

DEC 29 2011

John A. Clarke, Executive Officer/Clerk  
BY Mary Flores Deputy

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2 801 S. Grand Avenue, Ste. 1100  
3 Los Angeles, CA 90017  
4 213.629.2071  
5 FAX 213.623.7755  
6 gk@gideonlaw.net

7 Attorneys for Plaintiff  
8 Environmental Research Center

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF LOS ANGELES

BC 47 60 4 6

11 ENVIRONMENTAL RESEARCH CENTER, )  
12 a non-profit California corporation, )

13 Plaintiff, )

14 v. )

15 NEW ENGLAND GREENS LLC; VIBRANT )  
16 HEALTH; DOES 1 through 10, )

17 Defendant(s). )

Case No. \_\_\_\_\_

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

Health & Safety Code §25249.5, *et seq.*

18 Plaintiff Environmental Research Center brings this action in the interests of the  
19 general public and, on information and belief, hereby alleges:

20 **INTRODUCTION**

21 1. This action seeks to remedy Defendant(s)' continuing failure to warn consumers  
22 in California that they are being exposed to lead, a substance known to the State of California  
23 to cause cancer, birth defects and other reproductive harm. Defendant(s) manufactures,  
24 packages, distributes, markets, and/or sells in California certain herbal products containing lead  
25 (the "PRODUCTS") including:

26 **Green Vibrance  
Green Vibrance 15 day Supply 180 Grams**

1           **Green Vibrance Junior + 3D – Apple**  
2           **Joint Vibrance**  
3           **Pure Green Protein Vanilla**  
4           **Green Vibrance Original Meal Bar**  
5           **PureGreen Protein Mixed Berry Single Serving Pack**  
6           **PureGreen Protein Chocolate Single Serving Pack**  
7           **PureGreen Protein Mixed Berry 447 Grams**  
8           **PureGreen Protein Chocolate Version 2.0 488.4 Grams**  
9           **PureGreen Protein Natural Version 2.0 431 Grams**

10           2.       Lead and lead compounds (hereinafter, the "LISTED CHEMICALS") are  
11 substances known to the State<sup>1</sup> of California to cause cancer, birth defects and other  
12 reproductive harm.

13           3.       The use and/or handling of the PRODUCTS causes exposures to the LISTED  
14 CHEMICALS at levels requiring a "clear and reasonable warning" under California's Safe  
15 Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code ("H&S Code")  
16 §25249.5, *et seq.* (also known as "Proposition 65"). Defendant(s) has failed to provide the  
17 health hazard warnings required by Proposition 65.

18           4.       Defendant(s)' continued manufacturing, packaging, distributing, marketing  
19 and/or sales of the PRODUCTS without the required health hazard warnings, causes  
20 individuals to be involuntarily and unwittingly exposed to levels of the LISTED CHEMICALS  
21 that violate Proposition 65.

22           5.       Plaintiff seeks injunctive relief enjoining Defendant(s) from the continued  
23 manufacturing, packaging, distributing, marketing and/or sales of the PRODUCTS in  
24 California without provision of clear and reasonable warnings regarding the risks of cancer,  
25 birth defects and other reproductive harm posed by exposure to the LISTED CHEMICALS  
26 through the use and/or handling of the PRODUCTS. Plaintiff seeks an injunctive order  
compelling Defendant(s) to bring its business practices into compliance with Proposition 65 by  
providing a clear and reasonable warning to each individual who has been and who in the

1 future may be exposed to LISTED CHEMICALS from the use of the PRODUCTS. Plaintiff  
2 also seeks an order compelling Defendant(s) to identify and locate each individual person who  
3 in the past has purchased the PRODUCTS, and to provide to each such purchaser a clear and  
4 reasonable warning that the use of the PRODUCTS will cause exposures to the LISTED  
5 CHEMICALS.

6 6. In addition to injunctive relief, Plaintiff seeks an assessment of civil penalties in  
7 excess of \$1 million to remedy Defendant(s)' failure to provide clear and reasonable warnings  
8 regarding exposures to the LISTED CHEMICALS.

### 9 JURISDICTION AND VENUE

10 7. This Court has jurisdiction over this action pursuant to California Constitution  
11 Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes  
12 except those given by statute to other trial courts." The statute under which this action is  
13 brought does not specify any other basis for jurisdiction.

