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22 SGN ACQUISITION COMPANY, LLC

23  
24  
25 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
26 COUNTY OF ALAMEDA

27 ENVIRONMENTAL RESEARCH CENTER,  
28 a California non-profit  
corporation,

Plaintiff,

v.

SGN ACQUISITION COMPANY, LLC

Defendant.

CASE NO. RG14742593

STIPULATED CONSENT JUDGMENT;

~~PROPOSED ORDER~~

Health & Safety Code § 25249.5 et seq.

Action Filed: September 30, 2014

Trial Date: None set

1. INTRODUCTION

1.1 On September 30, 2014, Plaintiff Environmental Research Center ("ERC"), a non-profit corporation, as a private enforcer, and in the public interest, initiated this action by filing a Complaint for Injunctive and Declaratory relief and Civil Penalties (the "Complaint")

ENDORSED  
FILED  
ALAMEDA COUNTY

FEB 04 2015

K. McCoy, Exec. Off./Clerk

1 pursuant to the provisions of California Health and Safety Code section 25249.5 et seq.  
2 (“Proposition 65”), against SGN Acquisition Company, LLC (“SGN”). In this action, ERC  
3 alleges that certain products manufactured, distributed or sold by SGN, as more fully described  
4 below, contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive  
5 toxin, and that use of such products exposes consumers at a level requiring a Proposition 65  
6 warning. These products are: (1) SGN Nutrition X Balance Total Nutrition Drink Mix For  
7 Kids; (2) SGN Nutrition Emerald Balance Total Nutrition Drink Mix; (3) SGN Nutrition  
8 Emerald Balance Nutritional Support Amazon Tropical Berry; and (4) SGN Nutrition Emerald  
9 Balance Nutritional Support Plus Chocolate (individually, each a “Covered Product” and,  
10 collectively, the “Covered Products”). ERC and SGN are referred to individually as a “Party” or  
11 collectively as the “Parties.”

12 **1.2** ERC is a California non-profit corporation dedicated to, among other causes,  
13 helping safeguard the public from health hazards by reducing the use and misuse of hazardous  
14 and toxic chemicals, facilitating a safe environment for consumers and employees, and  
15 encouraging corporate responsibility.

16 **1.3** SGN is a business entity that employs ten or more persons. SGN conducts or  
17 arranges for the manufacture, distribution and/or sale of the Covered Products.

18 **1.4** The Complaint is based on allegations contained in ERC’s Notice of Violation,  
19 dated April 4, 2014, that was served on the California Attorney General, other public enforcers,  
20 and SGN (“Notice”). A true and correct copy of the Notice is attached as Exhibit A and is  
21 hereby incorporated by reference. More than 60 days have passed since the Notice was mailed  
22 and uploaded onto the Attorney General’s website, and no designated governmental entity has  
23 filed a complaint against SGN with regard to the Covered Products or the alleged violations.

24 **1.5** ERC’s Notice and Complaint allege that use of the Covered Products exposes  
25 persons in California to lead without first providing clear and reasonable warnings in violation  
26 of California Health and Safety Code section 25249.6. SGN denies all material allegations  
27 contained in the Notice and Complaint.

28 **1.6** The Parties have entered into this Consent Judgment in order to settle,

1 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.  
2 Nothing in this Consent Judgment shall constitute or be construed as an admission by either  
3 Party, or by any of its respective officers, directors, shareholders, employees, agents, parent  
4 companies, subsidiaries, divisions, affiliates, franchises, licensees, customers, suppliers,  
5 distributors, wholesalers, or retailers. Nothing in this Consent Judgment shall be construed as  
6 an admission by any Party of any fact, issue of law, or violation of law, nor shall compliance  
7 with this Consent Judgment be construed as an admission by any Party of any fact, issue of law,  
8 or violation of law, except that the foregoing shall not impair enforcement of the Consent  
9 Judgment.

