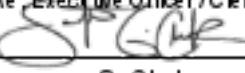


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FILED
Superior Court of California
County of Alameda

01/22/2026

Chad Fluke, Executive Officer/Clerk of the Court
By:  Deputy
S. Clark

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Attorney for Defendant Prime Hydration LLC

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

**ENVIRONMENTAL RESEARCH
CENTER, INC., a California non-profit
corporation**

vs.

**PRIME HYDRATION LLC and DOES 1-
100**

Defendants.

CASE NO. 25CV139744

**~~PROPOSED~~ STIPULATED
CONSENT JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: August 27, 2025
Trial Date: None set

1. INTRODUCTION

1.1 On August 27, 2025, Plaintiff Environmental Research Center, Inc. (“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 Prime Hydration LLC (“Prime”) and Does 1-100. In this action,
2 ERC alleges that a number of products manufactured, distributed, or sold by Prime contain
3 lead and/or mercury, chemicals listed under Proposition 65 as carcinogens and/or reproductive
4 toxins, and expose consumers to these chemicals at a level requiring a Proposition 65 warning.
5 These products (referred to hereinafter individually as a “Covered Product” or collectively as
6 “Covered Products”) are: (1) Prime Hydration Drink Strawberry Watermelon (lead), (2) Prime
7 Hydration Drink Meta Moon (lead), (3) Prime Hydration Drink Ice Pop (lead), (4) Prime
8 Hydration Drink Blue Raspberry (lead, mercury), (5) Prime Energy Drink Strawberry
9 Watermelon (lead), (6) Prime Energy Drink Lemon Lime (lead), (7) Prime Energy Drink
10 Orange Mango (lead), and (8) Prime Hydration Drink Glowberry (lead); (9) Prime Hydration
11 Drink Orange (lead), (10) Prime Hydration Drink Tropical Punch (lead, mercury), (11) Prime
12 Hydration Drink Lemonade (lead), (12) Prime Energy Drink Blue Raspberry (lead), (13) Prime
13 Energy Drink Ice Pop (lead, mercury), (14) Prime Energy Drink Tropical Punch (lead).

14 Prime Hydration Drink Blue Raspberry, Prime Hydration Drink Tropical Punch, and
15 Prime Energy Drink Ice Pop may also be referred to as “Mercury Covered Products.”

16 **1.2** ERC and Prime are hereinafter referred to individually as a “Party” or
17 collectively as the “Parties.”

18 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
19 causes, helping safeguard the public from health hazards by reducing the use and misuse of
20 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
21 and encouraging corporate responsibility.

22 **1.4** For purposes of this Stipulated Consent Judgment (“Consent Judgment”), the
23 Parties agree that Prime is a business entity that has employed ten or more persons at all times
24 relevant to this action, and qualifies as a “person in the course of doing business” within the
25 meaning of Proposition 65. Prime manufactures, distributes, and/or sells the Covered Products.

26 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
27 dated November 1, 2023, November 21, 2023, and March 27, 2024 that were served on the
28 California Attorney General, other public enforcers, and Prime (“Notices”). True and correct

1 copies of the 60-Day Notices dated November 1, 2023, November 21, 2023, and March 27,
2 2024 are attached hereto as **Exhibits A, B and C** and each is incorporated herein by reference.
3 More than 60 days have passed since the Notices were served on the Attorney General, public
4 enforcers, and Prime and no designated governmental entity has filed a Complaint against
5 Prime with regard to the Covered Products or the alleged violations.

6 **1.6** ERC's Notices and Complaint allege that use of the Covered Products by
7 California consumers exposes them to lead and/or mercury without first receiving clear and
8 reasonable warnings from Prime, which is in violation of California Health and Safety Code
9 section 25249.6.

10 **1.7** Prime denies all material allegations contained in the Notices and Complaint.

11 **1.8** The Parties have entered into this Consent Judgment in order to settle,
12 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
13 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute
14 or be construed as an admission by any of the Parties or by any of their respective officers,
15 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
16 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
17 issue of law, or violation of law.

18 **1.9** Except as expressly set forth herein, nothing in this Consent Judgment shall
19 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
20 any current or future legal proceeding unrelated to these proceedings.

21 **1.10** The Effective Date of this Consent Judgment is the date on which it is entered
22 as a Judgment by this Court.

23 **2. JURISDICTION AND VENUE**

24 For purposes of this Consent Judgment and any further court action that may become
25 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
26 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
27 over Prime as to the acts alleged in the Complaint, that venue is proper in Alameda County, and
28 that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all

1 claims up through and including the Effective Date that were or could have been asserted in this
2 action based on the facts alleged in the Notices and Complaint.

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

4 **3.1** Beginning on the Effective Date, Prime shall be permanently enjoined from
5 manufacturing for sale in the State of California, “Distributing into the State of California,” or
6 directly selling in the State of California, any Covered Product that exposes a person to a
7 “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day and any Mercury
8 Covered Product that exposes a person to a “Daily Mercury Exposure Level” of more than 0.3
9 micrograms of mercury per day unless it meets the warning requirements under Section 3.2.