14 8. This Court has jurisdiction over Defendant(s) because, based on information  
15 and belief, Defendant(s) is a business having sufficient minimum contacts with California, or  
16 otherwise intentionally availing itself of the California market through the distribution and sale  
17 of the PRODUCTS in the State of California to render the exercise of jurisdiction over it by the  
18 California courts consistent with traditional notions of fair play and substantial justice.

19 9. Venue in this action is proper in the Los Angeles Superior Court because the  
20 Defendant has violated California law in the County of Los Angeles.

### 21 PARTIES

22 10. PLAINTIFF Environmental Research Center ("PLAINTIFF") is a corporation  
23 organized under California's Corporation Law. ERC is dedicated to, among other causes,  
24 reducing the use and misuse of hazardous and toxic substances, consumer protection, worker  
25 safety and corporate responsibility.

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26 <sup>1</sup> All statutory and regulatory references herein are to California law, unless otherwise specified.



1 statute may be enjoined in a court of competent jurisdiction. (H&S Code §25249.7.) The phrase  
2 “threatening to violate” is defined to mean creating “a condition in which there is a substantial  
3 likelihood that a violation will occur.” (H&S Code §25249.11(e).) Violators are liable for civil  
4 penalties of up to \$2,500 per day for each violation of the Act. (H&S Code §25249.7.)

#### 5 FACTUAL BACKGROUND

6 19. On February 27, 1987, the State of California officially listed the chemical lead  
7 as a chemical known to cause reproductive toxicity. Lead became subject to the warning  
8 requirement one year later and was therefore subject to the "clear and reasonable" warning  
9 requirements of Proposition 65 beginning on February 27, 1988. (27 California Code of  
10 Regulations (“CCR”) §25000, *et seq.*; H&S Code §25249.5, *et seq.*)

11 20. On October 1, 1992, the State of California officially listed the chemicals lead  
12 and lead compounds as chemicals known to cause cancer. Lead and lead compounds became  
13 subject to the warning requirement one year later and were therefore subject to the "clear and  
14 reasonable" warning requirements of Proposition 65 beginning on October 1, 1993. (27 CCR §  
15 25000, *et seq.*; H&S Code §25249.6, *et seq.*) Due to the high toxicity of lead, the maximum  
16 allowable dose level for lead is .5 ug/day (micrograms a day) for reproductive toxicity.

17 21. To test the PRODUCTS for lead, Plaintiff hired a well-respected and accredited  
18 testing laboratory that designed the testing protocol used and approved by the California  
19 Attorney General years ago for testing heavy metals. The testing results undertaken by  
20 PLAINTIFF of the PRODUCTS show violation of the Proposition 65 .5 ug/day “safe harbor”  
21 daily dose limit. Very significant is the fact that people are being exposed to lead through  
22 ingestion as opposed to other not as harmful methods of exposure such as dermal exposure.  
23 Ingestion of lead produces much higher exposure levels and health risks than dermal exposure  
24 to this chemical.

25 22. At all times relevant to this action, DEFENDANTS therefore have knowingly  
26 and intentionally exposed the users and/or handlers of the PRODUCTS to LISTED  
CHEMICALS without first giving a clear and reasonable warning to such individuals.



1                   §25903.

2           c.     The California Attorney General was provided with a Certificate of Merit  
3                   by the attorney for the noticing party, stating that there is a reasonable  
4                   and meritorious case for this action, and attaching factual information  
5                   sufficient to establish a basis for the certificate, including the identify of  
6                   the persons consulted with and relied on by the certifier, and the facts  
7                   studies, or other data reviewed by those persons, pursuant to H&S Code  
8                   §25249.7(h) (2).

9           27.     The appropriate public enforcement agencies have failed to commence and  
10                  diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against  
11                  DEFENDANT(S) based on the allegations herein.

12           28.     By committing the acts alleged in this Complaint DEFENDANT(S) at all times  
13                  relevant to this action, and continuing through the present, has violated H&S Code §25249.6 by,  
14                  in the course of doing business, knowingly and intentionally exposing individuals who use or  
15                  handle the PRODUCTS set forth in the Notices to the LISTED CHEMICALS, without first  
16                  providing a clear and reasonable warning to such individuals pursuant to H&S Code §§ 25249.6  
17                  and 25249.11(f).

