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19 GANO EXCEL (U.S.A.) INC.

FILED
ALAMEDA COUNTY

DEC 26 2014
CLERK OF THE SUPERIOR COURT
By [Signature] Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ENVIRONMENTAL RESEARCH
CENTER, a California non-profit
corporation

Plaintiff,

vs.

GANO EXCEL (U.S.A.) INC. and DOES
1-180

Defendants.

CASE NO. RG14752641

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: December 26, 2014

Trial Date: None set

I. INTRODUCTION

1.1 On December 26, 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") pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*

1 ("Proposition 65"), against Gano Excel (U.S.A.) Inc. and Does 1-100 (collectively "Gano
2 Excel"). In this action, ERC alleges that a number of products manufactured, distributed or
3 sold by Gano Excel contain lead, a chemical listed under Proposition 65 as a carcinogen and
4 reproductive toxin, and expose consumers to this chemical at a level requiring a Proposition 65
5 warning. These products (referred to hereinafter individually as a "Covered Product" or
6 collectively as "Covered Products") are: (1) Gano Excel (USA) Inc. Sakanno, (2) Gano Excel
7 (USA) Inc. GanoCafé Ginseng Tongkat Ali, (3) Gano Excel International (Canada) Inc. Gano
8 Schokolada, (4) Gano Excel International (Canada) Inc. Ganocafé Mocha, (5) Gano Excel (USA)
9 Inc. GanoCafé 3-In-1, and (6) Gano Excel (USA) Inc. Gano Garcinia.

10 1.2 ERC and Gano Excel are hereinafter referred to individually as a "Party" or
11 collectively as the "Parties."

12 1.3 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 1.4 For purposes of this Consent Judgment, the Parties agree that Gano Excel is a
17 business entity that has employed ten or more persons at all times relevant to this action, and
18 qualifies as a "person in the course of business" within the meaning of Proposition 65. Gano
19 Excel purchases the Covered Products from Gano Excel Industries Sdn. Bhd. and then sells the
20 Covered Products to independent distributors who distribute and sell the Covered Products to
21 California consumers.

22 1.5 The Complaint is based on allegations contained in ERC's Notice of Violation
23 dated August 29, 2014 that was served on the California Attorney General, other public
24 enforcers, and Gano Excel. Subsequent to the filing of the Complaint, ERC prepared a Notice
25 of Violation dated November 5, 2015 that was served on the California Attorney General, other
26 public enforcers, and Gano Excel. True and correct copies of the Notices of Violation
27 ("Notices") are attached as Exhibit A and are hereby incorporated by reference. More than 60
28 days have passed since the Notices were mailed and uploaded to the Attorney General's

1 website, and no designated governmental entity has filed a complaint against Gano Excel with
2 regard to the Covered Products or the alleged violations. ERC's Notices and Complaint allege
3 that use of the Covered Products exposes persons in California to lead without first providing
4 clear and reasonable warnings in violation of California Health and Safety Code section
5 25249.6. The Parties hereby stipulate that the Complaint in Case No. RG14752641 shall be
6 deemed amended to include the November 5, 2015 Notice of Violation and all such allegations
7 contained therein.

8 1.6 Gano Excel denies all material allegations contained in the Notices and
9 Complaint.

10 1.7 The Parties have entered into this Consent Judgment in order to settle,
11 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.
12 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of
13 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,
14 parent companies, subsidiaries, divisions, affiliates, franchisees, licensees, customers, suppliers,
15 distributors, wholesalers, or retailers. Except for the representations made above, nothing in
16 this Consent Judgment shall be construed as an admission by the Parties of any fact, issue of
17 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an
18 admission by the Parties of any fact, issue of law, or violation of law, at any time, for any
19 purpose.

20 1.8 Except as expressly set forth herein, nothing in this Consent Judgment shall
21 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
22 other or future legal proceeding unrelated to these proceedings.

23 1.9 The Effective Date of this Consent Judgment is the date on which it is entered as
24 a Judgment by this Court.

25 1.10 As a result of ERC's NOV's on August 29, 2014 and November 5, 2015, Gano
26 Excel has begun labeling its products to warn consumers and upon execution of this agreement,
27 Gano Excel shall comply with the notice requirements pursuant to section 3.2 below.
28

1 **2. JURISDICTION AND VENUE**

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

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

11 **3.1** Beginning on the Effective Date, Gano Excel shall be permanently enjoined
12 from manufacturing for sale in the State of California, "Distributing into the State of
13 California", or directly selling in the State of California, any Covered Product which exposes a
14 person to a "Daily Lead Exposure Level" of more than 0.5 micrograms per day of lead when
15 the maximum suggested dose is taken as directed on the Covered Product's label, unless it
16 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 Gano Excel knows will sell the
20 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
25 of the product per day (using the largest number of servings in a recommended dosage
26 appearing on the product label), which equals micrograms of lead exposure per day.

27 **3.2 Clear and Reasonable Warnings**

28 If Gano Excel is required to provide a warning pursuant to Section 3.1, the following

1 warning must be utilized:

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

4 Gano Excel shall use the phrase "cancer and" in the warning only if the maximum daily dose
5 recommended on the label contains more than 15 micrograms of lead as determined pursuant to
6 the quality control methodology set forth in Section 3.4.

7 The warning shall be securely affixed to or printed upon the container or label of each
8 Covered Product. In addition, for Covered Products sold over Gano Excel's website, the
9 warning shall appear on Gano Excel's checkout page on its website for California consumers
10 identifying any Covered Product, and also appear prior to completing checkout on Gano
11 Excel's website when a California delivery address is indicated for any purchase of any
12 Covered Product.

