

MICHAEL FREUND  
ATTORNEY AT LAW  
1915 ADDISON STREET  
BERKELEY, CALIFORNIA 94704-1101

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

June 29, 2010

Re: Notice of Violation Against Usana Health Sciences, Inc. for Violation of California Health & Safety Code Section 25249.6

Dear Prosecutors:

I represent the Environmental Research Center ("ERC"), a non-profit California corporation whose mission is to safeguard the public from health hazards that impact families, workers and the environment. ERC is dedicated to reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and encouraging corporate responsibility. ERC is located at 5694 Mission Center Road, # 199, San Diego, CA 92108. Through this Notice of Violation, ERC seeks to reduce exposure to the public from lead contained in the named products manufactured and distributed by Usana Health Sciences, Inc.

This letter constitutes notification that Usana Health Sciences, Inc., located at 3838 West Parkway Blvd., Salt Lake City, UT 84120 has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code).

In particular, this company has manufactured and distributed products which have exposed and continue to expose numerous individuals within California to lead. Lead was listed pursuant to Proposition 65 as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. Lead was listed pursuant to Proposition 65 as a carcinogen on October 1, 1992. The time period of these violations commenced one year after the listed dates above. The primary route of exposure has been oral through ingestion.

Usana Health Sciences is exposing people to lead from the following products: Usana Health Sciences Optimizers Ginko-PS; Usana Health Sciences Optimizers Procosa II; Usana Optimizers Phytoestrin; and Usana Health Sciences Rev3 Energy Surge Pack.

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. Usana Health Sciences, Inc. is in violation of Proposition 65 because the company failed to provide a warning to persons using their products that they are being exposed to lead. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing people to lead, without first providing clear and reasonable warning. (Health and Safety Code section 25249.6.) The method of warning should be a warning that appears on the product's label. 22 C.C.R. section 12601 (b)(1) (A).

Proposition 65 requires that notice and intent to be given to a violator 60-days before the suit is filed. With this letter, ERC gives notice of the alleged violation to the noticed party and

the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to ERC from information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, and referenced as Appendix A, has been provided to the noticed party.

Based on the allegations set forth in this Notice, ERC intends to file a citizen enforcement action against Usana Health Sciences, Inc. unless the company agrees in an enforceable written instrument to: (1) reformulate these products so as to eliminate further lead exposures; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this Notice, ERC will focus its efforts in seeking a constructive resolution of this matter. Such resolution will avoid both further unwarned consumer exposures to lead and expensive and time-consuming litigation.

If you have any questions, please contact my office at your earliest convenience.

Sincerely,



Michael Freund

cc: Chris Heptinstall, ERC  
Karen Evans, ERC

## CERTIFICATE OF MERIT

### Health and Safety Code Section 25249.7 (d)

I, Michael Freund hereby declare:

1. This Certificate of Merit accompanies the Notice of Violation in which it is alleged that the party identified in the Notice has violated Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party Environmental Research Center ("ERC"). ERC is dedicated to reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and encouraging corporate responsibility. The Notice of Violation alleges that the party identified has exposed persons in California to lead from products that it manufactures and distributes. Please refer to the Notice of Violation for additional details regarding the alleged violations.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action. In particular, I have consulted with the laboratory that conducted the testing to determine the concentration of lead in the products identified in the Notice of Violation and I have relied on the testing results. The testing was conducted by a reputable testing laboratory with substantial experience in testing for lead. These facts, studies or other data derived through this investigation overwhelmingly demonstrate that the party identified in the Notice of Violation exposes persons to lead through oral exposure (ingestion).
4. Based on my consultation with the laboratory, the results of the laboratory testing, as well as published studies on lead, it is clear that there is sufficient evidence that human

exposures exist from exposure to the products from the noticed party. Furthermore, as a result of the above, I have concluded that 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 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. The copy of this Certificate of Merit served on the California Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code Section 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: June 27, 2010

  
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Michael Freund  
Attorney for Environmental Research Center

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action; my business address is 1915 Addison Street, Berkeley, California 94704. On June 29, 2010 I served the within:

Notice of Violation and Certificate of Merit (Supporting documentation pursuant to 11 CCR section 3102 sent to Attorney General only)

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Oakland, California to said parties addressed as follows:

See Attached Service List

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct.

Executed on June 29, 2010 at Berkeley, California.



