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14
15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **COUNTY OF ALAMEDA**

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

20 **Plaintiff,**

21 **vs.**

22 **THE LIV GROUP INC., individually and**
23 **dba LIQUID I.V. and DOES 1-100**

24 **Defendants.**

CASE NO. 22CV018972

STIPULATED CONSENT
JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Action Filed: October 3, 2022

Trial Date: None set

25
26 **1. INTRODUCTION**

27 **1.1** On October 3, 2022, Plaintiff Environmental Research Center, Inc. (“ERC”), a
28 non-profit corporation, as a private enforcer and in the public interest, initiated this action by

1 filing a Complaint for Injunctive and Declaratory Relief and Civil Penalties (the “Complaint”)
2 pursuant to the provisions of California Health and Safety Code section 25249.5 *et seq.*
3 (“Proposition 65”), against The LIV Group Inc., individually and dba Liquid I.V. (“The LIV
4 Group”) and Does 1-100. In this action, ERC alleges that a number of products manufactured,
5 distributed, or sold by The LIV Group contain lead and/or cadmium, chemicals listed under
6 Proposition 65 as carcinogens and reproductive toxins, and expose consumers to these
7 chemicals at a level requiring a Proposition 65 warning. These products (referred to hereinafter
8 individually as a “Covered Product” or collectively as “Covered Products”) are: (1) Liquid I.V.
9 Hydration Multiplier Electrolyte Drink Mix Passion Fruit (lead), (2) Liquid I.V. Hydration
10 Multiplier Electrolyte Drink Mix Lemon Lime (lead), (3) Liquid I.V. Hydration Multiplier
11 Electrolyte Drink Mix Açai Berry (lead), (4) Liquid I.V. Hydration Multiplier Electrolyte
12 Drink Mix Strawberry (lead), (5) Liquid I.V. Hydration Multiplier Electrolyte Drink Mix Piña
13 Colada (lead), (6) Liquid I.V. Hydration Multiplier Electrolyte Drink Mix Watermelon (lead),
14 (7) Liquid I.V. Hydration Multiplier Electrolyte Drink Mix Golden Cherry (lead), (8) Liquid
15 I.V. Hydration Multiplier Electrolyte Drink Mix Guava (cadmium), (9) Liquid I.V. Hydration
16 Multiplier Immune Support Drink Mix Tangerine (lead), (10) Liquid I.V. Energy Multiplier
17 Supercharged Energy Drink Mix Lemon Ginger (lead), (11) Liquid I.V. Hydration Multiplier
18 Electrolyte Drink Mix Caramel Apple (lead), (12) Liquid I.V. Energy Multiplier Energy Drink
19 Mix Yuzu Pineapple (lead), and (13) Liquid I.V. Hydration Multiplier Non-GMO Electrolyte
20 Drink Mix Tropical Punch.

21 **1.2** ERC and The LIV Group are hereinafter referred to individually as a “Party” or
22 collectively as the “Parties.”

23 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
24 causes, helping safeguard the public from health hazards by reducing the use and misuse of
25 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
26 and encouraging corporate responsibility.

27 **1.4** For purposes of this Consent Judgment, the Parties agree that The LIV Group is a
28 business entity that has employed ten or more persons at all times relevant to this action, and

1 qualifies as a “person in the course of doing business” within the meaning of Proposition 65. The
2 LIV Group manufactures, distributes, and/or sells the Covered Products.

3 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation
4 dated May 26, 2022, June 9, 2022, and July 21, 2022 that were served on the California
5 Attorney General, other public enforcers, and The LIV Group (“First Three Notices”). True and
6 correct copies of the First Three Notices dated May 26, 2022, June 9, 2022, and July 21, 2022
7 are attached hereto as *Exhibits A, B, and C* and each is incorporated herein by reference. More
8 than 60 days have passed since the First Three Notices were served on the Attorney General,
9 public enforcers, and The LIV Group and no designated governmental entity has filed a
10 Complaint against The LIV Group with regard to the Covered Products or the alleged
11 violations.

12 **1.6** On September 15, 2022, ERC served a Fourth Notice of Violation on the
13 California Attorney General, other public enforcers, and The LIV Group (“Fourth Notice”). A
14 true and correct copy of the Fourth Notice is attached hereto as *Exhibit D* and incorporated by
15 reference. The parties stipulate that the Complaint be deemed amended as of November 17,
16 2022 to include the products set forth in ERC’s Fourth Notice. This Consent Judgment shall
17 apply to all Covered Products set forth in Paragraph 1.1, effective 60 days after September 15,
18 2022, provided no public enforcer is diligently pursuing the allegations set forth in ERC’s
19 Fourth Notice. On November 17, 2022 more than 60 days will have passed since ERC’s
20 Fourth Notice were served on the Attorney General, public enforcers, and The LIV Group.
21 The First Three Notices and the Fourth Notice are collectively referred to as “Notices,” and
22 further references to ERC’s “Complaint” shall include the Fourth Notice.

23 **1.7** ERC’s Notices and Complaint allege that use of the Covered Products by
24 California consumers exposes them to lead and/or cadmium without first receiving clear and
25 reasonable warnings from The LIV Group, which is in violation of California Health and
26 Safety Code section 25249.6. The LIV Group denies all material allegations contained in the
27 Notices and Complaint.

28 **1.8** The Parties have entered into this Consent Judgment in order to settle,

1 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
2 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute
3 or be construed as an admission by any of the Parties or by any of their respective officers,
4 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
5 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,
6 issue of law, or violation of law.