10 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
11 of California” shall mean to directly ship a Covered Product into California for sale in
12 California or to sell a Covered Product to a distributor that Prime knows or has reason to know
13 will sell the Covered Product in California.

14 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
15 Level” shall be measured in micrograms, and shall be calculated using the following formula:
16 micrograms of lead per gram of product, multiplied by grams of product per serving of the
17 product (using the largest serving size appearing on the product label), multiplied by servings
18 of the product per day (using the largest number of recommended daily servings appearing on
19 the label), which equals micrograms of lead exposure per day. If the label contains no
20 recommended daily servings, then the number of recommended daily servings shall be one.

21 **3.1.3** For purposes of this Consent Judgment, the “Daily Mercury Exposure
22 Level” shall be measured in micrograms, and shall be calculated using the following formula:
23 micrograms of mercury 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 recommended daily servings appearing on
26 the label), which equals micrograms of mercury exposure per day. If the label contains no
27 recommended daily servings, then the number of recommended daily servings shall be one.

28 **3.1.4** In calculating the Daily Lead Exposure Level for a Covered Product,

1 Prime shall be allowed to deduct the amount of lead which is deemed “naturally occurring” in
2 any ingredient listed in **Table 1** that is contained in that Covered Product under the following
3 conditions: For the first three (3) years that Prime claims entitlement to a “naturally occurring”
4 allowance, Prime shall provide ERC with the following information: (a) Prime must produce to
5 ERC a written list of each ingredient in the Covered Product, and the amount, measured in
6 grams, of each such ingredient contained therein, for which a “naturally occurring” allowance is
7 claimed; (b) Prime must provide ERC with documentation of laboratory testing, conducted
8 during the year for which the “naturally occurring” allowance is claimed, that complies with
9 Sections 3.4.3 and 3.4.4 and that shows the amount of lead, if any, contained in any ingredient
10 listed in **Table 1** that is contained in the Covered Product and for which Prime intends to deduct
11 “naturally occurring” lead; (c) If the laboratory testing reveals the presence of lead in any
12 ingredient listed in **Table 1** that is contained in the Covered Product, Prime shall be entitled to
13 deduct the amount of lead contained in each such ingredient, up to the full amount of the
14 allowance for that ingredient as listed in **Table 1** but not to exceed the total amount of lead
15 actually contained in that ingredient in the Covered Product; and (d) If the Covered Product does
16 not contain an ingredient listed in **Table 1**, Prime shall not be entitled to a deduction for
17 “naturally occurring” lead in the Covered Product for that ingredient.

18 The information required by Sections 3.1.4 (a) and (b) shall be provided to ERC within
19 thirty (30) days of the first anniversary of the Effective Date, and annually within thirty (30) days
20 of the anniversary of the Effective Date, for the first (3) three years that Prime shall claim
21 entitlement to the “naturally occurring” allowance. After the first (3) three years, ERC may
22 request this information, no more than once per year thereafter, and Prime shall provide the
23 requested information to ERC within thirty (30) days of such request

24 **TABLE 1**

| 25 INGREDIENTS | 26 ALLOWANCES FOR LEAD |
|------------------------|-------------------------------|
| 27 Calcium (elemental) | 28 Up to 0.8 micrograms/gram |
| 29 Ferrous Fumarate | 30 Up to 0.4 micrograms/gram |
| 31 Zinc Oxide | 32 Up to 8.0 micrograms/gram |

| | | |
|---|---------------------|-----------------------------|
| 1 | Magnesium Oxide | Up to 0.4 micrograms/gram |
| 2 | Magnesium Carbonate | Up to 0.332 micrograms/gram |
| 3 | Magnesium Hydroxide | Up to 0.4 micrograms/gram |
| 4 | Zinc Gluconate | Up to 0.8 micrograms/gram |
| 5 | Potassium Chloride | Up to 1.1 micrograms/gram |
| 6 | Cocoa Powder | Up to 1.0 microgram/gram |
| 7 | Chocolate Liquor | Up to 1.0 microgram/gram |
| 8 | Cocoa Butter | Up to 0.1 micrograms/gram |

3.2 Clear and Reasonable Warnings

If Prime is required to provide a warning pursuant to Section 3.1, one of the following warnings must be utilized (“Warning”):

OPTION 1:

WARNING: Consuming this product can expose you to chemicals including [lead] [and] [mercury] which is [are] known to the State of California to cause [cancer and] birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov/food.

OR

OPTION 2:



WARNING: [Cancer and] Reproductive Harm -www.P65Warnings.ca.gov/food

OR

OPTION 3:

WARNING: Can expose you to [lead][mercury] a [carcinogen and] reproductive toxicant. See www.P65Warnings.ca.gov/food.