10 1.7 Except as expressly set forth herein, nothing in this Consent Judgment shall  
11 prejudice, waive, or impair any right, remedy, argument, or defense any Party may have in any  
12 other or future legal proceeding unrelated to this action.

13 1.8 The Effective Date of this Consent Judgment is the date on which it is entered as  
14 a Judgment by this Court.

## 15 2. JURISDICTION AND VENUE

16 For purposes of this Consent Judgment and for any further court action that may become  
17 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
18 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction over  
19 SGN as to the acts alleged in the Complaint, that venue is proper in Alameda County, and that this  
20 Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims up  
21 through and including the Effective Date which were or could have been asserted in this action  
22 based on the facts alleged in the Notice and Complaint.

## 23 3. INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS

24 3.1 SGN shall not manufacture for sale in the State of California, distribute for sale  
25 into the State of California, or directly sell in the State of California, any Covered Products  
26 which expose a person to a daily dose of lead more than 0.5 micrograms per day, as determined  
27 under Sections 3.3 and 3.4, when the maximum recommended dose is taken as directed on the  
28 Covered Product's label, unless it meets the warning requirements under Section 3.2. A

1 warning shall not be required if SGN elects to reformulate a Covered Product resulting in a  
2 Reformulated Covered Product as defined in Section 3.3 below. SGN shall bring the Covered  
3 Products into compliance with this Section no later than six (6) months after the Effective Date  
4 (the "Compliance Date"). For all Covered Products, if the product has been manufactured and  
5 packaged into final form for consumer sale and use prior to the Compliance Date, then such  
6 Covered Products may be sold and/or distributed into the State of California at any time. One  
7 (1) month after the Compliance Date, SGN shall provide ERC with the last lot number and  
8 expiration date for the Covered Products which have been manufactured and placed in final  
9 form for consumer distribution as of the Compliance Date.

10 As used in this Consent Judgment, the term "distribute for sale into the State of  
11 California" shall mean to directly ship a Covered Product into California for sale to California  
12 consumers or to sell a Covered Product to a distributor that SGN knows will sell the Covered  
13 Product to California consumers.

### 14 3.2 Clear and Reasonable Warnings

15 After the Compliance Date in Section 3.1, excepting such Covered Products as have been  
16 manufactured and packaged into final form for consumer sale and use prior to the Compliance  
17 Date, for any Covered Product that does not qualify as a Reformulated Covered Product under  
18 Section 3.3, the following warning shall be provided:

19 **[California] [Proposition 65] WARNING: This product contains [lead,] a chemical**  
20 **known to the State of California to cause [cancer and] birth defects or other**  
21 **reproductive harm.**

22 The text in brackets is optional in SGN's sole discretion except that SGN shall use the phrase  
23 "cancer and" in the warning only if the maximum daily dose recommended on the label contains  
24 more than 15 micrograms of lead as determined pursuant to the provisions of Sections 3.3 and 3.4.

25 SGN shall provide the warning on the label or on the exterior of a container or packaging  
26 (other than on the underside or bottom of the container or packaging) of each individual unit of a  
27 Covered Product. The warning shall be at least the same size as the largest of any other health or  
28 safety warnings correspondingly appearing on the label, container, or packaging, and the word

1 **“WARNING”** shall be in all capital letters and in bold print. No other statements about  
2 Proposition 65 or lead may accompany the warning on the product label, container or packaging.  
3 SGN must display the warning with such conspicuousness, as compared with other words,  
4 statements, or designs on the label, container or packaging, to render the warning likely to be read  
5 and understood by an ordinary individual under customary conditions of purchase or use of the  
6 product.