18           29.     By the above-described acts, DEFENDANT(S) has violated H&S Code §  
19                  25249.6 and is therefore subject to an injunction ordering DEFENDANT(S) to stop violating  
20                  Proposition 65, to provide warnings to all present and future customers and to provide warnings  
21                  to DEFENDANT(S)' past customers who purchased or used the PRODUCTS without  
22                  receiving a clear and reasonable warning.

23           30.     An action for injunctive relief under Proposition 65 is specifically authorized by  
24                  Health & Safety Code §25249.7(a).

25           31.     Continuing commission by DEFENDANT(S), of the acts alleged above will  
26                  irreparably harm the citizens of the State of California, for which harm they have no plain,  
                  speedy, or adequate remedy at law.





1 Wherefore, PLAINTIFF accordingly prays for the following relief:

2 A. a preliminary and permanent injunction, pursuant to H&S Code §25249.7(b),  
3 enjoining DEFENDANT(S), its agents, employees, assigns and all persons acting in concert or  
4 participating with DEFENDANT(S), from distributing or selling the PRODUCTS in California  
5 without first providing a clear and reasonable warning, within the meaning of Proposition 65,  
6 that the users and/or handlers of the PRODUCTS are exposed to the LISTED CHEMICALS.

7 B. an injunctive order, pursuant to H&S Code §25249.7(b), compelling  
8 DEFENDANT(S) to identify and locate each individual who has purchased the PRODUCTS  
9 since September 24, 2007, and to provide a warning to such person that the use of the  
10 PRODUCTS will expose the user to chemicals known to cause cancer, birth defects, and other  
11 reproductive harm.

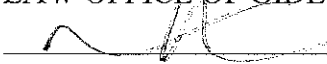
12 C. an assessment of civil penalties pursuant to Health & Safety Code §25249.7(b),  
13 against Defendant in the amount of \$2,500 per day for each violation of Proposition 65, in an  
14 amount in excess of \$1 million;

15 D. an award to PLAINTIFF of its reasonable attorneys fees and costs of suit  
16 pursuant to California Code of Civil Procedure §1021.5, as PLAINTIFF shall specify in further  
17 application to the Court; and,

18 E. such other and further relief as may be just and proper.

19  
20 DATED: 11/28, 2011

LAW OFFICE OF GIDEON KRACOV

  
\_\_\_\_\_  
Gideon Kracov  
Attorneys for Plaintiff  
Environmental Research Center





## Environmental Research Center

5694 Mission Center Road #199

San Diego, CA 92108

619.309.4194

September 24, 2010

### VIA CERTIFIED MAIL

Current CEO or President  
New England Greens, LLC  
403 Ashley Falls Rd  
Canaan, CT 06018

Mark Timon  
(New England Greens, LLC's Registered  
Agent for Service of Process)  
403 Ashley Falls Rd  
Canaan, CT 06018

Current CEO or President  
Vibrant Health  
99 Railroad Street  
Canaan, CT 06018

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
P.O. Box 70550  
Oakland, CA 94612-0550

Re: Notice of Violation against New England Greens, LLC and Vibrant Health for Violation of California Health & Safety Code Section 25249.6

Dear Prosecutors:

The Environmental Research Center ("ERC"), the noticing entity is a California corporation whose mission is to safeguard the public from health hazards that impact families, workers and the environment. ERC is dedicated to reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and encouraging corporate responsibility. ERC is located at 5694 Mission Center Road, # 199, San Diego, CA 92108. Tel. (619) 309-4194, Executive Director: Chris Heptinstall. Through this Notice of Violation, ERC seeks to reduce exposure to the public from lead and arsenic that is contained in the named products manufactured and distributed by New England Greens, LLC and Vibrant Health.

This letter constitutes notification that New England Greens, LLC located at 403 Ashley Falls Rd Canaan, CT 06018 and Vibrant Health, located at 99 Railroad Street, Canaan, CT 06018 have violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code).

In particular, these Companies have manufactured and distributed products that have exposed and continue to expose numerous individuals within California to lead and/or arsenic. Lead was listed pursuant to Proposition 65 as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. Lead was listed pursuant to Proposition 65 as a carcinogen on October 1, 1992. On February 27, 1987, the State of California officially listed arsenic (inorganic arsenic compounds) as a chemical known to cause cancer. On May 1, 1997, the State of California officially listed arsenic (inorganic oxides) as a chemical known to cause reproductive toxicity. The time period of these violations commenced one year after the listed dates above, at least since September 24, 2007, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to purchasers and users.

