

## 60-DAY SUPPLEMENTAL NOTICE OF VIOLATION

### California Safe Drinking Water and Toxic Enforcement Act

<b>Date:</b>	May 17, 2018
<b>To:</b>	President – ISI North America, Inc. CEO or President - ISI GmbH CEO or President - ISI Deutschland GmbH Leland J. Perry, President - North Bay Distribution, Inc., dba CreamRight/Waterline Douglas Meester, President - Waterline Marketing President - Amazon.com, Inc. President - Amazon.com LLC California Attorney General's Office District Attorney's Office for 58 Counties City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles
<b>From:</b>	Michael DiPirro

**This Supplemental Notice of Violation is provided to you pursuant to and in compliance with California Health and Safety Code Section 25249.7(d). For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, you may contact the Office of Environmental Health Hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900. Attached for your reference is a summary, "Appendix A: The Safe Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," provided by the California Office of Environmental Health Hazard Assessment's ("OEHHA") (copies not provided to public enforcement agencies).**

This Supplemental Notice of Violation is provided by Michael DiPirro. I am a citizen of the State of California acting in the interest of the general public. I am dedicated to protecting the environment, promoting awareness of exposures to toxic chemicals in products sold in California, improving human health and supporting environmentally sound practices.

Identified below are specific examples of products recently purchased and/or witnessed as being available for purchase or use in California that are within the categories or types of offending products covered by this Supplemental Notice of Violation. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 "clear and reasonable warnings" at one or more location and/or via other means including, but not limited to, transactions made over-the-counter, business-to-business, through the Internet and/or via a catalog by the Violator(s) and other retailers and distributors of the manufacturer, including, but not limited to the retailer(s) and/or distributor(s) listed below.

**Description of Violations:**

<b>Violator(s):</b>	ISI North America, Inc. ISI GmbH ISI Deutschland GmbH North Bay Distribution, Inc., dba CreamRight/Waterline Waterline Marketing Amazon.com, Inc. Amazon.com LLC
<b>Toxic Chemical:</b>	Nitrous Oxide ("N2O") Exposures to N2O occur from use of the products identified in this Supplemental Notice of Violation.
<b>Product Category:</b>	Nitrous Oxide Cartridges/Chargers
<b>Non-exclusive Example of Type of Product<sup>1</sup>:</b>	ISI 24 Cream Chargers (UPC # 9002377000844) ISI North America N2O Cream Chargers, 24-Pack (UPC # 9-002377-000844) ISI Whip Cream Chargers - 10 Pack (UPC # 9-002377-000769) ISI - Whipped Cream Chargers (24) (UPC # 9-002377-000844) ISI Professional Chargers 20 Pack (UPC # 9-002377-007225) SparkWhip by ISI Cream Chargers (UPC # 0-85355-05829-6)
<b>Retailer(s):</b>	The Mighty Quinn, Sonoma County, Northern California Waterline Marketing Company dba CreamRight.com Amazon.com KwikCream.com EasyWhip.com
<b>Manufacturer(s)/ Distributor(s):</b>	ISI North America, Inc. ISI GmbH ISI Deutschland GmbH Sundaes Novelty LLC, dba EasyWhip.com Sundaes Novelty LLC Waterline Marketing Company dba CreamRight.com North Bay Distribution, Inc. HRB Distribution
<b>Types of Harm:</b>	Birth Defects and Other Reproductive Harm
<b>Description of Exposure:</b>	These exposures occur in homes, some workplaces and everywhere else throughout California where these products are handled or used. As a result of the sales of these products, exposures to the listed

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<sup>1</sup> The specifically identified examples of the types of products that are subject to this Supplemental Notice of Violation are for the recipients' benefit to assist in their investigation of, among other things, the magnitude of potential exposures to the listed chemical from other items within the product categories/types listed herein. These examples are not meant to be an exhaustive or comprehensive identification of each specific offending product of the types listed under "Product Category." Further, it is this citizen's position that the alleged Violator(s) are obligated to continue to conduct in good faith an investigation into other specific products within the types or categories described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the Supplemental Notice of Violation recipients' custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