For all Warning options, the Warning shall begin either with the word “**WARNING**,” as indicated above, or the words “**CA WARNING**” or “**CALIFORNIA WARNING**,” in all capital letters and bold print. Prime shall use the phrase “cancer and” in the Option 1 and Option 2

1 Warnings or “carcinogen and” in the Option 3 Warning (each referred to individually as a
2 “Cancer Phrase”) if Prime has reason to believe that the “Daily Lead Exposure Level” is greater
3 than 15 micrograms of lead as determined pursuant to the quality control methodology set forth in
4 Section 3.4 or another Proposition 65 chemical is present which may require a cancer warning. As
5 identified in the brackets, the warning shall appropriately reflect whether there is lead, mercury
6 (only for the Mercury Covered Products), or both chemicals (where applicable) present in each of
7 the Covered Products, but if there is a chemical present at a level that requires a cancer warning,
8 the chemical requiring use of the Cancer Phrase in the Warning shall always be identified.

9 The Option 2 Warning may only be used until January 1, 2028. Any product that is
10 manufactured and labeled prior to January 1, 2028, may use the Option 2 Warning regardless of
11 when the product is sold to a consumer. For the Option 2 Warning, a symbol consisting of a black
12 exclamation point in a yellow equilateral triangle with a bold black outline shall be placed to the
13 left of the text of the Warning, in a size no smaller than the height of the word “**WARNING**.
14 Where the sign, label or shelf tag for the product is not printed using the color yellow, the symbol
15 may be printed in black and white.

16 The Warning shall be securely affixed to or printed upon the label of each Covered
17 Product and it must be set off from other surrounding information and enclosed in a box. In
18 addition, for any Covered Product sold over the internet, the Warning shall appear on the
19 checkout page when a California delivery address is indicated for any purchase of any Covered
20 Product. An asterisk or other identifying method must be utilized to identify which products on
21 the checkout page are subject to the Warning. In no event shall any internet or website
22 Warning be contained in or made through a link.

23 The Warning shall be at least the same size as the largest of any other health or safety
24 warnings also appearing on the website or on the label and in no event shall an Option 2 or Option
25 3 Warning be in a type size smaller than 6-point type. No statements intended to or likely to have
26 the effect of diminishing the impact of the Warning on the average lay person shall accompany
27 the Warning. Further no statements may accompany the Warning that state or imply that the
28 source of the listed chemical has an impact on or results in a less harmful effect of the listed

1 chemical.

2 Prime must display the above Warning with such conspicuousness, as compared with
3 other words, statements or designs on the label, or on its website, if applicable, to render the
4 Warning likely to be read and understood by an ordinary individual under customary conditions
5 of purchase or use of the product. Where a sign or label used to provide the Warning for a
6 Covered Product includes consumer information about the Covered Product in a language other
7 than English, the Warning must also be provided in that language in addition to English.

8 For purposes of this Consent Judgment, the term “label” means a display of written,
9 printed or graphic material that is printed on or affixed to a Covered Product or its immediate
10 container or wrapper.

11 **3.3 Conforming Covered Products**

12 With respect to exposure to lead, a Conforming Lead Covered Product is a Covered
13 Product for which the “Daily Lead Exposure Level” is no greater than 0.5 micrograms of lead per
14 day as determined by the exposure methodology set forth in Section 3.1.2, Section 3.1.4, and the
15 quality control methodology described in Section 3.4, and that is not known by Prime to contain
16 other chemicals that violate Proposition 65’s safe harbor thresholds. With respect to mercury, a
17 Conforming Mercury Covered Product is a Mercury Covered Product for which the “Daily
18 Mercury Exposure Level” is no greater than 0.3 micrograms of mercury per day as determined by
19 the exposure methodology set forth in Section 3.1.3 and the quality control methodology
20 described in Section 3.4, and that is not known by Prime to contain other chemicals that violate
21 Proposition 65’s safe harbor thresholds.

22 **3.4 Testing and Quality Control Methodology**

23 **3.4.1** Beginning within one year of the Effective Date, Prime shall arrange for
24 lead and mercury testing of the Covered Products at least once a year for a minimum of three
25 consecutive years by arranging for testing of three (3) randomly selected samples of each of
26 the Covered Products, in the form intended for sale to the end-user, which Prime intends to sell
27 or does manufacture for sale in California, directly sell to a consumer in California or
28 “Distribute into the State of California.” If tests conducted pursuant to this Section

1 demonstrate that no Warning is required for a Covered Product during each of three
2 consecutive years, then the testing requirements of this Section will no longer be required as to
3 that Covered Product.

4 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level” and/or the
5 “Daily Mercury Exposure Level,” the highest lead and/or mercury detection result of the three
6 (3) randomly selected samples of the Covered Products will be controlling.

7 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
8 laboratory method that complies with the performance and quality control factors appropriate
9 for the method used, including limit of detection and limit of quantification, sensitivity,
10 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
11 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005
12 mg/kg.

13 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
14 independent third party laboratory certified by the California Environmental Laboratory
15 Accreditation Program or an independent third-party laboratory that is registered with the
16 United States Food & Drug Administration.

17 **3.4.5** Nothing in this Consent Judgment shall limit Prime’s ability to conduct,
18 or require that others conduct, additional testing of the Covered Products, including the raw
19 materials used in their manufacture.

