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18 Attorneys for Defendant
19 GANO EXCEL (U.S.A.) INC.

20 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
21 **COUNTY OF ALAMEDA**

22 **ENVIRONMENTAL RESEARCH**
23 **CENTER, a California non-profit**
24 **corporation**

25 **Plaintiff,**

26 **vs.**

27 **GANO EXCEL (U.S.A.) INC. and DOES**
28 **1-100**

Defendants.

CASE NO. RG14752641

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: December 26, 2014

Trial Date: None set

1. 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 Schokolade, (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.
28

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
 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
 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 Walgampaya
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:

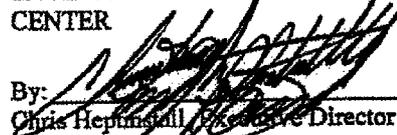
2 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
3 equitable settlement of all matters raised by the allegations of the Amended Complaint, that the
4 matter has been diligently prosecuted, and that the public interest is served by such settlement; and

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:**

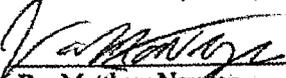
8 Dated: 12/14, 2015

ENVIRONMENTAL RESEARCH
CENTER

By: 
Chris Hepburn, Executive Director

9
10 Dated: 12/14, 2015

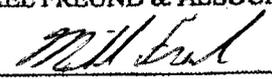
GANO EXCEL (U.S.A.) INC.


By: Matthew Nguyen
Its: Director of Operations and General
Counsel

15 **APPROVED AS TO FORM:**

16
17 Dated: 12/14, 2015

MICHAEL FREUND & ASSOCIATES

By: 
Michael Freund
Ryan Hoffman
Attorneys for Plaintiff Environmental
Research Center, Inc.

18
19
20
21
22 Dated: Dec. 14, 2015

WELLMAN & WARREN LLP

By: 
Scott Wellman
Derek Banducci
Bimali Walgampaya
Attorneys for Defendant Gano Excel
(U.S.A.) Inc.

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: _____, 2015

Judge of the Superior Court

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EXHIBIT A

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 Ferkich 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.

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 unwarned consumer exposures to the identified chemicals, as well as an expensive and time consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of 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

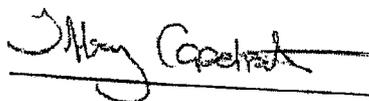
Law Office of Gene R. Moses PS
(Gano Excel (U.S.A.) Inc.'s Registered
Agent for Service of Process)
2200 Rimland Drive, Suite 115
Bellingham, WA 98226

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 Capehart

Service List

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

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 P65Public.Comments@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 Ferkich 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.

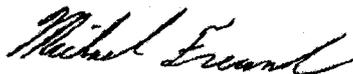
Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to this chemical has been and continues to be through ingestion, but may have also occurred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

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least 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 2nd 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

Service List

- District Attorney, Alameda County
1225 Fallon Street, Suite 900
Oakland, CA 94612
- District Attorney, Alpine County
P.O. Box 248
Markleeville, CA 96120
- District Attorney, Amador County
708 Court Street
Jackson, CA 95642
- District Attorney, Butte County
25 County Center Drive, Suite 245
Oroville, CA 95965
- District Attorney, Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249
- District Attorney, Colusa County
346 Fifth Street Suite 101
Colusa, CA 95932
- District Attorney, Contra Costa County
900 Ward Street
Martinez, CA 94553
- District Attorney, Del Norte County
450 H Street, Room 171
Crescent City, CA 95531
- District Attorney, El Dorado County
515 Main Street
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- District Attorney, Fresno County
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Fresno, CA 93721
- District Attorney, Glenn County
Post Office Box 430
Willows, CA 95988
- District Attorney, Humboldt County
825 5th Street 4th Floor
Eureka, CA 95501
- District Attorney, Imperial County
940 West Main Street, Ste 102
El Centro, CA 92243
- District Attorney, Inyo County
230 W. Line Street
Bishop, CA 93514
- District Attorney, Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301
- District Attorney, Kings County
1400 West Lacey Boulevard
Hanford, CA 93230
- District Attorney, Lake County
255 N. Forbes Street
Lakeport, CA 95453
- District Attorney, Lassen County
220 South Lassen Street, Ste. 8
Susanville, CA 96130
- District Attorney, Los Angeles County
210 West Temple Street, Suite 18000
Los Angeles, CA 90012
- District Attorney, Madera County
209 West Yosemite Avenue
Madera, CA 93637
- District Attorney, Marin County
3501 Civic Center Drive, Room 130
San Rafael, CA 94903
- District Attorney, Mariposa County
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Mariposa, CA 95338
- District Attorney, Mendocino County
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Ukiah, CA 95482
- District Attorney, Merced County
550 W. Main Street
Merced, CA 95340
- District Attorney, Modoc County
204 S Court Street, Room 202
Alturas, CA 96101-4020
- District Attorney, Mono County
Post Office Box 617
Bridgeport, CA 93517
- District Attorney, Monterey County
Post Office Box 1131
Salinas, CA 93902
- 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
10810 Justice Center Drive, Ste 240
Roseville, CA 95678
- District Attorney, Plumas County
520 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 Benito County
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Hollister, CA 95023
- District Attorney, San Bernardino County
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San Bernardino, CA 92415-0004
- District Attorney, San Diego County
330 West Broadway, Suite 1300
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. 202
Stockton, CA 95202
- District Attorney, San Luis Obispo County
1035 Palm St, Room 450
San Luis Obispo, CA 93408
- District Attorney, San Mateo County
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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
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- District Attorney, Shasta County
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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 P65Public.Comments@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.