

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

ENDORSED
FILED
ALAMEDA COUNTY

JAN 08 2015

ENVIRONMENTAL RESEARCH CENTER,

Plaintiff,

vs.

GARY NULL & ASSOCIATES, et al.,

Defendant.

Case No. RG14733262

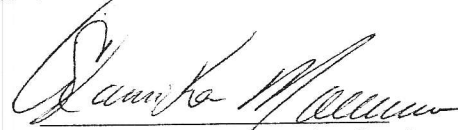
By Shanika Monroe

NOTICE OF ENTRY OF JUDGMENT
[Code of Civ. Proc. Section 664.5]

TO ALL PARTIES AND COUNSEL OF RECORD:

NOTICE IS HEREBY GIVEN THAT the above entitled court duly entered Judgment on January 8, 2015 and a correct copy of said judgment is attached to this notice.

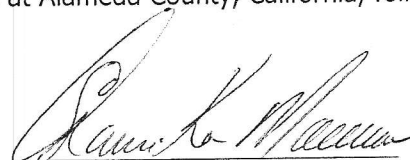
Dated: January 8, 2015


Clerk of the Superior Court

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served the foregoing document by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Dated: January 8, 2015


Clerk of the Superior Court

MAILING ADDRESSES

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Michael Freund & Associates
1919 Addison Street, Suite 105
Berkeley, CA 94704

Dennis F. Murphy
Sedgwick LLP
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By Shanika Monroe

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11 Attorneys for Defendant
GARY NULL & ASSOCIATES, INC.

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14

15 ENVIRONMENTAL RESEARCH
CENTER, a California non-profit
16 corporation,

17 Plaintiff,

18 v.

19 GARY NULL & ASSOCIATES, INC., and
DOES 1-100
20

21 Defendants.
22

CASE NO. RG14733262

STIPULATED CONSENT JUDGMENT;
~~PROPOSED~~ ORDER *PBM*

Health & Safety Code § 25249.5 et seq.

Action Filed: July 16, 2014
Trial Date: None set

23 1. INTRODUCTION

24 1.1 On July 16, 2014, Plaintiff Environmental Research Center ("ERC"), a non-
25 profit corporation, as a private enforcer, and in the public interest, initiated this action by filing
26 a Complaint for Injunctive and Declaratory relief and Civil Penalties (the "Complaint")
27 pursuant to the provisions of California Health and Safety Code section 25249.5 et seq.
28 ("Proposition 65"), against Gary Null & Associates, Inc. and DOES 1-100 (collectively "Gary

STIPULATED CONSENT JUDGMENT; ~~PROPOSED~~ ORDER

CASE NO. RG14733262

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1 Null). In this action, ERC alleges that the following products referred to hereinafter
 2 individually as "Covered Product" or collectively as "Covered Products", manufactured,
 3 distributed or sold by Gary Null contain lead, a chemical listed under Proposition 65 as a
 4 carcinogen and reproductive toxin, and expose consumers at a level requiring a Proposition 65
 5 warning:
 6 1. Gary Null & Associates Inc. Gary Null's Muscle with Rice Protein Product
 7 2. Gary Null & Associates, Inc. Gary Null's Cruciferous Stuff Rich Chocolate Flavor
 8 3. Gary Null & Associates, Inc. Gary Null's Coco-Magic Bar Coconut-Chocolate
 9 4. Gary Null & Associates, Inc. Gary Null's Detox
 10 5. Gary Null and Associates, Inc. Gary Null's Greens & Grains
 11 6. Gary Null & Associates, Inc. Gary Null's Muscle Natural French Vanilla Flavor
 12 7. Gary Null and Associates Inc. Gary Null's Friendly Fiber Formula.
 13 ERC is a California non-profit corporation dedicated to, among other causes,
 14 helping safeguard the public from health hazards by reducing the use and misuse of hazardous
 15 and toxic chemicals, facilitating a safe environment for consumers and employees, and
 16 encouraging corporate responsibility.
 17 Gary Null is a New York Corporation that, at all relevant times for the purpose of
 18 this Consent Judgment, employed ten or more persons and qualified as a "person in the course of
 19 business" within the meaning of Proposition 65. Gary Null distributes and sells the Covered
 20 Products.
 21 ERC and Gary Null are referred to individually as "Party" or collectively as the
 22 "Parties."
 23 1.5 The Complaint is based on allegations contained in ERC's Notice of Violation,
 24 dated November 30, 2012, that was served on the California Attorney General, other public
 25 enforcers, and Gary Null ("Notice"). A true and correct copy of the Notice is attached as
 26 Exhibit A and is hereby incorporated by reference. More than 60 days have passed since the
 27 Notice was mailed and uploaded onto the Attorney General's website, and no designated
 28 governmental entity has filed a complaint against Gary Null with regard to the Covered

OK for

1 Products or the alleged violations.

2 1.6 ERC's Notice and Complaint allege that use of the Covered Products exposes

3 persons in California to lead without first providing clear and reasonable warnings in violation

4 of California Health and Safety Code section 25249.6. Gary Null denies all material allegations

5 contained in the Notice and Complaint.