13 The warning shall be at least the same size as the largest of any other health or safety
14 warnings also appearing on its website or on the label or container of Gano Excel's product
15 packaging and the word "WARNING" shall be in all capital letters and in bold print. No other
16 statements about Proposition 65 or lead may accompany the warning.

17 Gano Excel must display the above warnings with such conspicuousness, as compared
18 with other words, statements, or design of the label or container, as applicable, to render the
19 warning likely to be read and understood by an ordinary individual under customary conditions of
20 purchase or use of the product.

21 **3.3 Reformulated Covered Products**

22 A Reformulated Covered Product is one for which the Daily Lead Exposure Level when
23 the maximum suggested dose is taken as directed on the Reformulated Covered Product's label,
24 contains no more than 0.5 micrograms of lead per day as determined by the quality control
25 methodology described in Section 3.4.

26 **3.4 Testing and Quality Control Methodology**

27 **3.4.1** Beginning within one year of the Effective Date, Gano Excel shall
28 arrange for lead testing of the Covered Products at least once a year for a minimum of five

1 consecutive years by arranging for testing of five randomly selected samples of each of the
2 Covered Products, in the form intended for sale to the end-user, which Gano Excel intends to
3 sell or is manufacturing for sale in California, directly selling to a consumer in California or
4 "Distributing into California." The testing requirement does not apply to any of the Covered
5 Products for which Gano Excel has provided the warning specified in Section 3.2. If tests
6 conducted pursuant to this Section demonstrate that no warning is required for a Covered
7 Product during each of five consecutive years, then the testing requirements of this Section will
8 no longer be required as to that Covered Product. However, if during or after the five-year
9 testing period, Gano Excel changes ingredient suppliers for any of the Covered Products and/or
10 reformulates any of the Covered Products, Gano Excel shall test that Covered Product annually
11 for at least four (4) consecutive years after such change is made.

12 3.4.2 For purposes of measuring the "Daily Lead Exposure Level", the highest
13 lead detection result of the five (5) randomly selected samples of the Covered Products will be
14 controlling.

15 3.4.3 All testing pursuant to this Consent Judgment shall be performed using a
16 laboratory method that complies with the performance and quality control factors appropriate
17 for the method used, including limit of detection, qualification, accuracy, and precision that
18 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry ("ICP-MS")
19 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
20 method subsequently agreed to in writing by the Parties.

21 3.4.4 All testing pursuant to this Consent Judgment shall be performed by an
22 independent third party laboratory certified by the California Environmental Laboratory
23 Accreditation Program or an independent third-party laboratory that is registered with the
24 United States Food & Drug Administration.

25 3.4.5 Nothing in this Consent Judgment shall limit Gano Excel's ability to
26 conduct, or require that others conduct, additional testing of the Covered Products, including
27 the raw materials used in their manufacture.

1 **3.4.6** Beginning on the Effective Date and continuing for a period of five
2 years, Gano Excel shall arrange for copies of all laboratory reports with results of testing for
3 lead content under Section 3.4.1 to be automatically sent by the testing laboratory directly to
4 ERC within ten days after completion of the testing. Gano Excel shall retain all test results and
5 documentation for a period of five years from the date of each test.

6 **4. SETTLEMENT PAYMENT**

7 **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil
8 penalties, attorney's fees, and costs, Gano Excel shall make a total payment of \$145,000
9 ("Total Settlement Amount") to ERC within 5 days of the Effective Date. Gano Excel shall
10 make this payment by wire transfer to ERC's escrow account, for which ERC will give Gano
11 Excel the necessary account information. The Total Settlement Amount shall be apportioned as
12 follows:

13 **4.2** \$56,704.00 shall be considered a civil penalty pursuant to California Health and
14 Safety Code §25249.7(b)(1). ERC shall remit 75% (\$42,528.00) of the civil penalty to the
15 Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
16 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
17 Code §25249.12(c). ERC will retain the remaining 25% (\$14,176.00) of the civil penalty.

18 **4.3** \$2,689.15 shall be distributed to ERC as reimbursement to ERC for reasonable
19 costs incurred in bringing this action.

20 **4.4** \$42,778.23 shall be distributed to ERC in lieu of further civil penalties, for the
21 day-to-day business activities such as (1) continued enforcement of Proposition 65, which
22 includes work, analyzing, researching and testing consumer products that may contain
23 Proposition 65 chemicals, focusing on the same or similar type of ingestible products that are
24 the subject matter of the current action; (2) the continued monitoring of past consent judgments
25 and settlements to ensure companies are in compliance with Proposition 65; and (3) giving a
26 donation of \$2,139.00 to the Natural Resource Defense Council to address reducing toxic
27 chemical exposures in California.

28 **4.5** \$19,555.00 shall be distributed to Michael Freund as reimbursement of ERC's

1 attorney's fees, \$4,675.00 shall be distributed to Ryan Hoffman as reimbursement of ERC's
2 attorney's fees, while \$18,598.62 shall be distributed to ERC for its in-house legal fees.

3 **5. MODIFICATION OF CONSENT JUDGMENT**

4 **5.1** This Consent Judgment may be modified only (i) by written stipulation of the
5 Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent
6 judgment.