The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products by consumers. Accordingly, the primary route of exposure for consumers has been oral through ingestion, but may also occur through the inhalation and/or dermal contact route of exposure.

New England Greens, LLC and Vibrant Health are exposing people to lead and arsenic from the following product:

Vibrant Health GREEN VIBRANCE

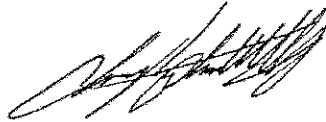
Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. New England Greens, LLC and Vibrant Health are in violation of Proposition 65 because the Company failed to provide a warning to persons using their products that they are being exposed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

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, ERC gives notice of the alleged violation to the noticed party and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to ERC from information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, and referenced as Appendix A, has been provided to the noticed party.

Based on the allegations set forth in this Notice, ERC intends to file a citizen enforcement action against New England Greens, LLC and Vibrant Health unless it agrees in an enforceable written instrument to: instrument to: (1) recall or reformulate the listed products so as to eliminate further unwarned exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

Please direct all questions concerning this notice to ERC's attorney, Gideon Kracov, 801 S. Grand Ave., 11<sup>th</sup> Fl., Los Angeles, CA 90017, 213-629-2071, gk@gideonlaw.net.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Heptinstall", written in a cursive style.

Chris Heptinstall  
Executive Director, Environmental Research Center

cc: Karen A. Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to New England Greens, LLC its Registered Agent for Service of Process, and Vibrant Health Only)

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

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center's Notice of Proposition 65 Violations by New England Greens, LLC and Vibrant Health**

I, Gideon Kracov, declare:

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



Dated: September 24, 2010

\_\_\_\_\_  
Gideon Kracov, Attorney At Law

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742

On September 24, 2010, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”**

On the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Current CEO or President  
New England Greens, LLC  
403 Ashley Falls Rd  
Canaan, CT 06018

Current CEO or President  
Vibrant Health  
99 Railroad Street  
Canaan, CT 06018

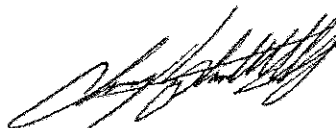
Mark Timon  
(New England Greens, LLC’s Registered  
Agent for Service of Process)  
403 Ashley Falls Rd  
Canaan, CT 06018

On September 24, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, CA 94612-0550

On September 24, 2010, 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 with the U.S. Postal Service for delivery by Priority Mail.

Executed on September 24, 2010, in Fort Oglethorpe, Georgia.



---

Chris Heptinstall

Service List

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

District Attorney, Alpine County  
P.O. Box 248  
Markleeville, CA 96120

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

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

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

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

District Attorney, Contra Costa County  
900 Ward Street  
Martinez, CA 94553

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

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

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

District Attorney, Glenn County  
Post Office Box 430  
Willows, CA 95988

District Attorney, Humboldt County  
825 5th Street  
Eureka, CA 95501

District Attorney, Imperial County  
939 West Main Street, Ste 102  
El Centro, CA 92243

District Attorney, Inyo County  
230 W. Line Street  
Bishop, CA 93514

District Attorney, Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Kings County  
1400 West Lacey Boulevard  
Hanford, CA 93230

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

District Attorney, Lassen County  
220 South Lassen Street, Ste. 8  
Susanville, CA 96130

District Attorney, Los Angeles County  
210 West Temple Street, Rm 345  
Los Angeles, CA 90012

District Attorney, Madera County  
209 West Yosemite Avenue  
Madera, CA 93637

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

District Attorney, Mariposa County  
Post Office Box 730  
Mariposa, CA 95338

District Attorney, Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

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

District Attorney, Modoc County  
204 S Court Street, Room 202  
Alturas, CA 96101-4020

District Attorney, Mono County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, Monterey County  
230 Church Street, Bldg 2  
Salinas, CA 93901

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

District Attorney, Nevada County  
110 Union Street  
Nevada City, CA 95959

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



Notice of Violations of California Health & Safety Code §25249.5 *et seq.*  
September 24, 2010  
Page 7

District Attorney, Placer County  
10810 Justice Center Drive, Ste 240  
Roseville, CA 95678

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

District Attorney, Riverside County  
4075 Main Street, 1st Floor  
Riverside, CA 92501

District Attorney, Sacramento County  
901 "G" Street  
Sacramento, CA 9581

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

District Attorney, San Bernardino County  
316 N. Mountain View Avenue  
San Bernardino, CA 92415-0004

