.
1 Yonge Street Unit 1801
Toronto ON M5E 1W7
Canada

Current President or CEO
SAGA Sciences International Inc.
510 West Hastings Street Suite 922 D
9th Floor
Vancouver BC V6B 1L8
Canada

Current President or CEO
SAGA Sciences USA Inc.
510 West Hastings Street Suite 922 D
9th Floor
Vancouver BC V6B 1L8
Canada

Current President or CEO
SAGA Sciences Canada Inc.
510 West Hastings Street Suite 922 D
9th Floor
Vancouver BC V6B 1L8
Canada

On August 30, 2016, 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 August 30, 2016, 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 the party listed below:

Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

Michelle Latimer, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
mлатimer@co.lassen.ca.us

Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

Dije Ndreu, Deputy District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

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

Gary Lieberstein, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

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

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

August 30, 2016

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

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

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

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

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

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

On August 30, 2016, I served the following documents: **NOTICE OF VIOLATIONS, 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 Priority Mail.

Executed on August 30, 2016, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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 4th Floor
Eureka, CA 95501

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

District Attorney, Inyo County
230 W. Line Street
Bishop, CA 93514

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
210 West Temple Street,
Suite 18000
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
316 N. Mountain View Avenue
San Bernardino, CA 92415-0004

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, Santa Cruz County
701 Ocean Street, Room 200
Santa Cruz, CA 95060

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

District Attorney, Sierra County
PO Box 457
Downieville, CA 95936

District Attorney, Siskiyou County
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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
446 Second 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 3rd 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