7 **5.2** If Gano Excel seeks to modify this Consent Judgment under Section 5.1, then
8 Gano Excel must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks
9 to meet and confer regarding the proposed modification in the Notice of Intent, then ERC must
10 provide written notice to Gano Excel within thirty days of receiving the Notice of Intent. If
11 ERC notifies Gano Excel in a timely manner of ERC's intent to meet and confer, then the
12 Parties shall meet and confer in good faith as required in this Section. The Parties shall meet in
13 person or via telephone within thirty (30) days of ERC's notification of its intent to meet and
14 confer. Within thirty days of such meeting, if ERC disputes the proposed modification, ERC
15 shall provide to Gano Excel a written basis for its position. The Parties shall continue to meet
16 and confer for an additional thirty (30) days in an effort to resolve any remaining disputes.
17 Should it become necessary, the Parties may agree in writing to different deadlines for the
18 meet-and-confer period.

19 **5.3** In the event that Gano Excel initiates or otherwise requests a modification under
20 Section 5.1, and the meet and confer process leads to a joint motion or application of the
21 Consent Judgment, Gano Excel shall reimburse ERC its costs and reasonable attorney's fees
22 for the time spent in the meet-and-confer process and filing and arguing the motion or
23 application.

24 **5.4** Where the meet-and-confer process does not lead to a joint motion or
25 application in support of a modification of the Consent Judgment, then either Party may seek
26 judicial relief on its own. In such a situation, the prevailing Party may seek to recover costs
27 and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"
28 means a party who is successful in obtaining relief more favorable to it than the relief that the

1 other party was amenable to providing during the Parties' good faith attempt to resolve the
2 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** If ERC alleges that any Covered Product fails to qualify as a Reformulated
8 Covered Product (for which ERC alleges that no warning has been provided), then ERC shall
9 inform Gano Excel in a reasonably prompt manner of its test results, including information
10 sufficient to permit Gano Excel to identify the Covered Products at issue. Gano Excel shall,
11 within thirty days following such notice, provide ERC with testing information, from an
12 independent third-party laboratory meeting the requirements of Sections 3.4.1 and 3.4.2,
13 demonstrating Gano Excel's compliance with the Consent Judgment, if warranted. The Parties
14 shall first attempt to resolve the matter prior to ERC taking any further legal action.

15 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

23 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
24 behalf of itself and in the public interest, and Gano Excel and its respective officers, directors,
25 shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, suppliers,
26 franchisees, licensees, customers (not including private label customers of Gano Excel),
27 manufacturers, distributors, wholesalers, retailers, and all other upstream and downstream
28 entities in the distribution chain of any Covered Product, and the predecessors, successors and

1 assigns of any of them (collectively, "Released Parties"), from any and all claims, actions,
2 causes of action, suits, demands, liabilities, damages, penalties, fees, costs and expenses
3 asserted, or that could have been asserted from the handling, use, or consumption of the
4 Covered Products, as to any alleged violation of Proposition 65 or its implementing regulations
5 arising from the failure to provide Proposition 65 warnings on the Covered Products regarding
6 lead up to and including the Effective Date.

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

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

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

25 ERC on behalf of itself only, on the one hand, and Gano Excel, on the other hand, acknowledge
26 and understand the significance and consequences of this specific waiver of California Civil
27 Code section 1542.

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

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

7 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

10 **10. GOVERNING LAW**

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

13 **11. PROVISION OF NOTICE**

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

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

18 Chris Heptinstall, Executive Director, Environmental Research Center
19 3111 Camino Del Rio North, Suite 400
20 San Diego, CA 92108
21 Tel: (619) 500-3090
22 Email: chris_erc501c3@yahoo.com

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

1 **GANO EXCEL (U.S.A.) INC.**

2 Matthew Nguyen
3 4828 4th Street
4 Irwindale, CA 91706

5 With a copy to:
6 Scott Wellman
7 Derek Banducci
8 Bimali Walganapaya
9 Wellman & Warren LLP
10 24411 Ridge Route, Suite 200
11 Laguna Hills, CA 92653
12 Telephone: (949) 580-3737
13 Facsimile: (949) 580-3738

14 **12. COURT APPROVAL**

15 12.1 Upon execution of this Consent Judgment by the Parties, ERC shall notice a
16 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
17 Consent Judgment.

18 12.2 If the California Attorney General objects to any term in this Consent Judgment,
19 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
20 prior to the hearing on the motion.

21 12.3 If this Stipulated Consent Judgment is not approved by the Court, it shall be
22 void and have no force or effect.

23 **13. EXECUTION AND COUNTERPARTS**

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

27 **14. DRAFTING**

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

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

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

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

15 **16. ENTIRE AGREEMENT, AUTHORIZATION**

16 16.1 This Consent Judgment contains the sole and entire agreement and
17 understanding of the Parties with respect to the entire subject matter herein, and any and all
18 prior discussions, negotiations, commitments and understandings related hereto. No
19 representations, oral or otherwise, express or implied, other than those contained herein have
20 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
21 herein, shall be deemed to exist or to bind any Party.

22 16.2 Each signatory to this Consent Judgment certifies that he or she is fully
23 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as
24 explicitly provided herein, each Party shall bear its own fees and costs.

25 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
26 **CONSENT JUDGMENT**

27 This Consent Judgment has come before the Court upon the request of the Parties. The
28 Parties request the Court to fully review this Consent Judgment and, being fully informed

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

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

5 (2) Make the findings pursuant to California Health and Safety Code section
6 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

7 **IT IS SO STIPULATED:**

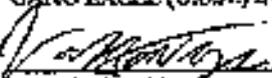
8 Dated: 12/14/, 2015

ENVIRONMENTAL RESEARCH
CENTER

9 By: 
10 Office Representative, Executive Director

11 Dated: 12/14/, 2015

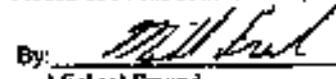
GANO EXCEL (U.S.A.) INC.