7 **1.9** Except as expressly set forth herein, nothing in this Consent Judgment shall
8 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
9 any current or future legal proceeding unrelated to these proceedings.

10 **1.10** The Effective Date of this Consent Judgment is the date on which it is entered
11 as a Judgment by this Court.

12 **2. JURISDICTION AND VENUE**

13 For purposes of this Consent Judgment and any further court action that may become
14 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
15 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
16 over The LIV Group as to the acts alleged in the Complaint, that venue is proper in Alameda
17 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
18 resolution of all claims up through and including the Effective Date that were or could have been
19 asserted in this action based on the facts alleged in the Notices and Complaint.

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

21 **3.1** Beginning on the Effective Date, The LIV Group shall be permanently enjoined
22 from manufacturing for sale in the State of California, “Distributing into the State of
23 California,” or directly selling in the State of California, any Covered Product that exposes a
24 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day and/or
25 “Daily Cadmium Exposure Level” of more than 4.1 micrograms of cadmium per day unless it
26 meets the warning requirements under Section 3.2.

27 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
28 of California” shall mean to directly ship a Covered Product into California for sale in

1 California or to sell a Covered Product to a distributor that The LIV Group knows or has
2 reason to know will sell the Covered Product in California.

3 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
4 Level” shall be measured in micrograms, and shall be calculated using the following formula:
5 micrograms of lead per gram of product, multiplied by grams of product per serving of the
6 product (using the largest serving size appearing on the product label), multiplied by servings
7 of the product per day (using the largest number of recommended daily servings appearing on
8 the label), which equals micrograms of lead exposure per day. If the label contains no
9 recommended daily servings, then the number of recommended daily servings shall be one.

10 **3.1.3** For purposes of this Consent Judgment, the “Daily Cadmium Exposure
11 Level” shall be measured in micrograms, and shall be calculated using the following formula:
12 micrograms of cadmium per gram of product, multiplied by grams of product per serving of
13 the product (using the largest serving size appearing on the product label), multiplied by
14 servings of the product per day (using the largest number of recommended daily servings
15 appearing on the label), which equals micrograms of cadmium exposure per day. If the label
16 contains no recommended daily servings, then the number of recommended daily servings
17 shall be one.

18 **3.2 Clear and Reasonable Warnings**

19 If The LIV Group is required to provide a warning pursuant to Section 3.1, the following
20 warning must be utilized (“Warning”):

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

24 The LIV Group shall comply with 27 CCR 25607.2 (2022) in the event The LIV Group
25 has reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead
26 as determined pursuant to the quality control methodology set forth in Section 3.4 or if The LIV
27 Group has reason to believe that another Proposition 65 chemical is present which may require a
28 warning for a different end point. As identified in the brackets, the warning shall appropriately

1 reflect whether there is lead, cadmium, or both chemicals present in each of the Covered Products.

2 The Warning shall be securely affixed to or printed upon the label of each Covered
3 Product and it must be set off from other surrounding information and enclosed in a box. For
4 Covered Product sales at brick-and-mortar locations, the Warning may be provided via a
5 product-specific warning for the Covered Product provided on a posted sign, shelf tag, or shelf
6 sign at each point of display of the Covered Product in lieu of a Warning being provided on the
7 label. In addition, for any Covered Product sold over the internet, the Warning shall appear on
8 the checkout page when a California delivery address is indicated for any purchase of any
9 Covered Product. An asterisk or other identifying method must be utilized to identify which
10 products on the checkout page are subject to the Warning. In no event shall any internet or
11 website Warning be contained in or made through a link.

12 The Warning shall be at least the same size as the largest of any other health or safety
13 warnings also appearing on the website or on the label and the word “**WARNING**” shall be in all
14 capital letters and in bold print. No statements intended to or likely to have the effect of
15 diminishing the impact of the Warning on the average lay person shall accompany the Warning.
16 Further no statements may accompany the Warning that state or imply that the source of the listed
17 chemical has an impact on or results in a less harmful effect of the listed chemical.

18 The LIV Group must display the above Warning with such conspicuousness, as compared
19 with other words, statements or designs on the label, or on its website, if applicable, to render the
20 Warning likely to be read and understood by an ordinary individual under customary conditions
21 of purchase or use of the product.

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

25 **3.3 Conforming Covered Products**

26 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure
27 Level” is no greater than 0.5 micrograms of lead per day and/or “Daily Cadmium Exposure
28 Level” is no more than 4.1 micrograms of cadmium per day as determined by the exposure

1 methodology set forth in Section 3.1.2 and the quality control methodology described in Section
2 3.4, and that is not known by The LIV Group to contain other chemicals that violate Proposition
3 65's safe harbor thresholds.

4 **3.4 Testing and Quality Control Methodology**

5 **3.4.1** Beginning within one year of the Effective Date, The LIV Group shall
6 arrange for lead and cadmium testing of the Covered Products at least once a year for a
7 minimum of three consecutive years by arranging for testing of one (1) randomly selected
8 sample of each of the Covered Products, in the form intended for sale to the end-user, which
9 The LIV Group intends to sell or is manufacturing for sale in California, directly selling to a
10 consumer in California or "Distributing into the State of California." If tests conducted
11 pursuant to this Section demonstrate that no Warning is required for a Covered Product during
12 each of three (3) consecutive years, then the testing requirements of this Section will no longer
13 be required as to that Covered Product. However, if during or after the three-year testing
14 period, The LIV Group changes ingredient suppliers for any of the Covered Products and/or
15 reformulates any of the Covered Products, The LIV Group shall test that Covered Product
16 annually for at least two (2) consecutive years after such change is made.