	chemical have been occurring without clear and reasonable warnings as required by Proposition 65.
<b>Routes of Exposure:</b>	Ingestion, Inhalation Reasonably foreseeable use of the products identified in this Supplemental Notice of Violation results in human exposures to N2O. The routes of exposure for the violations are: (1) direct ingestion and/or inhalation when consumers ingest, inhale or otherwise use the products for their intended and/or unintended but foreseeable use; (2) ingestion via hand to mouth contact after consumers touch, use, or handle the products; (3) ingestion when consumers place their hands in their mouths while using the products; (4) inhalation when N2O from the Products accumulates in ambient airborne particles (e.g., dust) in the air in or around the Products that consumers breathe.
<b>Time Period of Exposure:</b>	The violations have been occurring as far back as April 12, 2013, and are continuing to this day.

**Resolution of Noticed Claims:** Based on the allegations set forth in this Supplemental Notice of Violation, I intend to file a citizen enforcement lawsuit against the alleged Violator(s) unless such Violator(s) enter into a binding written agreement to: (1) recall products already sold; (2) take effective measures to prevent unwarned N2O exposures from products sold in the future and to ensure that the requisite health hazard warnings are provided to those who have received such products; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249(b). If the alleged Violator(s) are interested in resolving this dispute without resorting to expensive and time-consuming litigation, please feel free to contact me through my counsel identified below. It should be noted that neither my counsel nor I can: (1) finalize any settlement until after the 60-day Supplemental Notice of Violation period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received this Supplemental Notice of Violation. Therefore, while reaching an agreement with me will resolve my claims, such agreement may not satisfy the public prosecutors.

**Please direct any inquiries regarding this Supplemental Notice of Violation to Michael DiPirro through his counsel David Bush or Jennifer Henry at Bush & Henry, Attorneys at Law, PC, 6761 Sebastopol Ave Ste 111, Sebastopol CA 95472; Telephone: (707) 827-3311; E-mail: DRBush@BushAndHenry.com or JHenry@BushAndHenry.com.**

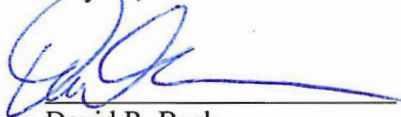
## **CERTIFICATE OF MERIT**

Health & Safety Code § 25249.7(d)

I, David R. Bush, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day Supplemental Notice of Violation in which it is alleged that the parties identified in the Notice of Violation has violated Health & Safety Code § 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney who represents the noticing party.
3. Members of my firm and 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 alleged exposure to the listed chemical that is the subject of this action.
4. Based on the information obtained through those consultations, and on all 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 the information did not prove that the alleged Violator(s) will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of the Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in 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.

May 17, 2018



David R. Bush

Attorneys for Michael DiPirro

## PROOF OF SERVICE

I declare that:

I am employed in Sonoma County, California; my business address is 6761 Sebastopol Ave Ste 111, Sebastopol CA 95472. I am over the age of 18 years and not a party to the within cause.

On May 17, 2018, I served true copies of the following documents:

**60-DAY SUPPLEMENTAL NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT;**

**APPENDIX A: THE SAFE WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY; OEHHA/CAL EPA (only sent to the Violator(s));**

**CERTIFICATE OF MERIT; and**

**CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE ATTORNEY GENERAL)**

On this date, I deposited fully prepaid and sealed envelopes containing the above- mentioned documents with the United States Postal Service, addressed to the following individuals as follows:

on the alleged Violator(s) listed below via regular and First Class Certified Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the entities listed below and providing each envelope to a United States Postal Service Representative:

President ISI North America, Inc. 175 Route 46 West Fairfield, NJ 07004	President Amazon.com LLC 410 Terry Avenue North Seattle, WA 98109	President Amazon.com, Inc. 410 Terry Avenue North Seattle, WA 98109	Leland J. Perry, President North Bay Distribution, Inc., dba CreamRight/Waterline 2031 Cessna Drive Vacaville, CA 95688	Douglas Meester, President, Waterline Marketing 13245 Tamiami Trail East #103 Naples FL 34114-8550
Leland J. Perry, President North Bay Distribution, Inc., dba CreamRight/Waterline 2029 E Monte Vista Ave Vacaville, CA 95688-3100	Leland J. Perry, President North Bay Distribution, Inc. 2050 Cessna Drive Vacaville, CA 95688	CEO or President ISI Deutschland GmbH Mittelitterstr. 12 - 16 D-42719 Solingen Germany	CEO or President ISI GmbH Kürschnergasse 4 A-1217 Vienna Austria	