6 1.7 The Parties have entered into this Consent Judgment in order to settle,

7 ~~compromise and resolve disputed claims and thus avoid prolonged and costly litigation.~~

8 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of

9 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,

10 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,

11 distributors, wholesalers, or retailers. Except for the representations made above, nothing in

12 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of

13 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an

14 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any

15 purpose.

16 1.8 Except as expressly set forth herein, nothing in this Consent Judgment shall

17 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any

18 other or future legal proceeding unrelated to these proceedings.

19 1.9 The Effective Date of this Consent Judgment is the date on which it is entered as

20 a Judgment by this Court.

21 2. JURISDICTION AND VENUE

22 For purposes of this Consent Judgment and for any further court action that may become

23 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter

24 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction

25 over Gary Null as to the acts alleged in the Complaint, that venue is proper in Alameda County,

26 and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of

27 all claims up through and including the Effective Date which were or could have been asserted in

28 this action based on the facts alleged in the Notice and Complaint.

MS

1 3. INJUNCTIVE RELIEF

2 Beginning on the Effective Date, Gary Null shall be permanently enjoined from

3 "Distributing into the State of California" or directly selling in the State of California, any of

4 the Covered Products. As used in Consent Judgment, the term "Distributing into the State of

5 California" shall mean to directly ship a Covered Product into California for sale in California

6 or to sell a Covered Product to a distributor that Gary Null knows will sell the Covered Product

7 in California.

8 4. SETTLEMENT PAYMENT

9 4.1 In full satisfaction of all potential civil penalties, payment in lieu of civil

10 penalties, attorney's fees, and costs, Gary Null shall make a total payment of \$50,000.00

11 ("Total Settlement Payment") of which \$30,000.00 shall be paid ERC within 10 days of the

12 Effective Date. The remaining amount, \$20,000.00 shall be paid within 70 days of the

13 Effective Date. Gary Null shall make this payment by wire transfer to ERC's escrow account,

14 for which ERC will give Gary Null the necessary account information. The Total Settlement

15 Amount shall be apportioned as follows:

16 4.2 \$5,104.00 shall be considered a civil penalty pursuant to California Health

17 and Safety Code §25249.7(b)(1). ERC shall remit 75% (\$3,828.00) of the civil penalty to the

18 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe

19 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety

20 Code §25249.12(c). ERC will retain the remaining 25% (\$1,276.00) of the civil penalty.

21 4.3 \$26,318.00 shall be distributed to Environmental Research Center as

22 reimbursement to ERC for reasonable costs associated with the enforcement of Proposition 65

23 and other costs incurred as a result of work in bringing this action; and \$5,103.00 shall be

24 distributed to Environmental Research Center in lieu of further civil penalties, for the day-to-

25 day business activities such as (1) continued enforcement of Proposition 65, which includes

26 work, analyzing, researching and testing consumer products that may contain Proposition 65

27 chemicals, focusing on the same or similar type of ingestible products that are the subject

28

1 matter of the current action; (2) the continued monitoring of past consent judgments and
2 settlements to ensure companies are in compliance with Proposition 65.

3 4.4 \$8,750.00 shall be distributed to Ryan Hoffinan as reimbursement of ERC's
4 attorney's fees, \$4,725.00 shall be distributed to Michael Freund as reimbursement of ERC's
5 attorney's fees.

6 5. MODIFICATION OF CONSENT JUDGMENT

7 ~~5.1 This Consent Judgment may be modified only (i) by written stipulation of~~
8 the Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent
9 judgment.

10 5.2 If Gary Null seeks to modify this Consent Judgment under Section 5.1, then
11 Gary Null must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks
12 to meet and confer regarding the proposed modification in the Notice of Intent, then ERC must
13 provide written notice to Gary Null within thirty days of receiving the Notice of Intent. If ERC
14 notifies Gary Null in a timely manner of ERC's intent to meet and confer, then the Parties shall
15 meet and confer in good faith as required in this Section. The Parties shall meet in person or
16 via telephone within thirty (30) days of ERC's notification of its intent to meet and confer.
17 Within thirty days of such meeting, if ERC disputes the proposed modification, ERC shall
18 provide to Gary Null a written basis for its position. The Parties shall continue to meet and
19 confer for an additional thirty (30) days in an effort to resolve any remaining disputes. Should
20 it become necessary, the Parties may agree in writing to different deadlines for the meet-and-
21 confer period.