20 **3.4.6** Within three (3) years of the Effective Date, and upon written request
21 from ERC no more than once a year, Prime will share, on a confidential basis, its most recent
22 lab reports for the Covered Products confirming compliance with Proposition 65.

23 **3.5** Nothing in Section 3 of this Consent Judgment shall prevent or preclude ERC
24 from obtaining and relying upon its own testing for purposes of enforcement, so long as such
25 testing meets the requirements of Sections 3.4.3 and 3.4.4. Nothing in Section 3.4 of this
26 Consent Judgment is intended by either party to set a precedent for the level of lead, mercury,
27 or other chemicals that is permissible in consumer products under Proposition 65.

28 ///

1 **4. SETTLEMENT PAYMENT**

2 **4.1** In full satisfaction of all potential civil penalties, additional settlement
3 payments, attorney's fees, and costs, Prime shall make a total payment of \$150,000.00 ("Total
4 Settlement Amount") to ERC within 20 days of the Effective Date ("Due Date"). Prime shall
5 make this payment by wire transfer to ERC's account, for which ERC will give Prime the
6 necessary account information. The Total Settlement Amount shall be apportioned as follows:

7 **4.2** \$35,000.00 shall be considered a civil penalty pursuant to California Health and
8 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$26,250.00) of the civil penalty to
9 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
10 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
11 Code section 25249.12(c). ERC will retain the remaining 25% (\$8,750.00) of the civil penalty.

12 **4.3** \$23,730.57 shall be distributed to ERC as reimbursement to ERC for reasonable
13 costs incurred in bringing this action.

14 **4.4** \$27,150.00 shall be distributed to Lozeau Drury LLP as reimbursement of
15 ERC's attorney fees, while \$64,119.43 shall be distributed to ERC for its in-house legal fees.
16 Except as explicitly provided herein, each Party shall bear its own fees and costs.

17 **4.5** In the event that Prime fails to remit the Total Settlement Amount owed under
18 Section 4 of this Consent Judgment on or before the Due Date, Prime shall be deemed to be in
19 material breach of its obligations under this Consent Judgment. ERC shall provide written
20 notice of the delinquency to Prime via electronic mail. If Prime fails to deliver the Total
21 Settlement Amount within five (5) days from the written notice, the Total Settlement Amount
22 shall accrue interest at the statutory judgment interest rate provided in the California Code of
23 Civil Procedure section 685.010, and Prime shall forfeit any release provisions in Section 8
24 that are for the benefit of Prime and the Released Parties (as defined in Section 8.1) until such
25 time as the Total Settlement Amount is paid in full. Additionally, Prime agrees to pay ERC's
26 reasonable attorneys' fees and costs for any efforts to collect the payment due under this
27 Consent Judgment.

28 ///

1 **5. MODIFICATION OF CONSENT JUDGMENT**

2 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
3 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
4 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a
5 modified consent judgment.

6 **5.2** If Prime seeks to modify this Consent Judgment under Section 5.1, then Prime
7 must provide written notice to ERC of its intent (“Notice of Intent”). If ERC seeks to meet and
8 confer regarding the proposed modification in the Notice of Intent, then ERC must provide
9 written notice to Prime within thirty (30) days of receiving the Notice of Intent. If ERC
10 notifies Prime in a timely manner of ERC’s intent to meet and confer, then the Parties shall
11 meet and confer in good faith as required in this Section. The Parties shall meet in person, via
12 remote meeting, or by telephone within thirty (30) days of ERC’s notification of its intent to
13 meet and confer. Within thirty (30) days of such meeting, if ERC disputes the proposed
14 modification, ERC shall provide to Prime a written basis for its position. The Parties shall
15 continue to meet and confer for an additional thirty (30) days in an effort to resolve any
16 remaining disputes. Should it become necessary, the Parties may agree in writing to different
17 deadlines for the meet-and-confer period.

18 **5.3** In the event that Prime initiates or otherwise requests a modification under
19 Section 5.1, and the meet and confer process leads to a joint motion or joint application for a
20 modification of the Consent Judgment, Prime shall reimburse ERC its costs and reasonable
21 attorney’s fees for the time spent in the meet-and-confer process and filing and arguing the
22 motion or application.

23 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT
24 JUDGMENT**

25 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
26 terminate this Consent Judgment.

27 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
28 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall

1 inform Prime in a reasonably prompt manner of its test results, including information sufficient
2 to permit Prime to identify the Covered Products at issue. Prime shall, within thirty (30) days
3 following such notice, provide ERC with testing information, from an independent third-party
4 laboratory meeting the requirements of Sections 3.4.3 and 3.4.4, demonstrating Prime's
5 compliance with the Consent Judgment. The Parties shall first attempt to resolve the matter
6 prior to ERC taking any further legal action.

7 **7. APPLICATION OF CONSENT JUDGMENT**

8 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their
9 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
10 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
11 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no application
12 to any Covered Product that is distributed or sold exclusively outside the State of California and
13 that is not used by California consumers.