17 **3.4.2** For purposes of measuring the "Daily Lead Exposure Level" and/or
18 "Daily Cadmium Exposure Level," the lead and/or cadmium detection result of the one (1)
19 randomly selected sample of the Covered Products will be controlling.

20 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
21 laboratory method that complies with the performance and quality control factors appropriate
22 for the method used, including limit of detection and limit of quantification, sensitivity,
23 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass
24 Spectrometry ("ICP-MS") achieving a limit of quantification of less than or equal to 0.005
25 mg/kg.

26 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
27 independent third party laboratory certified by the California Environmental Laboratory
28 Accreditation Program or an independent third-party laboratory that is registered with the

1 United States Food & Drug Administration.

2 **3.4.5** Nothing in this Consent Judgment shall limit The LIV Group's ability to
3 conduct, or require that others conduct, additional testing of the Covered Products, including
4 the raw materials used in their manufacture.

5 **3.4.6** Within thirty (30) days of ERC's written request, The LIV Group shall
6 deliver lab reports obtained pursuant to Section 3.4 to ERC. The LIV Group shall retain all test
7 results and documentation for a period of five years from the date of each test.

8 **4. SETTLEMENT PAYMENT**

9 **4.1** In full satisfaction of all potential civil penalties, additional settlement
10 payments, attorney's fees, and costs, The LIV Group shall make a total payment of
11 \$500,000.00 ("Total Settlement Amount") to ERC within 5 days of the Effective Date ("Due
12 Date"). The LIV Group shall make this payment by wire transfer to ERC's account, for which
13 ERC will give The LIV Group the necessary account information. The Total Settlement
14 Amount shall be apportioned as follows:

15 **4.2** \$245,500.00 shall be considered a civil penalty pursuant to California Health
16 and Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$184,125.00) of the civil
17 penalty to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in
18 the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health
19 and Safety Code section 25249.12(c). ERC will retain the remaining 25% (\$61,375.00) of the
20 civil penalty.

21 **4.3** \$8,779.54 shall be distributed to ERC as reimbursement to ERC for reasonable
22 costs incurred in bringing this action.

23 **4.4** \$183,950.81 shall be distributed to ERC as an Additional Settlement Payment
24 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d)
25 and 3204. ERC will utilize the ASP for activities that address the same public harm as
26 allegedly caused by Defendant in this matter. These activities are detailed
27 below and support ERC's overarching goal of reducing and/or eliminating hazardous and toxic
28 chemicals in dietary supplement products in California. ERC's activities have had, and will

1 continue to have, a direct and primary effect within the State of California because California
2 consumers will be benefitted by the reduction and/or elimination of exposure to lead and/or
3 cadmium in dietary supplements and/or by providing clear and reasonable warnings to
4 California consumers prior to ingestion of the products.

5 Based on a review of past years' actual budgets, ERC is providing the following list of
6 activities ERC engages in to protect California consumers through Proposition 65 citizen
7 enforcement, along with a breakdown of how ASP funds will be utilized to facilitate those
8 activities: (1) ENFORCEMENT (up to 65-80%): obtaining, shipping, analyzing, and testing
9 dietary supplement products that may contain lead and/or cadmium and are sold to California
10 consumers. This work includes continued monitoring and enforcement of past consent
11 judgments and settlements to ensure companies are in compliance with their obligations
12 thereunder, with a specific focus on those judgments and settlements concerning lead and/or
13 cadmium. This work also includes investigation of new companies that ERC does not obtain
14 any recovery through settlement or judgment; (2) VOLUNTARY COMPLIANCE PROGRAM
15 (up to 10-20%): maintaining ERC's Voluntary Compliance Program by acquiring products
16 from companies, developing and maintaining a case file, testing products from these
17 companies, providing the test results and supporting documentation to the companies, and
18 offering guidance in warning or implementing a self-testing program for lead and/or cadmium
19 in dietary supplement products; and (3) "GOT LEAD" PROGRAM (up to 5%): maintaining
20 ERC's "Got Lead?" Program which reduces the numbers of contaminated products that reach
21 California consumers by providing access to free testing for lead in dietary supplement
22 products (Products submitted to the program are screened for ingredients which are suspected
23 to be contaminated, and then may be purchased by ERC, catalogued, sent to a qualified
24 laboratory for testing, and the results shared with the consumer that submitted the product).

25 ERC shall be fully accountable in that it will maintain adequate records to document
26 and will be able to demonstrate how the ASP funds will be spent and can assure that the funds
27 are being spent only for the proper, designated purposes described in this Consent Judgment.
28 ERC shall provide the Attorney General, within thirty days of any request, copies of

1 documentation demonstrating how such funds have been spent.

2 **4.5** \$15,134.90 shall be distributed to Aqua Terra Aeris Law Group as
3 reimbursement of ERC’s attorney’s fees, while \$46,634.75 shall be distributed to ERC for its
4 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
5 costs.