12 By: 
13 His: Director of Operations and General
14 Counsel

15 **APPROVED AS TO FORM:**

16
17 Dated: 12/14/, 2015

MICHAEL FREUND & ASSOCIATES

18 By: 
19 Michael Freund
20 Ryan Holburn
21 Attorneys for Plaintiff Environmental
22 Research Center, Inc.

23 Dated: Dec 14, 2015

WELLMAN & WARREN LLP

24 By: 
25 Scott Wellman
26 Derek Sanducci
27 Binabli Walgampaya
28 Attorneys for Defendant Gano Excel
(U.S.A.) Inc.

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ORDER AND JUDGMENT

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

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 2/4, 2016



Judge of the Superior Court

EXHIBIT A

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704
Voice: 510.541.1992 • Fax: 510.540.5543

Michael Freund, Esq.
Ryan Hoffman, Esq.

OF COUNSEL:
Denise Ferlich Hoffman, Esq.

August 29, 2014

**NOTICE OF VIOLATION 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, 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 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 Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

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

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

Gano Excel (U.S.A.) 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:

Gano Excel (USA) Inc. Sakonno – Lead

Gano Excel (USA) Inc. GanoCafé Ginseng Tongkat Ali – Lead

Gano Excel International (Canada) Inc. Gano Schokolade – Lead

Gano Excel International (Canada) Inc. GanoCafé Mocha – 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.

Exhibit A

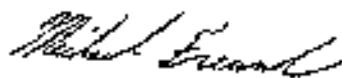
Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred 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 August 29, 2011, 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; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons who purchased the above products in the last three years. Such a resolution will prevent further unwarranted 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 Violation 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 Gano Excel (U.S.A.) Inc. and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

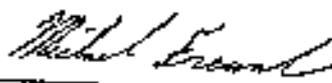
CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Gano Excel (U.S.A.) Inc.

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that 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 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: August 29, 2014



Michael Freund

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 29, 2014, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to 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
Gano Excel (U.S.A.) Inc.
4828 4th Street
Irwindale, CA 91706

Matthew Nguyen
(Gano Excel (U.S.A.) Inc.'s Registered
Agent for Service of Process)
4828 4th Street
Irwindale, CA 91706

Current President or CEO
Gano Excel (U.S.A.) Inc.
4981 Irwindale Avenue
Irwindale, CA 91706

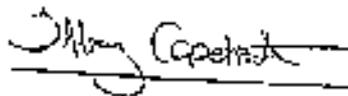
Law Office of Gene R. Moses PS
(Gano Excel (U.S.A.) Inc.'s Registered
Agent for Service of Process)
2200 Rimland Drive, Suite 115
Bellingham, WA 98226

On August 29, 2014, I electronically served the following documents: **NOTICE OF VIOLATION, 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 August 29, 2014, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on August 29, 2014, in Fort Oglethorpe, Georgia.



Tiffany Capetant

Notice of Violation of California Health & Safety Code §25249.5 et seq.
August 29, 2014
Page 5

Service List

- District Attorney, Alameda County
1225 Fallon Street, Suite 200
Oakland, CA 94612
- District Attorney, Alpine County
P.O. Box 248
Markleeville, CA 96120
- District Attorney, Amador County
708 Court Street
Jackson, CA 95862
- District Attorney, Butte County
25 Courty Center Drive, Suite 245
Chico, CA 95926
- District Attorney, Calaveras County
491 Meunier Ranch Road
San Andreas, CA 95245
- District Attorney, Colusa County
345 Fifth Street, Suite 101
Colusa, CA 95932
- District Attorney, Contra Costa County
900 West Street
Martinez, CA 94533
- District Attorney, Del Norte County
450 H Street, Room 111
Crescent City, CA 95531
- District Attorney, El Dorado County
115 Main Street
Placerville, CA 95667
- District Attorney, Fresno County
2200 Tulare Street, Suite 1000
Fresno, CA 93721
- District Attorney, Glenn County
Post Office Box 430
Wadsworth, CA 95988
- District Attorney, Humboldt County
425 5th Street, 4th Floor
Eureka, CA 95501
- District Attorney, Imperial County
940 West Main Street, Ste 102
El Centro, CA 92240
- District Attorney, Inyo County
230 W. Line Street
Bishop, CA 93314
- District Attorney, Kern County
1245 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, Lassen County
220 South Lassen Street, Ste. 8
Susanville, CA 95170
- District Attorney, Los Angeles County
210 West Temple Street, Suite 1400
Los Angeles, CA 90012
- District Attorney, Merced County
209 West Yosemite Avenue
Merced, CA 95337
- District Attorney, Marin County
3501 Civic Center Dr., Room 130
San Rafael, CA 94503
- District Attorney, Mariposa County
Post Office Box 730
Mariposa, CA 95338
- District Attorney, Mendocino County
Post Office Box 1000
Ukiah, CA 95487
- District Attorney, Merced County
130 W. Main Street
Merced, CA 95340
- District Attorney, Modoc County
204 S. Court Street, Room 202
Alturas, CA 96103-4020
- District Attorney, Mono County
Post Office Box 617
Bridgeport, CA 95311
- District Attorney, Monterey County
Post Office Box 1131
Salinas, CA 95062
- District Attorney, Napa County
931 Parkway Mall
Napa, CA 94559
- 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
10870 Jessica Center Drive, Ste 240
Roseville, CA 95678
- District Attorney, Plumas County
580 Main Street, Room 404
Quincy, CA 95671
- District Attorney, Riverside County
1960 Orange Street
Riverside, CA 92501
- District Attorney, Sacramento County
901 "G" Street
Sacramento, CA 95814
- District Attorney, San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023
- District Attorney, San Bernardino County
116 N. Mountain View Avenue
San Bernardino, CA 92415-0001
- District Attorney, San Diego County
100 West Broadway, Suite 1300
San Diego, CA 92101
- District Attorney, San Francisco County
450 Dryden Street, Suite 322
San Francisco, CA 94101
- District Attorney, San Joaquin County
222 E. Weber Ave. Rm 202
Stockton, CA 95202
- District Attorney, San Luis Obispo County
7035 Palms St, Room 450
San Luis Obispo, CA 93408
- District Attorney, San Mateo County
406 County Cir., 3rd Floor
Redwood City, CA 94063
- District Attorney, Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93106
- District Attorney, Santa Clara County
70 West Hodgson Street
San Jose, CA 95110
- District Attorney, Santa Cruz County
701 Deane Street, Room 200
Santa Cruz, CA 95060
- District Attorney, Shasta County
1355 West Street
Redding, CA 96001
- District Attorney, Sierra County
100 Hwy 457
Downsville, CA 95936
- District Attorney, Siskiyou County
Post Office Box 986
Yreka, CA 96097
- District Attorney, Solano County
678 Texas Street, Ste 4500
Fairfield, CA 94531
- District Attorney, Sonoma County
600 Administration Drive,
Route 2521
Santa Rosa, CA 95403
- District Attorney, Stanislaus County
532 12th Street, Ste 500
Modesto, CA 95136
- District Attorney, Sutter County
448 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, Tulare County
221 S. Mooney Blvd., Room 221
Visalia, CA 93291
- District Attorney, Tuolumne County
423 N. Washington Street
Sonora, CA 95370
- District Attorney, Ventura County
800 South Victoria Ave, Suite 114
Ventura, CA 93020
- District Attorney, Yolo County
301 2nd Street
Woodland, CA 95693
- District Attorney, Yuba County
174 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 Jrd 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
280 East Santa Clara Street,
15th Floor
San Jose, CA 95113