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

15 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC, on
16 behalf of itself and in the public interest, and Prime and its respective officers, directors,
17 shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
18 franchisees, licensees, customers (not including private label customers of Prime), distributors,
19 wholesalers, retailers, and all other upstream and downstream entities in the distribution chain
20 of any Covered Product, and the predecessors, successors, and assigns of any of them
21 (collectively, "Released Parties").

22 **8.2** ERC, acting in the public interest, releases the Released Parties from any and all
23 claims for violations of Proposition 65 up through the Effective Date based on exposure to lead
24 from the Covered Products and/or mercury from the Mercury Covered Products as set forth in
25 the Notices of Violation. ERC, on behalf of itself only, hereby fully releases and discharges
26 the Released Parties from any and all claims, actions, causes of action, suits, demands,
27 liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have been
28 asserted from the handling, use, or consumption of the Covered Products, as to any alleged

1 violation of Proposition 65 or its implementing regulations arising from the failure to provide
2 Proposition 65 warnings on the Covered Products regarding lead and/or on the Mercury
3 Covered Products regarding mercury up to and including the Effective Date.

4 **8.3** ERC on its own behalf only, and Prime on its own behalf only, further waive
5 and release any and all claims they may have against each other for all actions or statements
6 made or undertaken in the course of seeking or opposing enforcement of Proposition 65 in
7 connection with the Notices and Complaint up through and including the Effective Date,
8 provided, however, that nothing in Section 8 shall affect or limit any Party's right to seek to
9 enforce the terms of this Consent Judgment.

10 **8.4** It is possible that other claims not known to the Parties, arising out of the facts
11 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
12 discovered. ERC on behalf of itself only, and Prime on behalf of itself only, acknowledge that
13 this Consent Judgment is expressly intended to cover and include all such claims up through
14 and including the Effective Date, including all rights of action therefore. ERC and Prime
15 acknowledge that the claims released in Sections 8.2 and 8.3 above may include unknown
16 claims, and nevertheless waive California Civil Code section 1542 as to any such unknown
17 claims. California Civil Code section 1542 reads as follows:

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

24 ERC on behalf of itself only, and Prime on behalf of itself only, acknowledge and understand
25 the significance and consequences of this specific waiver of California Civil Code section
26 1542.

27 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
28 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
exposures to lead in the Covered Products and/or mercury in the Mercury Covered Products as
set forth in the Notices and Complaint.

1 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
2 environmental exposures arising under Proposition 65, nor shall it apply to any of Prime's
3 products other than the Covered Products.

4 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

8 **10. GOVERNING LAW**

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

11 **11. PROVISION OF NOTICE**

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

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

16 Chris Heptinstall, Executive Director, Environmental Research Center
17 3111 Camino Del Rio North, Suite 400
18 San Diego, CA 92108
19 Ph: (619) 500-3090
20 Email: chris.heptinstall@erc501c3.org

21 With a copy to:
22 Richard T. Drury
23 Lozeau | Drury LLP
24 1939 Harrison Street, Suite 150
25 Oakland, CA 94612
26 Ph: 510-836-4200
27 Email: richard@lozeaudrury.com

28 **FOR PRIME HYDRATION LLC:**

29 Ryan Lane, VP Ops & Supply Chain
30 Wyatt Bryant, VP Mfg & Innovation
31 Congo Brands
32 7201 Intermodal Drive
33 Louisville KY 40258
34 Emails: ryan@congobrands.com
35 wyatt.bryant@congobrands.com

1 With a copy to:
2 Skyler J. May
3 Beth Schneider Naylor
4 Frost Brown Todd LLP
5 Great American Tower
6 301 East Fourth Street, Suite 3300
7 Cincinnati, OH 45202
8 Ph: 513-651-6726
9 Email: smay@fbtlaw.com
10 bnaylor@fbtlaw.com

12. COURT APPROVAL

13 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
14 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
15 Consent Judgment.

16 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
17 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
18 prior to the hearing on the motion.

19 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
20 void and have no force or effect.

13. EXECUTION AND COUNTERPARTS

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

17. DRAFTING

18 The terms of this Consent Judgment have been reviewed by the respective counsel for
19 each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms
20 and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
21 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
22 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
23 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
24 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
25
26
27
28

1 equally in the preparation and drafting of this Consent Judgment.

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

3 If a dispute arises with respect to either Party's compliance with the terms of this Consent
4 Judgment entered by the Court, the Parties shall meet and confer in person, via remote meeting,
5 by telephone, and/or in writing and endeavor to resolve the dispute in an amicable manner. No
6 action or motion may be filed in the absence of such a good faith attempt to resolve the dispute
7 beforehand.

8 **16. ENFORCEMENT**

9 ERC may, by motion or order to show cause before the Superior Court of Alameda
10 County, enforce the terms and conditions contained in this Consent Judgment. In any action
11 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
12 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
13 To the extent the failure to comply with the Consent Judgment constitutes a violation of
14 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent
15 Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are
16 provided by law for failure to comply with Proposition 65 or other laws.