District Attorney, San Diego County  
330 West Broadway, Room 1300  
San Diego, CA 92101

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

District Attorney, San Joaquin County  
Post Office Box 990  
Stockton, CA 95201

District Attorney, San Luis Obispo County  
1050 Monterey Street, Room 450  
San Luis Obispo, CA 93408

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

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

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

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

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

District Attorney, Sierra County  
PO Box 457  
Downieville, CA 95936

District Attorney, Siskiyou County  
Post Office Box 986  
Yreka, CA 96097

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

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

District Attorney, Stanislaus County  
832 12<sup>th</sup> Street, Ste 300  
Modesto, CA 95353

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

District Attorney, Tehama County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity County  
Post Office Box 310  
Weaverville, CA 96093

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

District Attorney, Tuolumne County  
423 N. Washington Street  
Sonora, CA 95370

District Attorney, Ventura County  
800 South Victoria Avenue  
Ventura, CA 93009

District Attorney, Yolo County  
301 2<sup>nd</sup> Street  
Woodland, CA 95695

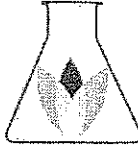
District Attorney, Yuba County  
215 Fifth Street  
Marysville, CA 95901

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

San Diego City Attorney's Office  
1200 3rd Avenue, Ste 1620  
San Diego, CA 92101

San Francisco City Attorney's Office  
City Hall, Room 234  
1 Drive Carlton B Goodlett Place  
San Francisco, CA 94102

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



## Environmental Research Center

5694 Mission Center Road #199  
San Diego, CA 92108  
619.309.4194

October 22, 2010

### VIA CERTIFIED MAIL

Current CEO or President  
New England Greens, LLC  
403 Ashley Falls Rd  
Canaan, CT 06018

Mark Timon  
(New England Greens, LLC's Registered  
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403 Ashley Falls Rd  
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1515 Clay Street, Suite 2000  
P.O. Box 70550  
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October 22, 2010

Page 2

In particular, these Companies have manufactured and distributed products that have exposed and continue to expose numerous individuals within California to lead. Lead was listed pursuant to Proposition 65 as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. Lead was listed pursuant to Proposition 65 as a carcinogen on October 1, 1992. The time period of these violations commenced one year after the listed dates above, at least since October 22, 2007, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to purchasers and users.

The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products by consumers. Accordingly, the primary route of exposure for consumers has been oral through ingestion, but may also occur through the inhalation and/or dermal contact route of exposure.

New England Greens, LLC and Vibrant Health are exposing people to lead from the following products:

**Vibrant Health GREEN VIBRANCE JUNIOR + 3D – Apple**  
**Vibrant Health - GREEN VIBRANCE**  
**Vibrant Health - Joint Vibrance**  
**Vibrant Health - Pure Green Protein Vanilla**  
**Vibrant Health - Green Vibrance Original Meal Bar**

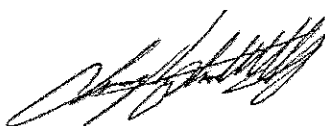
Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. New England Greens, LLC and Vibrant Health are in violation of Proposition 65 because the Company failed to provide a warning to persons using their products that they are being exposed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

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, ERC gives notice of the alleged violation to the noticed party and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to ERC from information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, and referenced as Appendix A, has been provided to the noticed party.

Based on the allegations set forth in this Notice, ERC intends to file a citizen enforcement action against New England Greens, LLC and Vibrant Health unless it agrees in an enforceable written instrument to: instrument to: (1) recall or reformulate the listed products so as to eliminate further unwarned exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

Please direct all questions concerning this notice to ERC's attorney, Gideon Kracov, 801 S. Grand Ave., 11<sup>th</sup> Fl., Los Angeles, CA 90017, 213-629-2071, [gk@gideonlaw.net](mailto:gk@gideonlaw.net).