### 7 **3.3 Calculation of Lead Levels; Reformulated Covered Products**

8 A Reformulated Covered Product is one for which the maximum recommended daily  
9 serving on the label contains no more than 0.5 micrograms of lead per day as determined by the  
10 quality control methodology described in Section 3.4. As used in this Consent Judgment, “no more  
11 than 0.5 micrograms of lead per day” means that the samples of the testing performed by SGN  
12 under Section 3.4 yield a daily exposure of no more than 0.5 micrograms of lead (with daily  
13 exposure calculated pursuant to Section 3.4 of this Consent Judgment). For Covered Products that  
14 cause exposures in excess of 0.5 micrograms of lead per day even after reformulation, SGN shall  
15 provide the warning set forth in Section 3.2. For all purposes of determining which warning, if  
16 any, is required pursuant to Section 3.2, the second highest lead detection result of the four (4)  
17 randomly selected samples of the Covered Products (as specified in the sample selection process  
18 set forth in Section 3.4.6) will be controlling.

### 19 **3.4 Testing and Quality Control Methodology**

20 **3.4.1** For all purposes of this Consent Judgment, daily lead exposure levels  
21 shall be measured in micrograms, and shall be calculated using the following formula:  
22 micrograms of lead per gram of product, multiplied by grams per serving of the Covered  
23 Product (using the largest serving size recommended on the Covered Product’s label),  
24 multiplied by servings of the Covered Product per day (using the largest number of servings  
25 recommended for one day on the Covered Product’s label), which equals micrograms of lead  
26 exposure per day.

27 **3.4.2 Calculation of “Naturally Occurring” Lead Content.** SGN shall not  
28 be required to warn respecting exposures to lead deemed “naturally occurring” under this

1 Consent Judgment. Such "naturally occurring" lead amounts shall be deducted from the  
 2 exposure levels calculated under Section 3.4.1. For the purposes of Section 3 of this Consent  
 3 Judgment, the amount of lead deemed "naturally occurring" in the Covered Products is the sum  
 4 of the amounts of "naturally occurring" lead supplied by the ingredients listed in the table below  
 5 that are present in the maximum daily dose recommended on the label of the Covered Product.  
 6 For each ingredient, the amount of "naturally occurring" lead is listed in the table in micrograms  
 7 ("mcg") of "naturally occurring" lead per gram of the ingredient contained in the maximum  
 8 daily dose recommended on the label of the Covered Product. If the amount of elemental  
 9 calcium contained in the maximum daily dose recommended on the label of a Covered Product  
 10 exceeds 1500 milligrams, then the amount of "naturally occurring" lead supplied by each  
 11 ingredient listed in the table is limited to that amount of lead supplied by the quantity of the  
 12 ingredient that would be contained in that fraction of the maximum daily dose of the Covered  
 13 Product that would supply only 1500 milligrams of elemental calcium.

INGREDIENT	NATURALLY OCCURRING AMOUNT OF LEAD
Elemental Calcium	0.8 micrograms/gram
Ferrous Fumarate	0.4 micrograms/gram
Zinc Oxide	8.0 micrograms/gram
Magnesium Oxide	0.4 micrograms/gram
Magnesium Carbonate	0.332 micrograms/gram
Magnesium Hydroxide	0.4 micrograms/gram
Zinc Gluconate	0.8 micrograms/gram
Potassium Chloride	1.1 micrograms/gram
Cocoa-powder	1.0 micrograms/gram

24  
 25 **3.4.3 Reporting of "Naturally Occurring" Allowances.** SGN has provided  
 26 ERC with calculations of the naturally occurring allowances listed in Section 3.4.2 for the  
 27 Covered Products prior to the execution of this Consent Judgment. For up to two (2) years  
 28 after the Effective Date ERC may request in writing updated calculations of the naturally

1 occurring allowances for lead in a Covered Product, and SGN shall provide such calculations  
2 within twenty (20) business days of receipt of the request, or confirm the calculation remains  
3 unchanged for any given Covered Product. ERC shall not request such calculations more than  
4 once a year, absent good cause therefor. ERC shall designate such calculations as confidential,  
5 and not share them with any third party. ERC and SGN may, however, discuss such  
6 calculations during any meet and confer process pursuant to Section 15.