22 5.3 In the event that Gary Null initiates or otherwise requests a modification
23 under Section 5.1, and the meet and confer process leads to a joint motion or application of the
24 Consent Judgment, Gary Null shall reimburse ERC its costs and reasonable attorney's fees for
25 the time spent in the meet-and-confer process and filing and arguing the motion or application.

26 5.4 Where the meet-and-confer process does not lead to a joint motion or
27 application in support of a modification of the Consent Judgment, then either Party may seek
28 judicial relief on its own. In such a situation, the prevailing party may seek to recover costs and

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28 "Released Parties"), from any and all claims, actions, causes of action, suits, demands,
27 Covered Product, and the predecessors, successors and assigns of any of them (collectively,
26 retailers, and all other upstream and downstream entities in the distribution chain of any
25 divisions, affiliates, suppliers, franchisees, licensees, customers, distributors, wholesalers,
24 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
23 ERC, on behalf of itself and in the public interest, hereby discharges Gary Null and its
22 the Effective Date for failure to provide Proposition 65 warnings for the Covered Products,
21 resolves all claims that have been or could have been asserted in this action up to and including
20 exposure to lead from the handling, use, or consumption of the Covered Products and fully
19 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings of
18 on behalf of itself and in the public interest, and Gary Null, of any alleged violation of
17 8.1 This Consent Judgment is a full, final, and binding resolution between ERC,

8. BINDING EFFECT, CLAIMS COVERED AND RELEASED

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

7. APPLICATION OF CONSENT JUDGMENT

9 terminate this Consent Judgment.
8
7 6-1 This Court shall retain jurisdiction of this matter to enforce, modify or

JUDGMENT

6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT

4 dispute that is the subject of the modification.
3 other party was amenable to providing during the Parties' good faith attempt to resolve the
2 means a party who is successful in obtaining relief more favorable to it than the relief that the
1 reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"

1 liabilities, damages, penalties, fees, costs and expenses asserted, or that could have been
2 asserted, as to any alleged violation of Proposition 65 arising from the failure to provide
3 Proposition 65 warnings on the Covered Products regarding lead.

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

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

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

21 ERC on behalf of itself only, on the one hand, and Gary Null, on the other hand, acknowledge
22 and understand the significance and consequences of this specific waiver of California Civil
23 Code section 1542.

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

27 8.5 Nothing in this Consent Judgment is intended to apply to any occupational
28 or environmental exposures arising under Proposition 65, nor shall it apply to any of Gary

off

1 Null's products other than the Covered Products.

2 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

3 In the event that any of the provisions of this Consent Judgment are held by a court to be

4 unenforceable, the validity of the remaining enforceable provisions shall not be adversely affected.

5 **10. GOVERNING LAW**

6 The terms and conditions of this Consent Judgment shall be governed by and construed in

7 accordance with the laws of the State of California:

8 **11. PROVISION OF NOTICE**

9 All notices required to be given to either Party to this Consent Judgment by the other shall

10 be in writing and sent to the following agents listed below by: (a) first-class, registered, or certified

11 mail; (b) overnight courier; or (c) personal delivery. Courtesy copies via email may also be sent.

12 **FOR ENVIRONMENTAL RESEARCH CENTER:**

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

16 With a copy to:

17 Michael Freund SBN 99687
Ryan Hoffman SBN 283297
Michael Freund & Associates
1919 Addison Street, Suite 105
Berkeley, CA 94704
Telephone: (510) 540-1992
Facsimile: (510) 540-5543

21 **FOR GARY NULL & ASSOCIATES, INC.**

22 Scott London, Esq.
COO/General Counsel
Gary Null & Associates, Inc.
2307 Broadway, 2nd Floor
New York, NY 10024

25 With a copy to:

26 Carol R. Brophy (SBN 155767)
Sedgwick LLP
333 Bush Street, 30th Floor
San Francisco, CA 94104-2834
Tel: (415) 781-7900

Handwritten initials/signature

28 during the Parties' good faith attempt to resolve the dispute that is the subject of such enforcement
 27 obtaining relief more favorable to it than the relief that the other party was amenable to providing
 26 used in the preceding sentence, the term "prevailing party" means a party who is successful in
 25 filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As
 24 such a good faith attempt to resolve the dispute beforehand. In the event an action or motion is
 23 resolve the dispute in an amicable manner. No action or motion may be filed in the absence of
 22 Judgment entered by the Court, the Parties shall meet in person or by telephone and endeavor to
 21 If a dispute arises with respect to either Party's compliance with the terms of this Consent

15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES

19 Judgment entered thereon, the terms and provisions shall not be construed against any Party.
 18 counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent
 17 Party prior to its signing, and each Party has had an opportunity to fully discuss the terms with
 16 The terms of this Consent Judgment have been reviewed by the respective counsel for each

14. DRAFTING

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

13. EXECUTION AND COUNTERPARTS

10 void and have no force or effect.