By providing copies to the addressees below electronically as follows:

<u>Electronically via the Attorney General website:</u> The Attorney General of the State of California	<u>Electronically to the following recipients at the following electronic mail addresses:</u>	Yen Deng Supervising Deputy District Attorney Santa Clara County epu@da.sccgov.org	Jeffrey S. Rosell District Attorney Santa Cruz County Prop65DA@santacruzco unty.us	Christopher Dalbey Deputy District Attorney Santa Barbara County DAProp65@co.santa- barbara.ca.us
Dije Ndreu Deputy District Attorney Monterey County Prop65DA@co.monterey.ca.us	Phillip J. Cline District Attorney Tulare County Prop65@co.tulare.ca.us	Anne Marie Schubert District Attorney Sacramento County Prop65@sacda.org	Gregory D. Totten District Attorney Ventura County daspecialops@ventura. org	Stephan R. Passalacqua District Attorney Sonoma County jbarnes@sonoma- county.org
Gregory Alker Assistant District Attorney San Francisco City/County Gregory.alker@sfgov.org	Eric J. Dobroth Deputy District Attorney San Luis Obispo County edobroth@co.slo.ca.us	Gary Lieberstein District Attorney Napa County CEPD@countyofnapa. org	Michelle Latimer Program Coordinator Lassen County mlatimer@co.lassen.ca. us	Tori Verber Salazar District Attorney San Joaquin County DAConsumer.Environmental@sjcda.org
Paul E. Zellerbach District Attorney Riverside County Prop65@rivcoda.org	Jeff W. Reisig District Attorney Yolo County cfepd@yolocounty.org	Kathryn L. Turner Chief Deputy City Attorney San Diego County CityAttyCrimProp65@ sandiego.gov	Stacey Grassini Deputy District Attorney Contra Costa County sgrassini@contracostad a.org	Christopher Dalbey, Deputy District Attorney Santa Barbara County DAProp65@co.santa- barbara.ca.us

As well as providing copies to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows: *By placing each envelope in a United States Postal Service mailbox, postage prepaid:* The District Attorney for Each of the 58 counties in California; and The City Attorney for Los Angeles, San Diego, San Jose, San Francisco and Sacramento. *A list of addresses for each of these recipients is attached.*

Executed on May 17, 2018, at Sebastopol, California.