6 **4.6** In the event that The LIV Group fails to remit the Total Settlement Amount
7 owed under Section 4 of this Consent Judgment on or before the Due Date, The LIV Group
8 shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC
9 shall provide written notice of the delinquency to The LIV Group via electronic mail. If The
10 LIV Group fails to deliver the Total Settlement Amount within five (5) days from the written
11 notice, the Total Settlement Amount shall accrue interest at the statutory judgment interest rate
12 provided in the California Code of Civil Procedure section 685.010. Additionally, The LIV
13 Group agrees to pay ERC’s reasonable attorney’s fees and costs for any efforts to collect the
14 payment due under this Consent Judgment.

15 **5. MODIFICATION OF CONSENT JUDGMENT**

16 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
17 written stipulation of the Parties and upon entry by the Court of a modified consent judgment
18 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a
19 modified consent judgment.

20 **5.2** If The LIV Group seeks to modify this Consent Judgment under Section 5.1,
21 then The LIV Group must provide written notice to ERC of its intent (“Notice of Intent”). If
22 ERC seeks to meet and confer regarding the proposed modification in the Notice of Intent, then
23 ERC must provide written notice to The LIV Group within thirty (30) days of receiving the
24 Notice of Intent. If ERC notifies The LIV Group in a timely manner of ERC’s intent to meet
25 and confer, then the Parties shall meet and confer in good faith as required in this Section. The
26 Parties shall meet in person or via telephone within thirty (30) days of ERC’s notification of its
27 intent to meet and confer. Within thirty (30) days of such meeting, if ERC disputes the
28 proposed modification, ERC shall provide to The LIV Group a written basis for its position.

1 The Parties shall continue to meet and confer for an additional thirty (30) days in an effort to
2 resolve any remaining disputes. Should it become necessary, the Parties may agree in writing
3 to different deadlines for the meet-and-confer period.

4 **5.3** In the event that The LIV Group initiates or otherwise requests a modification
5 under Section 5.1, and the meet and confer process leads to a joint motion or application for a
6 modification of the Consent Judgment, The LIV Group shall reimburse ERC its costs and
7 reasonable attorney's fees for the time spent in the meet-and-confer process and filing and
8 arguing the motion or application.

9 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
10 **JUDGMENT**

11 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or
12 terminate this Consent Judgment.

13 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming
14 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
15 inform The LIV Group in a reasonably prompt manner of its test results, including information
16 sufficient to permit The LIV Group to identify the Covered Products at issue. The LIV Group
17 shall, within thirty (30) days following such notice, provide ERC with testing information,
18 from an independent third-party laboratory meeting the requirements of Sections 3.4.3 and
19 3.4.4, demonstrating The LIV Group's compliance with the Consent Judgment. The Parties
20 shall first attempt to resolve the matter prior to ERC taking any further legal action.

21 **7. APPLICATION OF CONSENT JUDGMENT**

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

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

2 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
3 on behalf of itself and in the public interest, and The LIV Group and its respective officers,
4 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
5 franchisees, licensees, customers (not including private label customers of The LIV Group),
6 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
7 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
8 of them (collectively, “Released Parties”).

9 **8.2** ERC, acting in the public interest, releases the Released Parties from any
10 and all claims for violations of Proposition 65 up through the Effective Date based on exposure
11 to lead and/or cadmium from the Covered Products as set forth in the Notices of Violation.
12 ERC, on behalf of itself only, hereby fully releases and discharges the Released Parties from
13 any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties,
14 fees, costs, and expenses asserted, or that could have been asserted from the handling, use, or
15 consumption of the Covered Products, as to any alleged violation of Proposition 65 or its
16 implementing regulations arising from the failure to provide Proposition 65 warnings on the
17 Covered Products regarding lead and/or cadmium up to and including the Effective Date.

18 **8.3** ERC on its own behalf only, and The LIV Group on its own behalf only,
19 further waive and release any and all claims they may have against each other for all actions or
20 statements made or undertaken in the course of seeking or opposing enforcement of
21 Proposition 65 in connection with the Notices and Complaint up through and including the
22 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party’s
23 right to seek to enforce the terms of this Consent Judgment.

24 **8.4** It is possible that other claims not known to the Parties, arising out of the facts
25 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be
26 discovered. ERC on behalf of itself only, and The LIV Group on behalf of itself only,
27 acknowledge that this Consent Judgment is expressly intended to cover and include all such
28 claims up through and including the Effective Date, including all rights of action therefore.

1 ERC and The LIV Group acknowledge that the claims released in Sections 8.2 and 8.3 above
2 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to
3 any such unknown claims. California Civil Code section 1542 reads as follows:

4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
5 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
6 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
7 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
8 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
9 PARTY.

8 ERC on behalf of itself only, and The LIV Group on behalf of itself only, acknowledge and
9 understand the significance and consequences of this specific waiver of California Civil Code
10 section 1542.

11 **8.5** Compliance with the terms of this Consent Judgment shall be deemed to
12 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged
13 exposures to lead and/or cadmium in the Covered Products as set forth in the Notices and
14 Complaint.

15 **8.6** Nothing in this Consent Judgment is intended to apply to any occupational or
16 environmental exposures arising under Proposition 65, nor shall it apply to any of The LIV
17 Group's products other than the Covered Products.