Sincerely,



Chris Heptinstall  
Executive Director, Environmental Research Center

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

October 22, 2010

Page 3

cc: Karen A. Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to New England Greens, LLC its Registered Agent for Service of Process, and Vibrant Health Only)

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

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center's Notice of Proposition 65 Violations by New England Greens, LLC and Vibrant Health**

I, Gideon Kracov, declare:

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



Dated: October 22, 2010

\_\_\_\_\_  
Gideon Kracov, Attorney At Law

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742

On October 22, 2010, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 *ET SEQ.*; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”**

On the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Current CEO or President  
New England Greens, LLC  
403 Ashley Falls Rd  
Canaan, CT 06018

Current CEO or President  
Vibrant Health  
99 Railroad Street  
Canaan, CT 06018

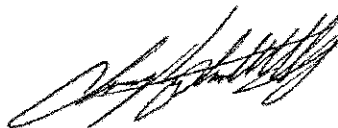
Mark Timon  
(New England Greens, LLC’s Registered  
Agent for Service of Process)  
403 Ashley Falls Rd  
Canaan, CT 06018

On October 22, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 *ET SEQ.*; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, CA 94612-0550

On October 22, 2010, 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 with the U.S. Postal Service for delivery by Priority Mail.

Executed on October 22, 2010, in Fort Oglethorpe, Georgia.



---

Chris Heptinstall

Service List

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

District Attorney, Alpine County  
P.O. Box 248  
Markleeville, CA 96120

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

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

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

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

District Attorney, Contra Costa County  
900 Ward Street  
Martinez, CA 94553

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

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

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

District Attorney, Glenn County  
Post Office Box 430  
Willows, CA 95988

District Attorney, Humboldt County  
825 5th Street  
Eureka, CA 95501

District Attorney, Imperial County  
939 West Main Street, Ste 102  
El Centro, CA 92243

District Attorney, Inyo County  
230 W. Line Street  
Bishop, CA 93514

District Attorney, Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

District Attorney, Kings County  
1400 West Lacey Boulevard  
Hanford, CA 93230

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

District Attorney, Lassen County  
220 South Lassen Street, Ste. 8  
Susanville, CA 96130

District Attorney, Los Angeles County  
210 West Temple Street, Rm 345  
Los Angeles, CA 90012

District Attorney, Madera County  
209 West Yosemite Avenue  
Madera, CA 93637

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

District Attorney, Mariposa County  
Post Office Box 730  
Mariposa, CA 95338

District Attorney, Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

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

District Attorney, Modoc County  
204 S Court Street, Room 202  
Alturas, CA 96101-4020

District Attorney, Mono County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, Monterey County  
230 Church Street, Bldg 2  
Salinas, CA 93901

District Attorney, Napa County  
931 Parkway Mail  
Napa, CA 94559

District Attorney, Nevada County  
110 Union Street  
Nevada City, CA 95959

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

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

October 22, 2010

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District Attorney, Placer County  
10810 Justice Center Drive, Ste 240  
Roseville, CA 95678

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

District Attorney, Riverside County  
4075 Main Street, 1st Floor  
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District Attorney, San Benito County  
419 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023

District Attorney, San Bernardino County  
316 N. Mountain View Avenue  
San Bernardino, CA 92415-0004

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San Francisco, CA 94103

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Stockton, CA 95201

District Attorney, San Luis Obispo County  
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San Luis Obispo, CA 93408

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

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

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

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

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

District Attorney, Sierra County  
PO Box 457  
Downieville, CA 95936

District Attorney, Siskiyou County  
Post Office Box 986  
Yreka, CA 96097

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

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

District Attorney, Stanislaus County  
832 12<sup>th</sup> Street, Ste 300  
Modesto, CA 95353

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

District Attorney, Tehama County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity County  
Post Office Box 310  
Weaverville, CA 96093

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

District Attorney, Tuolumne County  
423 N. Washington Street  
Sonora, CA 95370

District Attorney, Ventura County  
800 South Victoria Avenue  
Ventura, CA 93009

District Attorney, Yolo County  
301 2<sup>nd</sup> Street  
Woodland, CA 95695

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

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

San Diego City Attorney's Office  
1200 3rd Avenue, Ste 1620  
San Diego, CA 92101

San Francisco City Attorney's Office  
City Hall, Room 234  
1 Drive Carlton B Goodlett Place  
San Francisco, CA 94102

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





## Environmental Research Center

5694 Mission Center Road #199

San Diego, CA 92108

619.309.4194

December 23, 2010

### VIA CERTIFIED MAIL

Current CEO or President  
New England Greens, LLC  
403 Ashley Falls Rd  
Canaan, CT 06018

Mark Timon  
(New England Greens, LLC's Registered  
Agent for Service of Process)  
403 Ashley Falls Rd  
Canaan, CT 06018

Current CEO or President  
Vibrant Health  
99 Railroad Street  
Canaan , CT 06018