7           3.4.4 All testing pursuant to this Consent Judgment shall be performed using a  
8 laboratory method that complies with the performance and quality control factors appropriate  
9 for the method used, including limit of detection, qualification, accuracy, and precision that  
10 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (ICP-MS)  
11 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing  
12 method subsequently agreed upon in writing by the Parties.

13           3.4.5 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 for the analysis of heavy metals or by an independent third-party  
16 laboratory that is registered with the United States Food & Drug Administration. Nothing in  
17 this Consent Judgment shall limit SGN's ability to conduct, or require that others conduct,  
18 additional testing of the Covered Products, including the raw materials used in their  
19 manufacture.

20           3.4.6 SGN shall arrange, for at least three (3) consecutive years, and by each  
21 anniversary of the Effective Date, for the lead testing of four (4) randomly selected samples of  
22 each Covered Product in the form intended for sale to the consumer. ERC may request that  
23 SGN provide the results of this testing conducted for purposes of this Consent Judgment after  
24 each anniversary date and SGN shall provide such test results within twenty (20) business days  
25 of receipt of written request therefor. ERC shall designate such test results as confidential, and  
26 not share them with any third party. ERC and SGN may, however, discuss such test results  
27 during any meet and confer process pursuant to Section 15. If the meet and confer process fails  
28 and ERC moves to enforce this Consent Judgment, then ERC may refer to the test results SGN

1 is obligated to provide upon request under this Section 3.4.6 in such enforcement proceeding.  
2 After three (3) years from the Effective Date, SGN is not required to test Covered Products  
3 under this Consent Judgment, but may elect to do so. Nothing in this Section 3.4.6 shall relieve  
4 SGN of its obligations to provide warnings for Covered Products which are not Reformulated  
5 Products and for which warnings are required under the terms of Sections 3.3 and 3.4. The  
6 testing requirements in Section 3.4 are not applicable to any Covered Product for which SGN  
7 has provided the warning as specified in Section 3.2. SGN shall retain all test results and  
8 documentation for a period of at least three (3) years from the date of each test.

9 **4. SETTLEMENT PAYMENT**

10 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil  
11 penalties, attorney's fees, and costs, SGN shall make a total payment of \$90,000.00 (the Total  
12 Settlement Amount) to ERC according to the following schedule:

- 13 a. \$30,000.00 within 5 days of the Effective Date.
- 14 b. \$30,000.00 within 35 days of the Effective Date.
- 15 c. \$30,000.00 within 60 days of the Effective Date.

16 SGN shall make these payments by wire transfer to ERC's escrow account, for  
17 which ERC will give SGN the necessary account information. Said payment shall be for the  
18 following:

19 **4.2** As a portion of the Total Settlement Amount, \$26,466.00 shall be considered a  
20 civil penalty pursuant to California Health and Safety Code §25249.7(b)(1). ERC shall remit  
21 75% (\$19,850.00) of the civil penalty to the Office of Environmental Health Hazard  
22 Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund  
23 in accordance with California Health and Safety Code §25249.12(c). ERC will retain the  
24 remaining 25% (\$6,616.00) of the civil penalty.

25 **4.3** \$435.98 shall be distributed to Environmental Research Center as reimbursement  
26 to ERC for reasonable costs associated with the enforcement of Proposition 65 and other costs  
27 incurred as a result of work in bringing this action; and \$19,964.31 shall be distributed to  
28 Environmental Research Center in lieu of further civil penalties, for the day-to-day business



1 activities such as (1) continued enforcement of Proposition 65, which includes work, analyzing,  
2 researching and testing consumer products that may contain Proposition 65 chemicals, focusing  
3 on the same or similar type of ingestible products that are the subject matter of the current  
4 action; (2) the continued monitoring of past consent judgments and settlements to ensure  
5 companies are in compliance with Proposition 65; and (3) giving a donation of \$998.00 to the  
6 Center For Environmental Health to address reducing toxic chemical exposures in California.