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. This means that chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as

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

damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at:
http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

Exposures to Naturally Occurring Chemicals in a Food. Certain exposures to chemicals that occur in foods naturally (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

² See Section 25501(a)(4)

HOW IS PROPOSITION 65 ENFORCED?

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65PublicComments@oehha.ca.gov.

Revised: July, 2012

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

Michael Freund & Associates

1919 Addison Street, Suite 105
Berkeley, CA 94704

Voice: 510.540.1992 • Fax: 510.540.5543

Michael Freund, Esq.
Ryan Hoffman, Esq.

OF COUNSEL
Denise Ferlich Hoffman, Esq.

November 5, 2015

**NOTICE OF VIOLATION 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, 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 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 Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

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

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

Gano Excel (U.S.A.) 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:

Gano Excel (USA) Inc. GanoCafé 3-In-1 - Lead
Gano Excel (USA) Inc. Gano Garcinia - 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.

NMD'S WHEREABOUTS**TYPE OF PLACEMENT**

Sade comes to Court from the home of her biological father, Marvin Sweetwyne, of Oakland, CA. Mr. Sweetwyne's number is 510.692.3747. Additionally, Sade's cell number is (707) 863-9597.

Date placed: June 30, 2015.

The home of a relative a non-relative extended family member was approved on N/A.

BIRTH CERTIFICATE

The undersigned Sade has a copy of her birth certificate and it was mailed to her on 11/06/2014.

INTERPRETER

| <u>Interpreter Required</u> | <u>Language</u> | <u>For Whom</u> |
|-----------------------------|-----------------|-----------------|
| N/A | | |

ATTORNEYS

| <u>Name</u> | <u>Address/ Phone</u> | <u>Representing</u> |
|----------------|--|----------------------|
| County Counsel | 1221 Oak Street Oakland, CA 94612 510.272.6700 | Child Welfare |
| Michael Freund | 1919 Addison Street, Suite 105 Berkeley, CA 94704 (510) 540-1992 | Sade L. Sweetwyne |

INDIAN CHILD WELFARE ACT STATUS

The Indian Child Welfare Act does not apply. ICWA inquiries were made by the Court on 6/4/13 and the father denied having Indian ancestry in their family history.

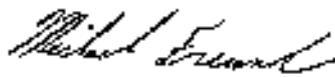
Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, requisition, handling and recommended use of these products. Consequently, the primary route of exposure to this chemical has been and continues to be through ingestion, but may have also occurred 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 November 5, 2012, 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 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 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 Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time consuming litigation.

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

Sincerely,



Michael Freund

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Gano Excel (U.S.A.) Inc. and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Gano Excel (U.S.A.) Inc.

I, Michael Freund, declare:

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

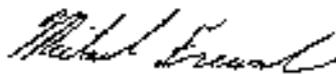
2. I am an attorney for the noticing party.