18 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

22 **10. GOVERNING LAW**

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

25 **11. PROVISION OF NOTICE**

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

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

2 Chris Heptinstall, Executive Director, Environmental Research Center
3 3111 Camino Del Rio North, Suite 400
4 San Diego, CA 92108
5 Ph: (619) 500-3090
6 Email: chris.heptinstall@erc501c3.org

7 With a copy to:

8 Matthew C. Maclear
9 Anthony M. Barnes
10 Aqua Terra Aeris Law Group
11 4030 Martin Luther King Jr. Way
12 Oakland, CA 94609
13 Telephone: (415) 568-5200
14 Email: mcm@atalawgroup.com
15 amb@atalawgroup.com

16 **THE LIV GROUP INC., individually and dba LIQUID I.V.:**

17 Patricia Almeida
18 Chief Operating Officer
19 The LIV Group Inc.
20 777 S. Aviation Blvd.
21 El Segundo, CA 90245
22 Email: Patricia.H.Almeida@liquid-iv.com

23 With a copy to:

24 Jacqueline Biner
25 Assistant General Counsel for Unilever's
26 Health & Wellbeing & The LIV Group, Inc.,
27 Individually and dba Liquid I.V.
28 415 Jackson St, Floor 2
San Francisco, CA 94111
Telephone: (415) 273-1000
Email: Jacqueline.biner@unilever.com

29 **12. COURT APPROVAL**

30 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
31 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
32 Consent Judgment.

33 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
34 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible

1 prior to the hearing on the motion.

2 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
3 void and have no force or effect.

4 **13. EXECUTION AND COUNTERPARTS**

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

8 **14. DRAFTING**

9 The terms of this Consent Judgment have been reviewed by the respective counsel for
10 each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms
11 and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and
12 construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,
13 and no provision of this Consent Judgment shall be construed against any Party, based on the fact
14 that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any
15 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated
16 equally in the preparation and drafting of this Consent Judgment.

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

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

22 **16. ENFORCEMENT**

23 ERC may, by motion or order to show cause before the Superior Court of Alameda
24 County, enforce the terms and conditions contained in this Consent Judgment. In any action
25 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
26 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.

27 **17. ENTIRE AGREEMENT, AUTHORIZATION**

28 **17.1** This Consent Judgment contains the sole and entire agreement and

1 understanding of the Parties with respect to the entire subject matter herein, including any and
2 all prior discussions, negotiations, commitments, and understandings related thereto. No
3 representations, oral or otherwise, express or implied, other than those contained herein have
4 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
5 herein, shall be deemed to exist or to bind any Party.

6 17.2 Each signatory to this Consent Judgment certifies that he or she is fully
7 authorized by the Party he or she represents to stipulate to this Consent Judgment.

8 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
9 **CONSENT JUDGMENT**

10 This Consent Judgment has come before the Court upon the request of the Parties. The
11 Parties request the Court to fully review this Consent Judgment and, being fully informed
12 regarding the matters which are the subject of this action, to:

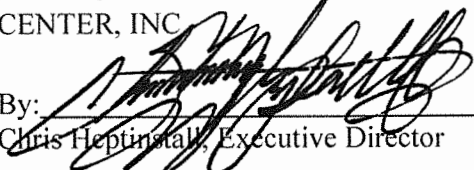
13 (1) Find that the terms and provisions of this Consent Judgment represent a fair and
14 equitable settlement of all matters raised by the allegations of the Complaint that the matter has
15 been diligently prosecuted, and that the public interest is served by such settlement; and

16 (2) Make the findings pursuant to California Health and Safety Code section
17 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

18 **IT IS SO STIPULATED:**

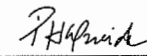
19
20 Dated: 10/10/, 2022

ENVIRONMENTAL RESEARCH
CENTER, INC

21
22 By: 
23 Chris Heptinstall, Executive Director

24 Dated: October 7, 2022


THE LIV GROUP INC., individually and
dba LIQUID I.V.

25
26 
27 By: Patricia H. Almeida
28 Its: Chief Operating Officer, Liquid I.V.

1 **APPROVED AS TO FORM:**

2 Dated: October 7, 2022


AQUA TERRA AERIS LAW GROUP

3
4 By: 

5 Matthew C. Maclear
6 Anthony M. Barnes
7 Attorneys For Environmental Research
8 Center, Inc.

9 Dated: October 7, 2022

UNILEVER'S HEALTH & WELLBEING
& THE LIV GROUP INC., individually and
dba LIQUID I.V.

10 By: 

11 Jacqueline Biner
12 Assistant General Counsel for Unilever's
13 Health & Wellbeing & The LIV Group
14 Inc., individually and dba Liquid I.V.

15
16
17 **ORDER AND JUDGMENT**

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

20 IT IS SO ORDERED, ADJUDGED AND DECREED.

21
22 Dated: _____, 2022

Judge of the Superior Court

EXHIBIT A



Matthew Maclear
mcm@atalawgroup.com
415-568-5200

Anthony Barnes
amb@atalawgroup.com
415-326-3173

May 26, 2022

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

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

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

The LIV Group Inc., individually and dba Liquid I.V.



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
May 26, 2022
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Consumer Products and Listed Chemical. The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

1. **Liquid I.V. Hydration Multiplier Electrolyte Drink Mix Passion Fruit - Lead**
2. **Liquid I.V. Hydration Multiplier Electrolyte Drink Mix Lemon Lime - Lead**
3. **Liquid I.V. Hydration Multiplier Electrolyte Drink Mix Açai Berry - Lead**
4. **Liquid I.V. Hydration Multiplier Electrolyte Drink Mix Strawberry - Lead**

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

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least May 26, 2019, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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Page 3

ERC has retained ATA Law Group as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention, or the attention of ATA partner Anthony Barnes, using the address or contact information indicated on the letterhead.**

Sincerely,

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style with a large, stylized initial "M".