  
M. Madden



## SERVICE LIST

The Honorable Nancy O'Malley Alameda County District Attorney 1225 Fallon Street, #900 Oakland, CA 94612	The Honorable Gilbert Otero Imperial County District Attorney 940 West Main Street, # 102 El Centro, CA 92243	The Honorable Candice Hooper San Benito County District Attorney 419 4 <sup>th</sup> Street Hollister, CA 95023-3801	The Honorable Richard Doyle Ofc of the City Attorney, San Jose 200 East Santa Clara Street, 16 <sup>th</sup> Floor San Jose, CA 95113
The Honorable Greg Cohen Tehama County District Attorney 444 Oak St # L Red Bluff, CA 96080	The Honorable Michael Atwell Alpine County District Attorney PO Box 248 Markleeville, CA 96120	The Honorable Jackie Lacey Los Angeles County District Attorney 211 West Temple St., #1200 Los Angeles, CA 90012	The Honorable Lawrence Allen Sierra County District Attorney PO Box 886 Downieville, CA 95936
The Honorable Michael Ramos San Bernardino County District Attorney 803 West 3rd Street, 6th Floor San Bernardino, CA 92415	The Honorable Eric L. Heryford Trinity County District Attorney PO Box 310 Weaverville, CA 96093	The Honorable Todd Riebe Amador County District Attorney 708 Court Street Jackson, CA 95642	The Honorable Donald Anderson Lake County District Attorney 255 North Forbes Street Lakeport, CA 95453
The Honorable David Linn Madera County District Attorney 209 West Yosemite Avenue Madera, CA 93637	The Honorable Summer Stephan San Diego County District Attorney 330 W. Broadway Street San Diego, CA 92101	The Honorable Jordan Funk Modoc County District Attorney 204 S. Court Street, # 202 Alturas, CA 96101	The Honorable Maggie Fleming Humboldt County District Attorney 825 5 <sup>th</sup> Street, 4 <sup>th</sup> Floor Eureka, CA 95501
The Honorable Michael Ramsey Butte County District Attorney 25 County Center Drive, #245 Oroville, CA 95965	The Honorable Edward Berberian Marin County District Attorney 3501 Civic Center Drive, # 145 San Rafael, CA 94903	The Honorable Tony Rackauckas Orange County District Attorney 401 Civic Center Drive West Santa Ana, CA 92701	The Honorable Dwayne R. Stewart Glenn County District Attorney PO Box 430 Willows, CA 95988
The Honorable Laura L. Krieg Tuolumne County District Attorney 423 North Washington Street Sonora, CA 95370	The Honorable Barbara Yook Calaveras County District Attorney 891 Mountain Ranch Road San Andreas, CA 95249	The Honorable Thomas K Cooke Mariposa County District Attorney PO Box 730 Mariposa, CA 95338	The Honorable Krishna A. Abrams Solano County District Attorney 675 Texas Street, Suite 4500 Fairfield, CA 94533
The Honorable Tori V. Salazar San Joaquin County District Attorney PO Box 990 Stockton, CA 95201	Del Norte County District Attorney 450 H Street, Room 171 Crescent City, CA 95531	The Honorable Matthew R. Beauchamp Colusa County District Attorney 346 5 <sup>th</sup> Street, #101 Colusa, CA 95932	The Honorable James Sanchez Ofc of Sacramento City Attorney 915 I Street, 4th Floor Sacramento, CA 95814-2608
The Honorable C. David Eyster Mendocino County District Attorney PO Box 1000 Ukiah, CA 95482	The Honorable Tom Hardy Inyo County District Attorney PO Box D Independence, CA 93526	The Honorable James Kirk Andrus Siskiyou County District Attorney 311 Fourth Street Yreka, CA 96097	The Honorable Stephanie Bridgett Shasta County District Attorney 1355 West St. Redding, CA 96001
The Honorable Patrick McGrath Yuba County District Attorney 215 Fifth Street Marysville, CA 95901	The Honorable Larry Morse II Merced County District Attorney 550 W. Main Street Merced, CA 95340	The Honorable Stephen Wagstaffe San Mateo County District Attorney 400 County Center Redwood City, CA 94603	The Honorable Clifford Newell Nevada County District Attorney 201 Commercial Street Nevada City, CA 95959-2506
The Honorable Birgit Fladager Stanislaus County District Attorney 832 12th Street, #300 Modesto, CA 95654	The Honorable Mike Feuer Office of the City Attorney, Los Angeles James K. Hahn City Hall East 200 N. Main St., 8 <sup>th</sup> Floor Los Angeles, CA 90012	The Honorable Vernon Pierson El Dorado County District Attorney 515 Main Street Placerville, CA 95667	The Honorable Lisa Green Kern County District Attorney 1215 Truxtun Avenue, 4 <sup>th</sup> Floor Bakersfield, CA 93301
The Honorable Keith L. Fagundes Kings County District Attorney 1400 West Lacey Boulevard Hanford, CA 93230	The Honorable Ronald Owens Placer County District Attorney 10810 Justice Center Drive, Suite 240 Roseville, CA 95678	The Honorable Amanda L. Hopper Sutter County District Attorney 463 2 <sup>nd</sup> St., #102 Yuba City, CA 95991	The Honorable Lisa A. Smittcamp Fresno County District Attorney 2220 Tulare Street, #1000 Fresno, CA 93721
The Honorable Tim Kendall Mono County District Attorney PO Box 617 Bridgeport, CA 93517	The Honorable David Hollister Plumas County District Attorney 520 Main Street, Room 404 Quincy, CA 95971	The Honorable Mara Elliott Office of the City Attorney, San Diego 1200 Third Avenue, Suite 1620 San Diego, CA 92101	