7 4.4 \$27,000.00 shall be distributed to Lozeau | Drury LLP as reimbursement of  
8 ERC's attorney's fees and \$16,133.71 shall be distributed to ERC as reimbursement for its in-  
9 house legal fees.

10 **5. MODIFICATION OF CONSENT JUDGMENT**

11 5.1 This Consent Judgment may be modified only (i) by written stipulation of the  
12 Parties or pursuant to Section 5.3 and (ii) upon entry by the Court of a modified consent  
13 judgment. The Attorney General shall be served with any such stipulations or motions to  
14 modify this Consent Judgment.

15 5.2 If any Party seeks to modify this Consent Judgment, then that Party must provide  
16 written notice of its intent ("Notice of Intent"). The Parties shall meet and confer in good-faith  
17 regarding the proposed modification in the Notice of Intent within thirty (30) days. Should it  
18 become necessary, the Parties may agree in writing to different deadlines for the meet-and-  
19 confer period.

20 5.3 In the event that SGN initiates or otherwise requests a modification under  
21 Section 5.1, and the meet and confer process leads to a joint motion or application of this  
22 Consent Judgment, SGN shall reimburse ERC its costs and reasonable attorney's fees for the  
23 time spent in the meet-and-confer process and filing and arguing the motion or application.

24 5.4 Where the meet-and-confer process does not lead to a joint motion or an  
25 uncontested application in support of a modification of this Consent Judgment, the prevailing  
26 party may seek to recover costs and reasonable attorney's fees. As used in the preceding  
27 sentence, the term "prevailing party" means a party who is successful in obtaining relief more  
28

1 favorable to it than the relief that the other party was amenable to providing during the Parties'  
2 good faith attempt to resolve the dispute that is the subject of the modification.

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

5 6.1 This Court shall retain jurisdiction of this matter to enforce, modify or terminate  
6 this Consent Judgment.

7 6.2 Only after it complies with Section 15 below may any Party, by motion or  
8 application for an order to show cause filed with this Court, enforce the terms and conditions  
9 contained in this Consent Judgment.

10 6.3 If ERC alleges that any Covered Product fails to qualify as a Reformulated  
11 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall  
12 inform SGN in a reasonably prompt manner of its test results, including information sufficient  
13 to permit SGN to identify the Covered Products at issue. SGN shall, within thirty days  
14 following such notice, provide ERC with testing information, from an independent third-party  
15 laboratory meeting the requirements of Sections 3.4.4 and 3.4.5, demonstrating Defendant's  
16 compliance with the Consent Judgment, if warranted. The Parties shall first attempt to resolve  
17 the matter pursuant to Section 15 of this Consent Judgment prior to ERC taking any further  
18 legal action.

19 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

27 8.1 This Consent Judgment is a full, final, and binding resolution between ERC, on  
28 behalf of itself and in the public interest, and SGN, of any alleged violation of Proposition 65 or

1 its implementing regulations for failure to provide Proposition 65 warnings of exposure to lead  
2 from the handling, use, or consumption of the Covered Products and fully resolves all claims  
3 that have been or could have been asserted in the Notice and Complaint up to and including the  
4 Effective Date for failure to provide Proposition 65 warnings for the Covered Products. ERC,  
5 on behalf of itself and in the public interest, hereby discharges and releases SGN and its  
6 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
7 divisions, affiliates, suppliers, franchisees, licensees, customers (not including private label  
8 customers of SGN), distributors, wholesalers, retailers, and all other upstream and downstream  
9 entities in the distribution chain of any Covered Product, and the predecessors, successors and  
10 assigns of any of them (collectively, "Released Parties"), from any and all claims, actions,  
11 causes of action, suits, demands, liabilities, damages, penalties, fees, costs and expenses  
12 asserted, or that could have been asserted, as to any alleged violation of Proposition 65 arising  
13 from the failure to provide Proposition 65 warnings on the Covered Products regarding lead.