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: November 5, 2015



Michael Freund

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 November 5, 2015, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to 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
Gano Excel (U.S.A.) Inc.
4828 4th Street
Irwindale, CA 91706

Matthew Nguyen
(Gano Excel (U.S.A.) Inc.'s Registered
Agent for Service of Process)
4828 4th Street
Irwindale, CA 91706

Current President or CEO
Gano Excel (U.S.A.) Inc.
4981 Irwindale Avenue
Irwindale, CA 91706

Law Office of Gene R. Moses PS
(Gano Excel (U.S.A.) Inc.'s Registered
Agent for Service of Process)
2200 Rimland Drive, Suite 115
Bellingham, WA 98226

On November 5, 2015, 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 November 5, 2015, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following party when a true and correct copy thereof was sent via electronic mail to the party listed below:

Yolo County District Attorney
301 1st Street
Woodland, CA 95695
cfepd@yolocounty.org

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
November 5, 2015
Page 5

On November 5, 2015, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on November 5, 2015, in Fort Oglethorpe, Georgia

Phyllis Dunwoody

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

November 5, 2015

Page 6

Service List

District Attorney, Alameda County
1225 Valley Street, Suite 908
Oakland, CA 94612

District Attorney, Alameda County
P.O. Box 246
Marshallville, CA 94520

District Attorney, Amador County
708 Court House
Jackson, CA 95842

District Attorney, Butte County
25 County Center Drive, Suite 365
Oroville, CA 95961

District Attorney, Calaveras
County
645 Mountain Ranch Road
San Anselmo, CA 95249

District Attorney, Colusa County
146 F. J. Street, Suite 108
Colusa, CA 95932

District Attorney, Contra Costa
County
900 Ward Street
Martinez, CA 94530

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

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

District Attorney, Fresno County
210 Tyler Street, Suite 1060
Fresno, CA 93721

District Attorney, Glenn County
Post Office Box 430
Windsor, CA 95788

District Attorney, Humboldt
County
125 1/2 Street 4th Floor
Eureka, CA 95501

District Attorney, Inyo County
940 Main Street, Ste 102
FL Center, CA 92241

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

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

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

District Attorney, Lake County
251 N. Foster Street
Lakeport, CA 94551

District Attorney, Lassen County
210 South Lassen Street, Ste. 2
Susanville, CA 96130

District Attorney, Los Angeles
County
210 West Temple Street, Suite
11000
Los Angeles, CA 90012

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

District Attorney, Marin County
3501 Civic Center Drive, Room
139
San Rafael, CA 94903

District Attorney, Mariposa County
Post Office Box 330
Mariposa, CA 95338

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

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

District Attorney, Modoc County
204 S. Court Street, Room 202
Alturas, CA 96101-4650

District Attorney, Mono County
Post Office Box 417
Bridgeport, CA 95317

District Attorney, Monterey
County
Post Office Box 1111
Salinas, CA 95067

District Attorney, Napa County
911 Parkway Mall
Napa, CA 94559

District Attorney, Nevada County
201 Commercial Street
Nevada City, CA 95955

District Attorney, Orange County
401 West Civic Center Drive
Santa Ana, CA 92711

District Attorney, Placer County
10810 Justice Center Drive, Ste
130
Roseville, CA 95678

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

District Attorney, Riverside County
1950 Orange Street
Riverside, CA 92501

District Attorney, Sacramento
County
901 G Street
Sacramento, CA 95814

District Attorney, San Benito
County
419 Fourth Street, 2nd Floor
Holyoke, CA 95031

District Attorney, San Bernardino
County
310 N. Mountain Vista Avenue
San Bernardino, CA 92415-6005

District Attorney, San Diego
County
330 West Broadway, Suite 1700
San Diego, CA 92101

District Attorney, San Francisco
County
857 Bryant Street, Suite 702
San Francisco, CA 94103

District Attorney, San Joaquin
County
221 E. Weber Ave. Rm. 202
Stockton, CA 95222

District Attorney, San Luis Obispo
County
1113 Palm St., Room 452
San Luis Obispo, CA 93408

District Attorney, San Mateo
County
400 Energy Ctr., 3rd Floor
Redwood City, CA 94065

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

District Attorney, Santa Clara
County
70 West Hedberg Street
San Jose, CA 95110

District Attorney, Santa Cruz
County
201 Ocean Street, Room 200
Santa Cruz, CA 95060

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

District Attorney, Sierra County
PO Box 451
Dunsmuir, CA 95925

District Attorney, Siskiyou County
Post Office Box 966
Yreka, CA 96097

District Attorney, Solano County
675 Texas Street, Ste 400
Fairfield, CA 94533

District Attorney, Stanislaus County
600 Administration Drive
Room 2521
Sunnyvale, CA 95051

District Attorney, Stanislaus
County
812 22nd Street, Ste 308
Modesto, CA 95354

District Attorney, Sutter County
446 Second Street
Yuba City, CA 95991

District Attorney, Tehama County
Post Office Box 319
Fort Hall, CA 96029

District Attorney, Trinity County
Post Office Box 510
Weaverville, CA 96093

District Attorney, Tulare County
221 S. Main Street, Room 224
Visalia, CA 93291

District Attorney, Tuolumne
County
121 N. Washington Street
Susanville, CA 95325

District Attorney, Ventura County
890 South Victoria Ave., Suite 214
Ventura, CA 93009

District Attorney, Yuba County
213 Fifth Street, Suite 110
Marysville, CA 95901

Los Angeles City Attorney's Office
City Hall East
201 N. Main Street, Suite 600
Los Angeles, CA 90012

San Diego City Attorney's Office
1700 3rd Avenue, Ste 2600
San Diego, CA 92101

San Francisco, City Attorney
City Hall, Room 234
101 California Street, 11th Fl.
San Francisco, CA 94102

San Jose City Attorney's Office
200 East Santa Clara Street
- 11th Floor
San Jose, CA 95111

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. This means that chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as

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

damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at:
http://www.oehha.ca.gov/prop65/prop65_list/NewList.html.