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Michael Freund

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

District Attorney of Glenn County  
PO Box 430  
Willows, CA 95988

District Attorney of Marin County  
3501 Civic Center Dr., Room 130  
San Rafael, CA 94903

District Attorney of Colusa County  
547 Market Street  
Colusa, CA 95932

District Attorney of Kings County  
1400 West Lacey  
Hanford, CA 93239

District Attorney of Mono County  
PO Box 617  
Bridgeport, CA 93517

District Attorney of Contra Costa  
County  
627 Ferry Street  
Martinez, CA 94553

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

District Attorney of Mariposa County  
PO Box 730  
Mariposa, CA 95338

District Attorney of Alpine County  
PO Box 248  
Markleeville, CA 96120

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

District Attorney of Monterey County  
230 Church Street, Bdg. 2  
Salinas, CA 93901

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

District Attorney of Imperial County  
939 Main Street  
El Centro, CA 92243

District Attorney of Mendocino County  
PO Box 1000  
Ukiah, CA 95482

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

District Attorney of Lassen County  
220 S. Lassen St., Ste 8  
Susanville, CA 96130

District Attorney of Napa County  
931 Parkway Mall  
Napa, CA 94559

District Attorney of Butte County  
25 County Center Drive  
Oroville, CA 95965

District Attorney of Inyo County  
PO Drawer D  
Independence, CA 93526

District Attorney of Merced County  
2222 "M" Street  
Merced, CA 95340

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

District Attorney of Los Angeles County  
210 W. Temple Street, Room 345  
Los Angeles, CA 90012

District Attorney of Nevada County  
110 Union Street  
Nevada City, CA 95959-2503

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

District Attorney of Madera County  
209 West Yosemite Ave.  
Madera, CA 93637

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

District Attorney of Fresno County  
2220 Tulare Street, # 1000  
Fresno, CA 93721

District Attorney of Kern County  
1215 Truxtun Ave.  
Bakersfield, CA 93301

District Attorney of Modoc County  
204 S. Court Street  
Alturas, CA 96101-4020

District Attorney of Placer County  
2501 North Lake Blvd.  
Tahoe City, CA 96145

District Attorney of San Mateo County  
400 County Ctr., 3<sup>rd</sup> Floor  
Redwood City, CA 94063

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

District Attorney of San Bernardino Cty  
316 N. Mountain View Ave.  
San Bernardino, CA 92415

District Attorney of Sierra County  
Courthouse, PO Box 457  
Donieville, CA 95936

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

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

District Attorney of Santa Barbara  
County  
1105 Santa Barbara Street  
Santa Barbara, 93101

District Attorney of Tehama County  
PO Box 519  
Red Bluff, CA 96080

District Attorney of San Diego County  
330 West Broadway, Suite 1320  
San Diego, 92101

District Attorney of Siskiyou County  
PO Box 986  
Yreka, CA 96097

District Attorney of Yolo County  
301 Second Street  
Woodland, CA 95695

District Attorney of Riverside County  
4075 Main Street  
Riverside, CA 92501

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

District Attorney of Trinity County  
PO Box 310  
11 Court Street  
Weaverville, CA 96093

District Attorney of San Francisco  
County  
850 Bryant Street, Room 325  
San Francisco, CA 94103

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

District Attorney of Yuba County  
215 Fifth Street  
Marysville, CA 95901

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

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

District Attorney of Tulare County  
221 S. Mooney Ave., Room 224  
Visalia, CA 93291

District Attorney of San Joaquin County  
PO Box 990  
Stockton, CA 95201

District Attorney of Sonoma County  
600 Administration Drive, Room 212J  
Santa Rosa, CA 95403

District Attorney of Tuolumne County  
423 No. Washington Street  
Sonora, CA 95370

District attorney of San Luis Obispo  
County  
1050 Monterey St., Room 450  
San Luis Obispo, CA 93408

District Attorney of Shasta County  
1525 Court Street, Third Floor  
Redding, CA 96001-1632

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

District Attorney of San Benito County  
419 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023

District Attorney of Stanislaus County  
800 11<sup>th</sup> Street, Room 200  
PO Box 442  
Modesto, CA 95353

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

San Diego City Attorney's Office  
1200 3<sup>rd</sup> Ave. # 1620  
San Diego, CA 92101

San Francisco City Attorney's Office  
City Hall, Room 234  
San Francisco, CA 94102

California Attorney General's Office  
Attn: Proposition 65 Coordinator  
1515 Clay Street, Suite 2000  
PO Box 70550  
Oakland, CA 94612

Karen A. Evans, General Counsel  
Environmental Research Center  
Law Office of Karen A. Evans.  
4218 Biona Place  
San Diego, CA 92116

David Wentz, CEO  
Usana Health Sciences, In.  
3838 West Parkway Blvd.  
Salt Lake City, UT 84120