14 **8.2** The Parties further waive and release any and all claims they may have against  
15 each other for all actions or statements made or undertaken in the course of seeking or opposing  
16 enforcement of Proposition 65 in connection with the Notice or Complaint up through and  
17 including the Effective Date, provided, however, that nothing in Section 8 shall affect or limit  
18 any Party's right to seek to enforce the terms of this Consent Judgment.

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

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

1 The Parties acknowledge and understand the significance and consequences of this specific  
2 waiver of California Civil Code section 1542.

3 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to  
4 constitute compliance with Proposition 65 by any Released Party regarding alleged exposures to  
5 lead in the Covered Products as set forth in the Notice and the Complaint.

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

9 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

12 **10. GOVERNING LAW**

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

15 **11. PROVISION OF NOTICE**

16 All notices required to be given to either Party to this Consent Judgment by the other shall  
17 be in writing and sent to the following agents listed below by: (a) first-class, registered, or certified  
18 mail; (b) overnight courier; or (c) personal delivery. The Parties shall endeavor to send courtesy  
19 copies via email, but the date of receipt upon delivery by one of the methods (a)-(c) shall be the  
20 applicable date for purposes of this Consent Judgment.

21 **FOR ENVIRONMENTAL RESEARCH CENTER:**

22 Chris Heptinstall,  
23 Executive Director, Environmental Research Center  
24 3111 Camino Del Rio North, Suite 400  
25 San Diego, CA 92108

26  
27 With a copy to:

28 Michael R. Lozeau

1 Richard Drury  
2 LOZEAU | DRURY LLP  
3 410 12<sup>th</sup> Street, Suite 250  
4 Oakland, CA 94607  
5 Ph: 510-836-4200  
6 Fax: 510-836-4205

7  
8 **FOR SGN ACQUISITION COMPANY, LLC**

9 Anthony Misner  
10 SGN Nutrition  
11 Chief Executive Officer  
12 2777 Loker Ave West. Ste. C  
13 Carlsbad, Ca. 92010  
14 Ph: 760-804-2874  
15 anthony.misner@sgnnutrition.com

16 With a copy to:

17 Judith Praitis  
18 Amy P. Lally  
19 **SIDLEY AUSTIN LLP**  
20 555 West Fifth Street, Suite 4000  
21 Los Angeles, California 90013-1010  
22 Telephone: (213) 896-6000  
23 Facsimile: (213) 896-6600

24  
25 **12. COURT APPROVAL**

26 **12.1** If this Stipulated Consent Judgment is not approved by the Court, it shall be void  
27 and have no force or effect.

28

1           12.2 Following Court Approval of the Consent Judgment, ERC shall comply with  
2 California Health and Safety Code section 25249.7(f) and with Title II of the California Code  
3 Regulations, Section 3003.

4           **13. EXECUTION AND COUNTERPARTS**

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

8           **14. DRAFTING**

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

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

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

23           **16. ENTIRE AGREEMENT, AUTHORIZATION**

24           16.1 This Consent Judgment contains the sole and entire agreement and understanding  
25 of the Parties with respect to the entire subject matter herein, and any and all prior discussions,  
26 negotiations, commitments and understandings related hereto. No representations, oral or  
27 otherwise, express or implied, other than those contained herein have been made by any Party.  
28 No other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to

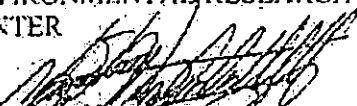
1 exist or to bind any Party.

2 16.2 Each signatory to this Consent Judgment certifies that he or she is fully  
3 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as  
4 explicitly provided herein, each Party shall bear its own fees and costs.