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

Exposures to Naturally Occurring Chemicals in a Food. Certain exposures to chemicals that occur in foods naturally (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

² See Section 25501(a)(4)

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25003 of the regulations and in Title 11, sections 3100-3103. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65PublicComments@oehha.ca.gov.

Revised: July, 2012

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 26249.5, 25249.6, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

EXHIBIT A

Michael Freund & Associates

1919 Addison Street, Suite 106
Berkeley, CA 94704
Voice: 510.543.1992 • Fax: 510.540.5543

Michael Freund, Esq.
Ryan Hoffman, Esq.

OF COUNSEL
Denise Perkiel Hoffman, Esq.

August 29, 2014

**NOTICE OF VIOLATION 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, 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 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 Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

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

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

Gano Excel (U.S.A.) 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:

Gano Excel (USA) Inc. Sakanno – Lead

Gano Excel (USA) Inc. GanoCafé Ginseng Tongkat Ali – Lead

Gano Excel International (Canada) Inc. Gano Schokolade – Lead

Gano Excel International (Canada) Inc. GanoCafé Mocha – 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.

August 29, 2014

Page 2

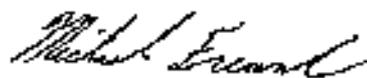
Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred 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 August 29, 2011, 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; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons who purchased the above products in the last three years. Such a resolution will prevent further unwarranted 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 Violation 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
- OELHA Summary (to Gano Excel (U.S.A.) Inc. and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Gano Excl (U.S.A.) Inc.

I, Michael Freund, declare:

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

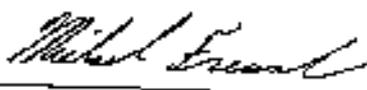
2. I am an attorney for the noticing party.

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 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(b)(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 29, 2014



Michael Freund

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 29, 2014, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to 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
Gano Excel (U.S.A.) Inc.
4828 4th Street
Irwindale, CA 91706

Matthew Nguyen
(Gano Excel (U.S.A.) Inc.'s Registered
Agent for Service of Process)
4828 4th Street
Irwindale, CA 91706

Current President or CEO
Gano Excel (U.S.A.) Inc.
4981 Irwindale Avenue
Irwindale, CA 91706

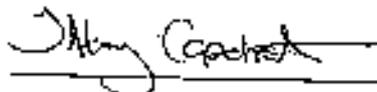
Law Office of Gene R. Moses PS
(Gano Excel (U.S.A.) Inc.'s Registered
Agent for Service of Process)
2200 Rimland Drive, Suite 115
Bellingham, WA 98226

On August 29, 2014, I electronically served the following documents: **NOTICE OF VIOLATION, 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/aid-60-day-notice>:

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

On August 29, 2014, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on August 29, 2014, in Fort Oglethorpe, Georgia.



Tiffany Capchart

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

August 29, 2014

Page 5

Service List

| | | | |
|--|--|---|---|
| District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612 | District Attorney, Los Angeles County 210 West Temple Street, Suite 1800 Los Angeles, CA 90012 | District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101 | District Attorney, Tricolome County 421 N. Washington Street Seaside, CA 95370 |
| District Attorney, Alpine County P.O. Box 248 Markleville, CA 96120 | District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637 | District Attorney, San Francisco County 850 Hyatt 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 3301 Civic Center Drive, Room 110 San Rafael, CA 94903 | District Attorney, San Joaquin County 222 E. Weber Ave. Rm 202 Stockton, CA 95202 | District Attorney, Yuba County 301 7 th Street Woodland, CA 95695 |
| District Attorney, Butte County 25 County Center Drive, Suite 213 Oroville, CA 95965 | District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95336 | District Attorney, San Luis Obispo County 1035 Palm St, Room 430 San Luis Obispo, CA 93408 | District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901 |
| District Attorney, Colavitas 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 Cir., 4 th 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 350 W. Main Street Merced, CA 95340 | District Attorney, Santa Barbara County 1122 Santa Barbara Street Santa Barbara, CA 93101 | San Diego City Attorney's Office 1200 3 rd 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 95317 | District Attorney, Santa Cruz County 701 Decan Street, Room 200 Santa Cruz, CA 95060 | San Jose City Attorney's Office 200 East Santa Clara Street, 16 th Floor San Jose, CA 95111 |
| 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 96002 | |
| 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 Downsville, CA 95936 | |
| District Attorney, Glenn County Post Office Box 430 Wadsworth, CA 95088 | 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 th 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 10010 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 93311 | District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971 | District Attorney, Stanislaus County 832 13 th 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 nd Floor Hollister, CA 95023 | District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96091 | |
| District Attorney, Lassen County 220 South Lassen Street, Ste. B Susanville, CA 96130 | District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0064 | District Attorney, Tulare County 221 S. Mooney Blvd., Room 224 Visalia, CA 93291 | |

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

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

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

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. This means that chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as

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

damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at:
http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

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

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

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

Exposures to Naturally Occurring Chemicals in a Food. Certain exposures to chemicals that occur in foods naturally (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

² See Section 25501(a)(4)

HOW IS PROPOSITION 65 ENFORCED?

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

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

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65PublicComments@oehha.ca.gov.