17 **17. ENTIRE AGREEMENT, AUTHORIZATION**

18 **17.1** This Consent Judgment contains the sole and entire agreement and
19 understanding of the Parties with respect to the entire subject matter herein, including any and
20 all prior discussions, negotiations, commitments, and understandings related thereto. No
21 representations, oral or otherwise, express or implied, other than those contained herein have
22 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
23 herein, shall be deemed to exist or to bind any Party.

24 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully
25 authorized by the Party he or she represents to stipulate to this Consent Judgment.

26 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
27 **CONSENT JUDGMENT**

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

1 Parties request the Court to fully review this Consent Judgment and, being fully informed
2 regarding the matters which are the subject of this action, to:

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

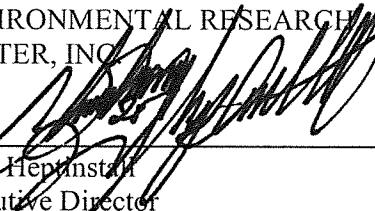
6 (2) Make the findings pursuant to California Health and Safety Code section
7 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

8 (3) Retain jurisdiction, pursuant to Section 664.6 of the Code of Civil Procedure, after
9 the Consent Judgment is entered in order to enforce, modify, or terminate this Consent Judgment.

10 **IT IS SO STIPULATED:**

11
12 Dated: 9/31, 2025

ENVIRONMENTAL RESEARCH
CENTER, INC.

By: 
Chris Hepinstall
Executive Director

13
14
15
16
17 Dated: 10/8/2025, 2025

PRIME HYDRATION LLC

Max Clemons

By: Max Clemons
Its: Co-Owner

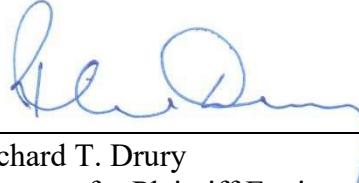
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1 **APPROVED AS TO FORM:**

2 Dated: September 2, 2025

LOZEAU | DRURY LLP

3 
4

5 By: _____
6 Richard T. Drury
7 Attorney for Plaintiff Environmental
8 Research Center, Inc.

9 Dated: October 8, 2025

10 FROST BROWN TODD LLP

11 
12

13 By: _____
14 Skyler J. May
15 Attorney for Defendant Prime Hydration
16 LLC

PROPOSED 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: ~~RE~~ ^{RE} ~~AG~~ ^{AG} 2025

Judge of the Superior Court

Keith Fong / Judge

EXHIBIT A



T 510.836.4200
F 510.836.4205

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Oakland, CA 94612

www.lozeaudrury.com
richard@lozeaudrury.com

VIA CERTIFIED MAIL

Current CEO or President
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2858 Frankfort Avenue
Louisville, KY 40206

Current CEO or President
Prime Hydration LLC
7201 Intermodal Drive, Suite A
Louisville, KY 40258

The Corporation Trust Center
(Registered Agent for Prime Hydration LLC)
1209 N. Orange Street
Wilmington, DE 19801

CT Corporation System
(Registered Agent for Prime Hydration LLC)
306 W Main Street, Suite 512
Frankfort, KY 40601

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

November 1, 2023

Page 2

VIA ELECTRONIC MAIL

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

November 1, 2023

Page 3

VIA ELECTRONIC MAIL

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Jeff W. Reisig, District Attorney
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cfepd@yolocounty.org

VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA FIRST CLASS MAIL

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

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

Dear Addressees:

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

November 1, 2023

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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.

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

Prime Hydration LLC

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

- 1. Prime Hydration Drink Strawberry Watermelon - Lead**
- 2. Prime Hydration Drink Meta Moon - Lead**
- 3. Prime Hydration Drink Ice Pop - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

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

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product’s label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since November 1, 2020, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemical; (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. Consistent with the public interest goals of Proposition 65 and my client’s objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to

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

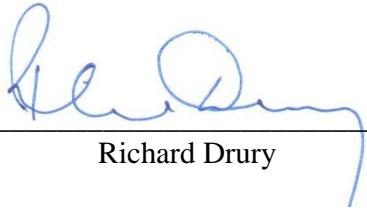
November 1, 2023

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this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemical and expensive and time consuming litigation.

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

Sincerely,



Richard Drury

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Prime Hydration LLC and its Registered Agents for Service of Process only)

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

November 1, 2023

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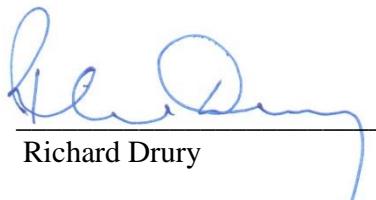
CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Prime Hydration LLC

I, Richard Drury, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: November 1, 2023



Richard Drury

November 1, 2023

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CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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 and over the age of 18 years of age. 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 1, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President
Prime Hydration LLC
2858 Frankfort Avenue
Louisville, KY 40206

The Corporation Trust Center
(Registered Agent for Prime Hydration LLC)
1209 N. Orange Street
Wilmington, DE 19801

Current CEO or President
Prime Hydration LLC
7201 Intermodal Drive, Suite A
Louisville, KY 40258

CT Corporation System
(Registered Agent for Prime Hydration LLC)
306 W Main Street, Suite 512
Frankfort, KY 40601