12.3

9 If this Stipulated Consent Judgment is not approved by the Court, it shall be
 8 If possible prior to the hearing on the motion.

7 Judgment, the Parties shall use their best efforts to resolve the concern in a timely manner, and

12.2

6 If the California Attorney General objects to any term in this Consent
 5 Consent Judgment.

4 Motion for Court Approval. The Parties shall use their best efforts to support entry of this

12.1

3 Upon execution of this Consent Judgment by the Parties, ERC shall notice a

12. COURT APPROVAL

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1 action.

2 16. ENTIRE AGREEMENT, AUTHORIZATION

3 16.1 This Consent Judgment contains the sole and entire agreement and

4 understanding of the Parties with respect to the entire subject matter herein, and any and all

5 prior discussions, negotiations, commitments and understandings related hereto. No

6 representations, oral or otherwise, express or implied, other than those contained herein have

7 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to

8 herein, shall be deemed to exist or to bind any Party.

9 16.2 Each signatory to this Consent Judgment certifies that he or she is fully

10 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as

11 explicitly provided herein, each Party shall bear its own fees and costs.

12 17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF

13 CONSENT JUDGMENT

14 This Consent Judgment has come before the Court upon the request of the Parties. The

15 Parties request the Court to fully review this Consent Judgment and, being fully informed

16 regarding the matters which are the subject of this action, to:

17 (1) Find that the terms and provisions of this Consent Judgment represent a fair and

18 equitable settlement of all matters raised by the allegations of the Complainant, that the matter has

19 been diligently prosecuted, and that the public interest is served by such settlement; and

20 (2) Make the findings pursuant to California Health and Safety Code section

21 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

22 / / /

23 / / /

24 / / /

25 / / /

26 / / /

27 / / /

28 / / /

1 IT IS SO STIPULATED:

2 Dated: 9/18, 2014

ENVIRONMENTAL RESEARCH CENTER

By: Chris Hoffmann, Executive Director

GARY NUIJ & ASSOCIATES, INC.

5 Dated: 9/19, 2014

By: [Signature]

8 APPROVED AS TO FORM:

9 Dated: 9/18, 2014

MICHAEL FREUND & ASSOCIATES

By: [Signature]

Michael Freund
Ryan Hoffmann

14 Dated: 9/19, 2014

SEDGWICK LLP

By: [Signature]
for: Jackson Lee

Carol Brophy

18 ORDER AND JUDGMENT

19 Based upon the Parties' Stipulation, and good cause appearing, this Consent Judgment is
20 approved and Judgment is hereby entered according to its terms.
21 IT IS SO ORDERED, ADJUDGED AND DECREED.

23 Dated: Jan. 8, 2015

[Signature]

24 Judge of the Superior Court

Off [Signature]

MICHAEL FREUND
ATTORNEY AT LAW
1919 Addison Street, Suite 105
BERKELEY, CALIFORNIA 94704-101

TEL 510/540-1992
FAX 510/540-5543
EMAIL FREUND1@AOL.COM

November 30, 2012

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

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center ("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 Violator 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 Violator 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 an attachment with the copy of this letter served to the alleged Violator identified below.

Alleged Violator. The name of the company covered by this notice that violated Proposition 65 (hereinafter "the Violator") is:

Gary Null & Associates, Inc.

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

Gary Null & Associates Inc. Gary Null's Muscle with Rice Protein - Lead

Gary Null & Associates, Inc. Gary Null's Cruciferous Stuff Rich Chocolate Flavor - Lead

Gary Null & Associates, Inc. Gary Null's Coco-Magic Bar Coconut-Chocolate - Lead

Gary Null & Associates, Inc. Gary Null's Detox - Lead

Gary Null and Associates, Inc. Gary Null's Greens & Grains - Lead

Gary Null & Associates, Inc. Gary Null's Muscle Natural French Vanilla Flavor - Lead

Exhibit A

Gary Null and Associates Inc. Gary Null's Friendly Fiber Formula - 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 these chemicals 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 November 30, 2009, 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 Violator violated Proposition 65 because it 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 Violator 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; and (2) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, 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,



Michael Freund

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Gary Null & Associates, Inc.)

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

CERTIFICATE OF MERIT

Re: **Environmental Research Center's Notice of Proposition 65 Violations by Gary Null & Associates, Inc.**

I, Michael Freund, 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 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 Violator 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: November 30, 2012



Michael Freund