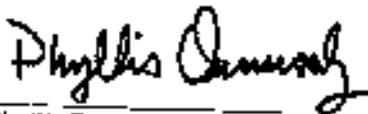
Revised: July, 2012

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

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
November 5, 2015
Page 5

On November 5, 2015, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.**; **CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on November 5, 2015, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

November 5, 2015

Page 6

Service List

District Attorney, Alameda County
7225 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
Jackson, CA 95842

District Attorney, Butte County
23 County Center Drive, Suite 243
Orville, CA 95965

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

District Attorney, Colusa County
346 Fifth Street Suite 401
Colusa, CA 95922

District Attorney, Contra Costa County
909 Ward Street
Martinez, CA 94553

District Attorney, Del Norte County
430 F Street, Room 171
Crescent City, CA 95531

District Attorney, El Dorado County
535 Main Street
Placerville, CA 95663

District Attorney, Fresno County
2229 Tulare Street, Suite 1002
Fresno, CA 93721

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

District Attorney, Humboldt County
821 5th Street 4th Floor
Eureka, CA 95501

District Attorney, Imperial County
910 West Main Street, Ste 103
El Centro, CA 92243

District Attorney, Inyo County
230 W. Line Street
Oshop, CA 93534

District Attorney, Kern County
4245 Truxtun Avenue
Bakersfield, CA 93309

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

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

District Attorney, Lassen County
320 South Lassen Street, Ste. B
Susanville, CA 96130

District Attorney, Los Angeles County
210 West Temple Street, Suite
18000
Los Angeles, CA 90017

District Attorney, Madera County
204 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 330
Mariposa, CA 95338

District Attorney, Mendocino County
Post Office Box 1000
Ukiah, CA 95484

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

District Attorney, Merced County
204 S Court Street, Room 202
Alhambra, CA 96101-4020

District Attorney, Mono County
Post Office Box 987
Bridgeport, CA 95187

District Attorney, Monterey County
Post Office Box 1931
Salinas, CA 91902

District Attorney, Napa County
938 Parkway Mall
Napa, CA 94459

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

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

District Attorney, Placer County
10880 Jurupa Center Drive, Ste
240
Roseville, CA 95678

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

District Attorney, Riverside County
3960 Orange Street
Riverside, CA 92501

District Attorney, Sacramento County
901 "G" Street
Sacramento, CA 95814

District Attorney, San Bernardino County
419 Fourth Street, 2nd Floor
Holtville, CA 95623

District Attorney, San Bernardino County
314 N. Mountain View Avenue
San Bernardino, CA 92415-0054

District Attorney, San Diego County
330 West Broadway, Suite 1400
San Diego, CA 92101

District Attorney, San Francisco County
850 Bryant Street, Suite 322
San Francisco, CA 94103

District Attorney, San Joaquin County
222 E. Weber Ave., Rm. 203
Stockton, CA 95202

District Attorney, San Luis Obispo County
1035 Park St., Room 430
San Luis Obispo, CA 93408

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

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

District Attorney, Santa Clara County
70 West Hedding Street
San Jose, CA 95110

District Attorney, Santa Cruz County
70 - Ocean Street, Room 300
Santa Cruz, CA 95060

District Attorney, Stanislaus County
1315 West Street
Redding, CA 96001

District Attorney, Sierra County
PO Box 457
Orleansville, CA 95976

District Attorney, Siskiyou County
Post Office Box 684
Yreka, CA 96097

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

District Attorney, Sonoma County
600 Administration Drive,
Room 2123
Santa Rosa, CA 95405

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

District Attorney, Sutter County
446 Second Street
Yuba City, CA 95993

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

District Attorney, Trinity County
Post Office Box 510
Weaverville, CA 96093

District Attorney, Tubero County
324 S. Main Street, Room 214
Weaverville, CA 96093

District Attorney, Tuolumne County
423 N. Washington Street
Sutter, CA 95270

District Attorney, Ventura County
800 South Victoria Ave., Suite 314
Ventura, CA 93009

District Attorney, Yuba County
215 Fifth Street, Suite 153
Marysville, CA 95901

Los Angeles City Attorney's Office
City Hall East
200 N. Main Street, Suite 402
Los Angeles, CA 90012

San Diego City Attorney's Office
1200 Int'l Avenue, Ste 1620
San Diego, CA 92161

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 Cruz Street,
16th Floor
San Jose, CA 95113

27 CCR Appendix A

Appendix A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY

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

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

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Rcgs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

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

http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

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

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and

reasonable." This means that the warning must: (1) clearly say that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

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

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

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

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

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

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

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

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

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at:

<http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

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

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

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

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off- premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;

- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

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

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties any reimbursement for costs and attorney's fees, if the notice was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$58500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator.

The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

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

The notice is reproduced here:

Date: November 5, 2015

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.

Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108

Phone number: 619-500-3090

SPECIAL COMPLIANCE PROCEDURE

PROOF OF COMPLIANCE

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

1. You have actually taken the corrective steps that you have certified in this form
2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice
3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.
4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

The alleged violation is for an exposure to: (check one)

Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

IMPORTANT NOTES:

1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.
2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Date: November 5, 2015

Name of Noticing Party or attorney for Noticing Party: Environmental Research Center, Inc.
Address: 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108
Phone number: 619-500-3090

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
- Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately its placement on my premises; OR
- Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

Certification

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

Signature of alleged violator or authorized representative Date

Name and title of signatory

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS. . .

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

Revised: May 2014

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

² See Section 25501(a)(4).

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

HISTORY

1. New Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).
2. Amendment filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).
3. Change without regulatory effect renumbering title 22, section 12903 and Appendix A to title 27, section 25903 and Appendix A, including amendment of appendix, filed 6-18-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 25).
4. Amendment filed 11-19-2012; operative 12-19-2012 (Register 2012, No. 47).
5. Amendment of appendix and Note filed 11-19-2014; operative 1-1-2015 (Register 2014, No. 47).

This database is current through 9/18/15 Register 2015, No. 38

27 CCR Appendix A, 27 CA ADC Appendix A