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to The LIV Group Inc., individually and dba Liquid I.V. and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
May 26, 2022
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CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by The LIV Group Inc., individually and dba Liquid I.V.

I, Matthew Maclear, declare:

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

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: May 26, 2022

A handwritten signature in cursive script that reads "Matthew Maclear".

Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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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 May 26, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
The LIV Group Inc., individually and
dba Liquid I.V.
777 S Aviation Blvd, Ste 105
El Segundo, CA 90245

Patricia Almeida
(Registered Agent for The LIV Group Inc., individually and
dba Liquid I.V.)
777 S Aviation Blvd, Ste 105
El Segundo, CA 90245

Current President or CEO
The LIV Group Inc., individually and
dba Liquid I.V.
6010 Cajon Blvd
San Bernardino, CA 92407

The Corporation Trust Company
(Registered Agent for The LIV Group Inc., individually and
dba Liquid I.V.)
1209 N. Orange St
Wilmington, DE 19801

On May 26, 2022, 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 May 26, 2022, 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 Violation of California Health & Safety Code §25249.5 *et seq.*
May 26, 2022
Page 6

Nancy O'Malley, 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
Prop65Env@co.calaveras.ca.us

Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Lisa A. Smittcamp, District Attorney
Fresno County
2100 Tulare Street
Fresno, CA 93721
consumerprotection@fresnocountyca.gov

Thomas L. Hardy, District Attorney
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168 North Edwards Street
Independence, CA 93526
inyoda@inyocounty.us

Michelle Latimer, Program Coordinator
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220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

Walter W. Wall, District Attorney
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P.O. Box 730
Mariposa, CA 95338
mcda@mariposacounty.org

Kimberly Lewis, District Attorney
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Prop65@countyofmerced.com

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Clifford H. Newell, District Attorney
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Nevada City, CA 95959
DA.Prop65@co nevada.ca.us

Todd Spitzer, District Attorney
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Prop65notice@da.ocgov.com

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davidhollister@countyofplumas.com

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Riverside, CA 92501
Prop65@rivcoda.org

Anne Marie Schubert, District Attorney
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Sacramento, CA 95814
Prop65@sacda.org



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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Page 7

Summer Stephan, District Attorney
San Diego County
330 West Broadway
San Diego, CA 92101
SanDiegoDAProp65@sdca.org

Mark Ankorn, Deputy City Attorney
San Diego City Attorney
1200 Third Avenue
San Diego, CA 92101
CityAttyProp65@sandiego.gov

Alexandra Grayner, Assistant District Attorney
San Francisco District Attorney's Office
350 Rhode Island Street
San Francisco, CA 94103
Alexandra.grayner@sfgov.org

Valerie Lopez, Deputy City Attorney
San Francisco City Attorney
1390 Market Street, 7th Floor
San Francisco, CA 94102
Valerie.Lopez@sfcityattorney.org

Tori Verber Salazar, District Attorney
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DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney
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edobroth@co.slo.ca.us

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Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

Bud Porter, Supervising Deputy District Attorney
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70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

Nora V. Frimann, City Attorney
San Jose City Attorney
200 E. Santa Clara Street, 16th Floor
San Jose, CA 96113
Proposition65notices@sanjoseca.gov

Jeffrey S. Rosell, District Attorney
Santa Cruz County
701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

Jill Ravitch, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
Jeannie.Barnes@sonoma-county.org

Phillip J. Cline, District Attorney
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Visalia, CA 95370
Prop65@co.tulare.ca.us

Gregory D. Totten, District Attorney
Ventura County
800 S Victoria Ave
Ventura, CA 93009
daspecialops@ventura.org

Jeff W. Reising, District Attorney
Yolo County
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org



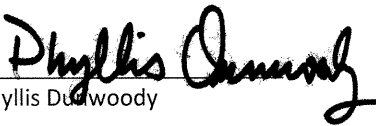
Notice of Violation of California Health & Safety Code §25249.5 *et seq.*

May 26, 2022

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On May 26, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on May 26, 2022, in Fort Oglethorpe, Georgia.



Phyllis Duwoody



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
May 26, 2022
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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, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	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, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Colusa County 310 6 th St Colusa, CA 95932	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	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, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, El Dorado County 778 Pacific St Placerville, CA 95667	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	
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



Matthew Maclear
mcm@atalawgroup.com
415-568-5200

Anthony Barnes
amb@atalawgroup.com
415-326-3173

June 9, 2022

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

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

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

The LIV Group Inc., individually and dba Liquid I.V.



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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Consumer Products and Listed Chemicals. The products that are the subject of this notice and the chemicals in those products identified as exceeding allowable levels are:

1. **Liquid I.V. Hydration Multiplier Electrolyte Drink Mix Piña Colada - Lead**
2. **Liquid I.V. Hydration Multiplier Electrolyte Drink Mix Watermelon - Lead**
3. **Liquid I.V. Hydration Multiplier Electrolyte Drink Mix Golden Cherry - Lead**
4. **Liquid I.V. Hydration Multiplier Electrolyte Drink Mix Guava - Cadmium**

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.

Cadmium was officially listed as a chemical known to cause developmental toxicity and male reproductive toxicity on May 1, 1997 while cadmium and cadmium compounds were listed as chemicals known to the State of California to cause cancer on October 1, 1987.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to these chemicals has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least June 9, 2019, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; (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



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time-consuming litigation.

ERC has retained ATA Law Group as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention, or the attention of ATA partner Anthony Barnes, using the address or contact information indicated on the letterhead.**

Sincerely,

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style and is positioned above a horizontal line.