On November 1, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, 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 1, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Pamela Y. Price, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

Barbara Yook, District Attorney
Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

November 1, 2023

Page 8

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

November 1, 2023

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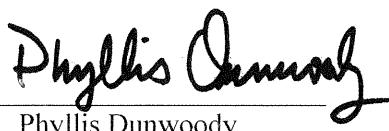
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On November 1, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on November 1, 2023, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

November 1, 2023

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Service List

| | | |
|--|--|--|
| District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120 | District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637 | District Attorney, Sutter County 463 2 nd Street Yuba City, CA 95991 |
| District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642 | District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482 | District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080 |
| District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965 | District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020 | District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093 |
| District Attorney, Colusa County 310 6 th St Colusa, CA 95932 | District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517 | District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370 |
| District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531 | District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023 | District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901 |
| District Attorney, Glenn County Post Office Box 430 Willows, CA 95988 | District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415 | Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012 |
| District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501 | District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063 | |
| District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243 | District Attorney, Shasta County 1355 West Street Redding, CA 96001 | |
| District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301 | District Attorney, Sierra County Post Office Box 457 100 Courthouse Square, 2 nd Floor Downieville, CA 95936 | |
| District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230 | District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097 | |
| District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453 | District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533 | |
| District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012 | District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354 | |

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 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/P65Regs.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

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>.

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 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 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 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 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.

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

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 2017

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.

EXHIBIT B



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Current CEO or President
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The Corporation Trust Center
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CT Corporation System
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Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

November 21, 2023

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

November 21, 2023

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VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA FIRST CLASS MAIL

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

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

Dear Addressees:

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

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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.

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

Prime Hydration LLC

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

1. **Prime Hydration Drink Blue Raspberry - Lead, Mercury**
2. **Prime Energy Drink Strawberry Watermelon - Lead**
3. **Prime Energy Drink Lemon Lime - Lead**
4. **Prime Energy Drink Orange Mango - Lead**
5. **Prime Hydration Drink Glowberry - 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.

On July 1, 1990, the State of California officially listed mercury and mercury compounds as chemicals known to cause developmental toxicity and male and female reproductive toxicity.

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

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and mercury. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead and/or mercury has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and/or mercury. The method of warning should be a warning that appears on the product’s label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead and/or mercury. Each of these ongoing violations has occurred on every day since November 21, 2020, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the

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

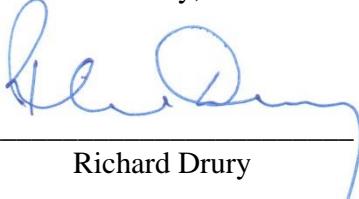
November 21, 2023

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identified chemicals; (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. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

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

Sincerely,



Richard Drury

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Prime Hydration LLC and its Registered Agents for Service of Process only)

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

November 21, 2023

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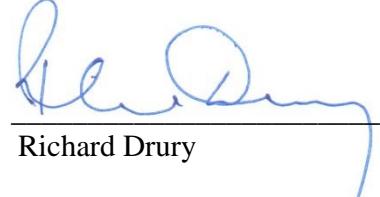
CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Prime Hydration LLC

I, Richard Drury, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: November 21, 2023



Richard Drury

November 21, 2023

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CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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 and over the age of 18 years of age. 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 21, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President
Prime Hydration LLC
2858 Frankfort Avenue
Louisville, KY 40206

The Corporation Trust Center
(Registered Agent for Prime Hydration LLC)
1209 N. Orange Street
Wilmington, DE 19801

Current CEO or President
Prime Hydration LLC
7201 Intermodal Drive, Suite A
Louisville, KY 40258

CT Corporation System
(Registered Agent for Prime Hydration LLC)
306 W Main Street, Suite 512
Frankfort, KY 40601

On November 21, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, 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 21, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

November 21, 2023

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

November 21, 2023

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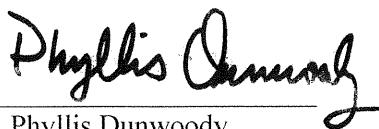
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On November 21, 2023, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on November 21, 2023, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

November 21, 2023

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Service List

| | | |
|--|--|--|
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| District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642 | District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482 | District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080 |
| District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965 | District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020 | District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093 |
| District Attorney, Colusa County 310 6 th St Colusa, CA 95932 | District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517 | District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370 |
| District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531 | District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023 | District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901 |
| District Attorney, Glenn County Post Office Box 430 Willows, CA 95988 | District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415 | Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012 |
| District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501 | District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063 | |
| District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243 | District Attorney, Shasta County 1355 West Street Redding, CA 96001 | |
| District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301 | District Attorney, Sierra County Post Office Box 457 100 Courthouse Square, 2 nd Floor Downieville, CA 95936 | |
| District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230 | District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097 | |
| District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453 | District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533 | |
| District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012 | District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354 | |

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 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/P65Regs.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

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>.

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 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 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 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 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.

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

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 2017

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.