5 **IT IS SO STIPULATED:**

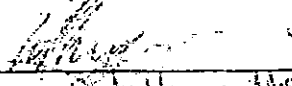
6 Dated: 11/21, 2014

ENVIRONMENTAL RESEARCH  
CENTER

By:   
Chris Hepinstall, Executive Director

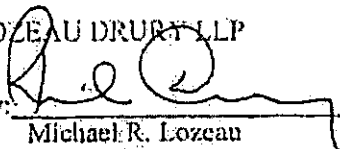
9 Dated: 11/21, 2014

SGN ACQUISITION COMPANY, LLC

By:   
Anthony Malone, CEO

12 APPROVED AS TO FORM;  
13 Dated: Nov. 25, 2014

LOZEAU DRURY LLP

By:   
Michael R. Lozeau  
Richard Drury  
Attorneys for Environmental Research  
Center

17 Dated: \_\_\_\_\_, 2014

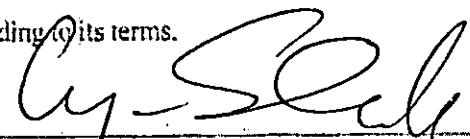
SIDLEY AUSTIN LLP

By: \_\_\_\_\_  
Judith Prailis  
Amy P. Lally  
Attorneys for SGN Acquisition  
Company, LLC

22 **JUDGMENT**

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

25 Dated: Feb. 5, 2014

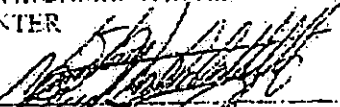
  
\_\_\_\_\_  
Judge of the Superior Court

1 exist or to bind any Party.

2 16.2 Each signatory to this Consent Judgment certifies that he or she is fully  
3 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as  
4 explicitly provided herein, each Party shall bear its own fees and costs.

5 **IT IS SO STIPULATED:**

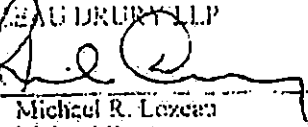
6 Dated: 11/21 2014

ENVIRONMENTAL RESEARCH  
CENTER  
By:   
Chris Heffinstall, Executive Director


9 Dated: 11/20 2014

SGN ACQUISITION COMPANY, LLC  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

12 APPROVED AS TO FORM:  
13 Dated: Nov. 25 2014

14 LOEWEN DRURY LLP  
By:   
Michael R. Loewen  
Richard Drury  
Attorneys for Environmental Research  
Center

17 Dated: 11/25 2014

18 SIDLEY AUSTIN LLP  
By:   
Judith Proutis  
Amy P. Lally  
Attorneys for SGN Acquisition  
Company, LLC

22 **JUDGMENT**

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

25 Dated: \_\_\_\_\_ 2014

26 \_\_\_\_\_  
27 Judge of the Superior Court



# EXHIBIT A



T 510.836.4200  
F 510.836.4205

410 12th Street, Suite 250  
Oakland, Ca 94607

www.lozeaudrury.com  
richard@lozeaudrury.com

**VIA CERTIFIED MAIL**

Current CEO or President  
SGN Acquisition Company, LLC  
dba SGN Nutrition  
2777 Loker Avenue W, Suite C  
Carlsbad, CA 92010

Current CEO or President  
SGN Acquisition Company, LLC  
dba SGN Nutrition  
265 Harrison Avenue  
Kearny, NJ 07032

George Joseph  
(SGN Acquisition Company, LLC dba SGN  
Nutrition's Registered Agent for Service of  
Process)  
2929 E White Star Avenue  
Anaheim, CA 92806

**VIA ONLINE SUBMISSION**

Office of the California Attorney General

**VIA PRIORITY MAIL**

District Attorneys of All California Counties  
and Select City Attorneys  
(See Attached Certificate of Service)

**Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.***

Dear Addressees:

I represent the Environmental Research Center ("ERC") in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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

April 4, 2014

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

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

**SGN Acquisition Company, LLC dba SGN Nutrition**

The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

- **Sggnutrition X Balance Total Nutrition Drink Mix For Kids - Lead**
- **Sggnutrition Emerald Balance Total Nutrition Drink Mix - Lead**
- **Sggnutrition Emerald Balance Nutritional Support Amazon Tropical Berry - Lead**
- **Sggnutrition Emerald Balance Nutritional Support Plus Chocolate - 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.