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to The LIV Group Inc., individually and dba Liquid I.V. and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
June 9, 2022
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CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by The LIV Group Inc., individually and dba Liquid I.V.

I, Matthew Maclear, declare:

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

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: June 9, 2022

A handwritten signature in cursive script that reads "Matthew Maclear". The signature is written in dark ink and is positioned above a horizontal line.

Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
June 9, 2022
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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 June 9, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
The LIV Group Inc., individually and
dba Liquid I.V.
777 S Aviation Blvd, Ste 105
El Segundo, CA 90245

Patricia Almeida
(Registered Agent for The LIV Group Inc., individually and
dba Liquid I.V.)
777 S Aviation Blvd, Ste 105
El Segundo, CA 90245

Current President or CEO
The LIV Group Inc., individually and
dba Liquid I.V.
6010 Cajon Blvd
San Bernardino, CA 92407

The Corporation Trust Company
(Registered Agent for The LIV Group Inc., individually and
dba Liquid I.V.)
1209 N. Orange St
Wilmington, DE 19801

On June 9, 2022, 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 June 9, 2022, 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 Violation of California Health & Safety Code §25249.5 *et seq.*
June 9, 2022
Page 6

Nancy O'Malley, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

Jeannine M. Pacioni, District Attorney
Monterey County
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Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Barbara Yook, District Attorney
Calaveras County
891 Mountain Ranch Road
San Andreas, CA 95249
Prop65Env@co.calaveras.ca.us

Allison Haley, District Attorney
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Napa, CA 94559
CEPD@countyofnapa.org

Stacey Grassini, Deputy District Attorney
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Martinez, CA 94553
sgrassini@contracostada.org

Clifford H. Newell, District Attorney
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Nevada City, CA 95959
DA.Prop65@co nevada.ca.us

Lisa A. Smittcamp, District Attorney
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Fresno, CA 93721
consumerprotection@fresnocountyca.gov

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Santa Ana, CA 92703
Prop65notice@da.ocgov.com

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Independence, CA 93526
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Morgan Briggs Gire, District Attorney
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Michelle Latimer, Program Coordinator
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mlatimer@co.lassen.ca.us

David Hollister, District Attorney
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davidhollister@countyofplumas.com

Walter W. Wall, District Attorney
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mcda@mariposacounty.org

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Kimberly Lewis, District Attorney
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Merced, CA 95340
Prop65@countyofmerced.com

Anne Marie Schubert, District Attorney
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901 G Street
Sacramento, CA 95814
Prop65@sacda.org



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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Page 7

Summer Stephan, District Attorney
San Diego County
330 West Broadway
San Diego, CA 92101
SanDiegoDAProp65@sdca.org

Mark Ankorn, Deputy City Attorney
San Diego City Attorney
1200 Third Avenue
San Diego, CA 92101
CityAttyProp65@sandiego.gov

Alexandra Grayner, Assistant District Attorney
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Alexandra.grayner@sfgov.org

Valerie Lopez, Deputy City Attorney
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San Francisco, CA 94102
Valerie.Lopez@sfcityattorney.org

Tori Verber Salazar, District Attorney
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DAProp65@co.santa-barbara.ca.us

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San Jose, CA 95110
EPU@da.sccgov.org

Nora V. Frimann, City Attorney
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San Jose, CA 96113
Proposition65notices@sanjoseca.gov

Jeffrey S. Rosell, District Attorney
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Jeannie.Barnes@sonoma-county.org

Phillip J. Cline, District Attorney
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daspecialops@ventura.org

Jeff W. Reising, District Attorney
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Woodland, CA 95695
cfepd@yolocounty.org



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
June 9, 2022
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On June 9, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on June 9, 2022, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink that reads "Phyllis Dunwoody". The signature is written in a cursive style with a large, looped "D" and a long, sweeping tail.

Phyllis Dunwoody



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
June 9, 2022
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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, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	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, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Colusa County 310 6 th St Colusa, CA 95932	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	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, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, El Dorado County 778 Pacific St Placerville, CA 95667	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	
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



Matthew Maclear
mcm@atalawgroup.com
415-568-5200

Anthony Barnes
amb@atalawgroup.com
415-326-3173

July 21, 2022

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

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

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

The LIV Group Inc., individually and dba Liquid I.V.



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
July 21, 2022
Page 2

Consumer Products and Listed Chemical. The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

1. **Liquid I.V. Hydration Multiplier Immune Support Drink Mix Tangerine - Lead**
2. **Liquid I.V. Energy Multiplier Supercharged Energy Drink Mix Lemon Ginger - Lead**
3. **Liquid I.V. Hydration Multiplier Electrolyte Drink Mix Caramel Apple - Lead**

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

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least July 21, 2019, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
July 21, 2022
Page 3

ERC has retained ATA Law Group as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention, or the attention of ATA partner Anthony Barnes, using the address or contact information indicated on the letterhead.**

Sincerely,

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style with a large, stylized initial "M".

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to The LIV Group Inc., individually and dba Liquid I.V. and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
July 21, 2022
Page 4

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by The LIV Group Inc., individually and dba Liquid I.V.

I, Matthew Maclear, declare:

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

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: July 21, 2022

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style and is positioned above a horizontal line.

Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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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 July 21, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
The LIV Group Inc., individually and
dba Liquid I.V.
777 S Aviation Blvd, Ste 105
El Segundo, CA 90245

Patricia Almeida
(Registered Agent for The LIV Group Inc., individually and
dba Liquid I.V.)
777 S Aviation Blvd, Ste 105
El Segundo, CA 90245

Current President or CEO
The LIV Group Inc., individually and
dba Liquid I.V.
6010 Cajon Blvd
San Bernardino, CA 92407

The Corporation Trust Company
(Registered Agent for The LIV Group Inc., individually and
dba Liquid I.V.)
1209 N. Orange St
Wilmington, DE 19801

On July 21, 2022, 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 July 21, 2022, 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 Violation of California Health & Safety Code §25249.5 *et seq.*
July 21, 2022
Page 6

Nancy O'Malley, District Attorney
Alameda County
7677 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

Jeannine M. Pacioni, District Attorney
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Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Barbara Yook, District Attorney
Calaveras County
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San Andreas, CA 95249
Prop65Env@co.calaveras.ca.us

Allison Haley, District Attorney
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Napa, CA 94559
CEPD@countyofnapa.org

Stacey Grassini, Deputy District Attorney
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Martinez, CA 94553
sgrassini@contracostada.org

Clifford H. Newell, District Attorney
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Nevada City, CA 95959
DA.Prop65@co nevada.ca.us

Lisa A. Smittcamp, District Attorney
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Fresno, CA 93721
consumerprotection@fresnocountyca.gov

Todd Spitzer, District Attorney
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Prop65notice@da.ocgov.com

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davidhollister@countyofplumas.com

Walter W. Wall, District Attorney
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mcda@mariposacounty.org

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Prop65@rivcoda.org

Kimberly Lewis, District Attorney
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Merced, CA 95340
Prop65@countyofmerced.com

Anne Marie Schubert, District Attorney
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901 G Street
Sacramento, CA 95814
Prop65@sacda.org



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

July 21, 2022

Page 7

Summer Stephan, District Attorney
San Diego County
330 West Broadway
San Diego, CA 92101
SanDiegoDAProp65@sdca.org

Mark Ankorn, Deputy City Attorney
San Diego City Attorney
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CityAttyProp65@sandiego.gov

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Alexandra.grayner@sfgov.org

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Valerie.Lopez@sfcityatt.org

Tori Verber Salazar, District Attorney
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EPU@da.sccgov.org

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San Jose, CA 96113
Proposition65notices@sanjoseca.gov

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Prop65DA@santacruzcounty.us

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Jeannie.Barnes@sonoma-county.org

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Prop65@co.tulare.ca.us

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daspecialops@ventura.org

Jeff W. Reising, District Attorney
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301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
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Page 8

On July 21, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on July 21, 2022, in Fort Oglethorpe, Georgia.

A handwritten signature in black ink that reads "Phyllis Dunwoody". The signature is written in a cursive style with a horizontal line underneath the name.

Phyllis Dunwoody



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
July 21, 2022
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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, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	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, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Colusa County 310 6 th St Colusa, CA 95932	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	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, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, El Dorado County 778 Pacific St Placerville, CA 95667	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, San Bernardino County 303 West Third Street San Bernardino, CA 92415	
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 D



Matthew Maclear
mcm@atalawgroup.com
415-568-5200

Anthony Barnes
amb@atalawgroup.com
415-326-3173

September 15, 2022

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with these products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7(d), ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

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

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

The LIV Group Inc., individually and dba Liquid I.V.



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
September 15, 2022
Page 2

Consumer Products and Listed Chemical. The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

1. **Liquid I.V. Energy Multiplier Energy Drink Mix Yuzu Pineapple - Lead**
2. **Liquid I.V. Hydration Multiplier Non-GMO Electrolyte Drink Mix 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.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the recommended use of these products. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least September 15, 2019, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
September 15, 2022
Page 3

ERC has retained ATA Law Group as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention, or the attention of ATA partner Anthony Barnes, using the address or contact information indicated on the letterhead.**

Sincerely,

A handwritten signature in black ink that reads "Matthew Maclear". The signature is written in a cursive style with a large, stylized initial "M".

Matthew Maclear
AQUA TERRA AERIS LAW GROUP

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to The LIV Group Inc., individually and dba Liquid I.V. and its Registered Agents for Service of Process only)
- Additional Supporting Information for Certificate of Merit (to AG only)



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
September 15, 2022
Page 4

CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by The LIV Group Inc., individually and dba Liquid I.V.

I, Matthew Maclear, declare:

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

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established and that the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: September 15, 2022

A handwritten signature in black ink that reads "Matthew Maclear".

Matthew Maclear



Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
September 15, 2022
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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 September 15, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** were served on the following party when a true and correct copy thereof was sent via electronic mail to the party listed below, through its attorney pursuant to agreement:

The LIV Group Inc., individually and
dba Liquid I.V.
c/o Jacqueline Biner
Assistant General Counsel for Unilever’s
Health & Wellbeing & The LIV Group, Inc.,
Individually and dba Liquid I.V.
415 Jackson St, Floor 2
San Francisco, CA 94111
Email: Jacqueline.biner@unilever.com

On September 15, 2022, 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 September 15, 2022, 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:

Nancy O’Malley, District Attorney
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Jeff W. Reisig, District Attorney
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On September 15, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on September 15, 2022, in Fort Oglethorpe, Georgia.



Myra Heptinstall



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, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	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, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Colusa County 310 6 th St Colusa, CA 95932	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	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, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, El Dorado County 778 Pacific St Placerville, CA 95667	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
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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	