EXHIBIT C



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

March 27, 2024

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

March 27, 2024

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VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA FIRST CLASS MAIL

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

Dear Addressees:

I represent Environmental Research Center, Inc. (“ERC”) in connection with this Notice of Violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986, which is

March 27, 2024

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codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

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

Prime Hydration LLC

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

- 1. Prime Hydration Drink Orange - Lead**
- 2. Prime Hydration Drink Tropical Punch – Lead, Mercury**
- 3. Prime Hydration Drink Lemonade - Lead**
- 4. Prime Energy Drink Blue Raspberry - Lead**
- 5. Prime Energy Drink Ice Pop – Lead, Mercury**
- 6. Prime Energy Drink Tropical Punch – 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.

On July 1, 1990, the State of California officially listed mercury and mercury compounds as chemicals known to cause developmental toxicity and male and female reproductive toxicity.

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

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals, lead and/or mercury. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead and/or mercury has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead and/or mercury. The method of warning should be a warning that appears on the product’s label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons ingesting these products that they are being exposed to lead and/or mercury. Each of these ongoing violations has occurred on every day since March 27, 2021, as well

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

March 27, 2024

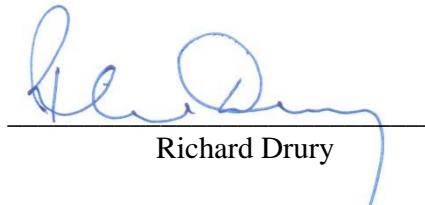
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as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this notice unless the Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; (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. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

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

Sincerely,



Richard Drury

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Prime Hydration LLC and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)

March 27, 2024

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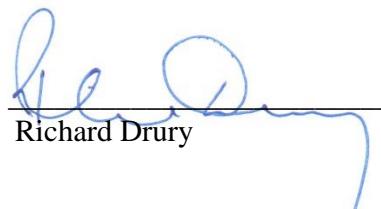
CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Prime Hydration LLC

I, Richard Drury, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed 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: March 27, 2024



Richard Drury

March 27, 2024

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CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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 and over the age of 18 years of age. 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 March 27, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President
Prime Hydration LLC
2858 Frankfort Avenue
Louisville, KY 40206

Current CEO or President
Prime Hydration LLC
7201 Intermodal Drive, Suite A
Louisville, KY 40258

Current CEO or President
Prime Hydration LLC
13551 Triton Park Blvd
Louisville, KY 40223

The Corporation Trust Center
(Registered Agent for Prime Hydration LLC)
1209 N. Orange Street
Wilmington, DE 19801

CT Corporation System
(Registered Agent for Prime Hydration LLC)
306 W Main Street, Suite 512
Frankfort, KY 40601

On March 27, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, 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 March 27, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

March 27, 2024

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

March 27, 2024

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

March 27, 2024

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On March 27, 2024, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by First Class Mail.

Executed on March 27, 2024, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

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

March 27, 2024

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Service List

| | | |
|--|--|--|
| District Attorney, Alpine County P.O. Box 248 17300 Hwy 89 Markleeville, CA 96120 | District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637 | District Attorney, Sutter County 463 2 nd Street Yuba City, CA 95991 |
| District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642 | District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482 | District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080 |
| District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965 | District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020 | District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093 |
| District Attorney, Colusa County 310 6 th St Colusa, CA 95932 | District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517 | District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370 |
| District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531 | District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023 | District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901 |
| District Attorney, Glenn County Post Office Box 430 Willows, CA 95988 | District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415 | Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012 |
| District Attorney, Humboldt County 825 5th Street 4 th Floor Eureka, CA 95501 | District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063 | |
| District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243 | District Attorney, Shasta County 1355 West Street Redding, CA 96001 | |
| District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301 | District Attorney, Sierra County Post Office Box 457 100 Courthouse Square, 2 nd Floor Downieville, CA 95936 | |
| District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230 | District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097 | |
| District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453 | District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533 | |
| District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012 | District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354 | |

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 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/P65Regs.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

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>.

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 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 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 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 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.

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 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.

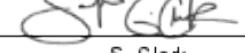
A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>.

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 2017

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.

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| SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA | | Reserved for Clerk's File Stamp |
| COURTHOUSE ADDRESS: Hayward Hall of Justice 24405 Amador Street, Hayward, CA 94544 | | FILED Superior Court of California County of Alameda 01/27/2026 Chad Finke, Executive Officer / Clerk of the Court By:  S. Clark |
| PLAINTIFF/PETITIONER: ENVIRONMENTAL RESEARCH CENTER, INC., a California non-profit corporation | | |
| DEFENDANT/RESPONDENT: PRIME HYDRATION LLC, a Delaware limited liability corporation | | |
| CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6 | | CASE NUMBER: 25CV139744 |

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Order [PROPOSED] STIPULATED CONSENT JUDGMENT entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

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 Lozeau Drury LLP
 richard@lozeaudrury.com

Skyler J May
 Frost Brown Todd LLP
 smay@fbtlaw.com

Dated: 01/27/2026

Chad Finke, Executive Officer / Clerk of the Court

By:



S. Clark, Deputy Clerk