This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator currently known to ERC from the information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with the copy of this letter to the Violator.

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and/or recommended use of these products by consumers. The primary route of exposure to lead has been through ingestion, but may have also occurred through inhalation and/or dermal contact. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since April 4, 2011, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable

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

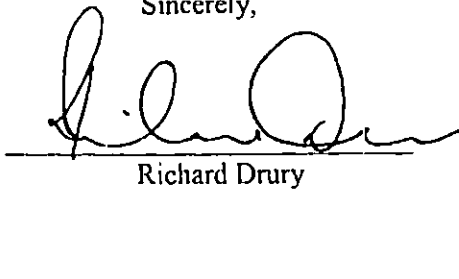
April 4, 2014

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written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Drury", is written over a horizontal line. The signature is fluid and cursive, with a long vertical stroke extending downwards from the end of the line.

Richard Drury

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to SGN Acquisition Company, LLC dba SGN Nutrition and its Registered Agent for Service of Process only)

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


**CERTIFICATE OF MERIT**

**Re: Environmental Research Center's Notice of Proposition 65 Violations by  
SGN Acquisition Company, LLC dba SGN Nutrition**

I, Richard Drury, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party 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 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: April 4, 2014

  
Richard Drury

**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 April 4, 2014, 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 in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President  
SGN Acquisition Company, LLC  
dba SGN Nutrition  
2777 Loker Avenue W, Suite C  
Carlsbad, CA 92010

George Joseph  
(SGN Acquisition Company, LLC dba SGN  
Nutrition's Registered Agent for Service of Process)  
2929 E White Star Avenue  
Anaheim, CA 92806

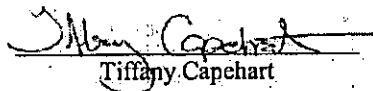
Current CEO or President  
SGN Acquisition Company, LLC  
dba SGN Nutrition  
265 Harrison Avenue  
Kearny, NJ 07032

On April 4, 2014, I electronically served 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)** on the following party by uploading a true and correct copy thereof 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 April 4, 2014, 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 with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail.

Executed on April 4, 2014, in Fort Oglethorpe, Georgia.

  
Tiffany Capchart

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

April 4, 2014

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## Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Francisco County 850 Bryant Street, Suite 322 San Francisco, CA 94103	District Attorney, Ventura County 800 South Victoria Ave, Suite 314 Ventura, CA 93009
District Attorney, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, San Joaquin County 222 E. Weber Ave. Rm. 202 Stockton, CA 95202	District Attorney, Yolo County 301 2 <sup>nd</sup> Street Woodland, CA 95695
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, San Luis Obispo County 1035 Palm St, Room 450 San Luis Obispo, CA 93408	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, San Mateo County 400 County Ctr., 3 <sup>rd</sup> Floor Redwood City, CA 94063	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Santa Clara County 70 West Hedding Street San Jose, CA 95110	San Francisco, City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	San Jose City Attorney's Office 200 East Santa Clara Street, 16 <sup>th</sup> Floor San Jose, CA 95113
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Monterey County Post Office Box 1131 Salinas, CA 93902	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Napa County 931 Parkway Mall Napa, CA 94559	District Attorney, Sierra County PO Box 457 Downieville, CA 95936	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Humboldt County 825 5th Street 4 <sup>th</sup> Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Stanislaus County 832 12 <sup>th</sup> Street, Ste 300 Modesto, CA 95354	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, Riverside County 3960 Orange Street Riverside, CA 92501	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Benito County 419 Fourth Street, 2 <sup>nd</sup> Floor Hollister, CA 95023	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Lassen County 220 South Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291	