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
P.O. Box 70550  
Oakland, CA 94612-0550

Re: Notice of Violation against New England Greens, LLC and Vibrant Health for Violation of California Health & Safety Code Section 25249.6

Dear Prosecutors:

The Environmental Research Center ("ERC"), the noticing entity is a California corporation whose mission is to safeguard the public from health hazards that impact families, workers and the environment. ERC is dedicated to reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and encouraging corporate responsibility. ERC is located at 5694 Mission Center Road, # 199, San Diego, CA 92108. Tel. (619) 309-4194, Executive Director: Chris Heptinstall. Through this Notice of Violation, ERC seeks to reduce exposure to the public from lead that is contained in the named products manufactured and distributed by New England Greens, LLC and Vibrant Health.

This letter constitutes notification that New England Greens, LLC located at 403 Ashley Falls Rd Canaan, CT 06018 and Vibrant Health, located at 99 Railroad Street, Canaan, CT 06018 have violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code).

In particular, these Companies have manufactured and distributed products that have exposed and continue to expose numerous individuals within California to lead. Lead was listed pursuant to Proposition 65 as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. Lead was listed pursuant to Proposition 65 as a carcinogen on October 1, 1992. The time period of these violations commenced one year after the listed dates above, at least since December 23, 2007, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to purchasers and users.

The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products by consumers. Accordingly, the primary route of exposure for consumers has been oral through ingestion, but may also occur through the inhalation and/or dermal contact route of exposure.

New England Greens, LLC and Vibrant Health are exposing people to lead from the following products:

**Vibrant Health PureGreen Protein Mixed Berry Single Serving Pack**  
**Vibrant Health PureGreen Protein Chocolate Single Serving Pack**  
**Vibrant Health PureGreen Protein Mixed Berry 447 Grams**  
**Vibrant Health Green Vibrance 15 Day Supply 180 Grams**  
**Vibrant Health PureGreen Protein Chocolate Version 2.0 488.4 Grams**  
**Vibrant Health PureGreen Protein Natural Version 2.0 431 Grams**

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

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Based on the allegations set forth in this Notice, ERC intends to file a citizen enforcement action against New England Greens, LLC and Vibrant Health unless it agrees in an enforceable written instrument to: instrument to: (1) recall or reformulate the listed products so as to eliminate further unwarned exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

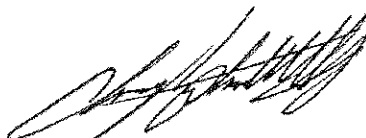
Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

December 23, 2010

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Please direct all questions concerning this notice to ERC's attorney, Gideon Kracov, 801 S. Grand Ave., 11<sup>th</sup> Fl., Los Angeles, CA 90017, 213-629-2071, gk@gideonlaw.net.

Sincerely,



---

Chris Heptinstall  
Executive Director  
Environmental Research Center

cc: Karen A. Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to New England Greens, LLC its Registered Agent for Service of Process, and Vibrant Health only)

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

**CERTIFICATE OF MERIT**

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I, Gideon Kracov, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
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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: December 23, 2010

\_\_\_\_\_  
Gideon Kracov, Attorney At Law

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742

On December 23, 2010, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”**

On the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Current CEO or President  
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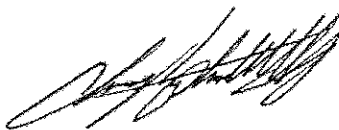
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1515 Clay Street, Suite 2000  
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Executed on December 23, 2010, in Fort Oglethorpe, Georgia.



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Chris Heptinstall

Service List

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

District Attorney, Alpine County  
P.O. Box 248  
Markleeville, CA 96120

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

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

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Nevada City, CA 95959

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

December 23, 2010

Page 7

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District Attorney, Shasta County  
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Redding, CA 96001-1632

District Attorney, Sierra County  
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Downieville, CA 95936

District Attorney, Siskiyou County  
Post Office Box 986  
Yreka, CA 96097

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

District Attorney, Sonoma County  
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Santa Rosa, CA 95403

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200 N. Main Street, Rm 800  
Los Angeles, CA 90012

San Diego City Attorney's Office  
1200 3rd Avenue, Ste 1620  
San Diego, CA 92101

San Francisco City Attorney's Office  
City Hall, Room 234  
1 Drive Carlton B Goodlett Place  
San Francisco, CA 94102

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