

**ENDORSED
FILED**
San Francisco County Superior Court

MAY 13 2011

CLERK OF THE COURT
BY: PARAM NATT
Deputy Clerk

1 Michael Freund SBN 99687
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3 1915 Addison Street
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5 Telephone: (510) 540-1992
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7 Attorney for Plaintiff David Steinman

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF ~~SAN FRANCISCO~~ SAN FRANCISCO**

11 **DAVID STEINMAN**

12 Case No. CGC-11-510957

13 **Plaintiff,**

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF
AND CIVIL PENALTIES**

14 **v.**

15 **PETRA HYGIENIC SYSTEMS**
16 **INTERNATIONAL LIMITED and DOES**
17 **I-100**

[Miscellaneous Civil Complaint (42)]
Proposition 65, Health & Safety Code
Section 25249.5 et seq.

18 **Defendants.**

19 _____ /
20
21 Plaintiff David Steinman hereby alleges:

22 **I**

23
24 **INTRODUCTION**

25
26 **1.** Plaintiff David Steinman (hereinafter "plaintiff" or "David Steinman") brings this
27 action as a private attorney general and in the public interest pursuant to Health & Safety Code
28 section 25249.7 (d). This complaint seeks injunctive and declaratory relief and civil penalties to

1 remedy Petra Hygienic Systems International Limited's ("Petra") failure to warn thousands of users
2 of various bodywashes and body shampoo's manufactured by the company that contain 1,4-
3 dioxane. These products expose people to a chemical known to the State of California to cause
4 cancer. Based on the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety
5 Code section 25249.5 et seq) also known as "Proposition 65," businesses with ten or more
6 employees must provide a "clear and reasonable warning" prior to exposing persons to certain listed
7 chemicals.
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10 II

11 PARTIES

12 2. Plaintiff David Steinman is a committed environmentalist, journalist, consumer health
13 advocate, publisher and author. His major books include Diet for a Poisoned Planet (1990, 2007);
14 The Safe Shopper's Bible (1995); Living Healthy in a Toxic World (1996); and Safe Trip to Eden:
15 Ten Steps to Save the Planet Earth from Global Warming Meltdown (2007). Through this legal
16 action, Mr. Steinman seeks to eliminate exposure to 1,4-dioxane.
17

18 3. Defendant Petra is a business entity that employs ten or more persons in the course of doing
19 business for the purpose of Proposition 65. Petra manufactures, distributes and/or sells various body
20 care products to hotels, golf clubs, sports clubs, spas, restaurants, and other facilities within the State
21 of California.
22

23 4. Defendants Does I-100, are named herein under fictitious names, as their true names and
24 capacities are unknown to Plaintiff. David Steinman is informed and believes, and thereon alleges,
25 that each of said Does is responsible, in some actionable manner, for the events and happenings
26 hereinafter referred to, either through said defendant's conduct, or through the conduct of its agents,
27 servants or employees, or in some other manner, causing the harms alleged by plaintiff in this
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1 complaint. When said true names and capacities of Does are ascertained, David Steinman will seek
2 leave to amend this complaint to set forth the same.

3
4 **III**

5 **JURISDICTION AND VENUE**

6 5. This Court has jurisdiction pursuant to California Constitution Article VI, section 10
7 because this case is a cause not given by statute to other trial courts.

8 6. David Steinman has performed any and all conditions precedent to the filing of a legal
9 action pursuant to Proposition 65 by serving by mail a Notice of Violation, dated February 11,
10 2011 to the Attorney General of the State of California, the State's district attorneys, the
11 appropriate city attorney's and to Petra. A true and correct copy of the Notice of Violation is
12 attached herein as Exhibit A. More than 60 days have passed since these Notices were mailed
13 and no public enforcement entity has filed a complaint in this case.

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16 7. This Court is the proper venue for the action because the causes of action have arisen in
17 the County of San Francisco where some of the violations of law have occurred. Furthermore, this
18 Court is the proper venue under Code of Civil Procedure section 395.5 and Health & Safety Code
19 section 25249.7.

20
21 **IV**

22 **STATUTORY BACKGROUND**

23 **A. Proposition 65**

24 8. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
25 passed as "Proposition 65" by an overwhelming majority vote of the people in November of 1986.

26
27 9. The warning requirement of Proposition 65 is contained in Health & Safety Code section
28 25249.6, which provides:

1 No person in the course of doing business shall knowingly and intentionally expose any
2 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
3 giving clear and reasonable warning to such individual, except as provided in Section 25249.10.

4 10. Implementing regulations for Proposition 65 provide that warnings are required for
5 consumer product exposures. A "consumer product exposure is an exposure which results from a
6 person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a
7 consumer good, or any exposure that results from receiving a consumer service." 27 CCR section
8 25601 (b).

9 11. Whenever a clear and reasonable warning is required under Health & Safety Code section
10 25249.6, the "method employed to transmit the warning must be reasonably calculated considering
11 the alternative methods available under the circumstances, to make the warning message available
12 prior to exposure." 27 CCR section 25601 (a). The warning requirement may be satisfied by a
13 warning that appears on a product's label or other labeling, shelf labeling, signs, a system of signs,
14 public advertising identifying the system and toll-free information services, or any other, system,
15 that provides clear and reasonable warnings. Id., section 25601 (b) (1) (A)-(C).

16 12. Proposition 65 establishes a procedure by which the State is to develop a list of
17 chemicals "known to the State to cause cancer or reproductive toxicity." Health & Safety Code
18 section 25249.8. There is no duty to provide a clear and reasonable warning until 12-months after
19 the chemical was published on the State list. Id., section 25249.10(b). 1,4 dioxane was listed as a
20 chemical known to the State of California to cause cancer on January 1, 1988. Title 27, Cal. Code
21 Regs., section 27001.

22 13. Proposition 65 may be enforced by any person in the public interest who provides notice
23 sixty days before filing suit to both the violator and designated law enforcement officials. The
24 failure of law enforcement officials to file a timely complaint enables a citizen suit to be filed
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1 pursuant to Health & Safety Code section 25249.7 (c).

2 14. Proposition 65 provides that any person "violating or threatening to violate" Proposition
3 65 may be enjoined in any court of competent jurisdiction. Health & Safety Code section 25249.7
4 (a). To "threaten to violate" means "to create a condition in which there is a substantial probability
5 that a violation will occur." Id., section 25249.11 (e). Furthermore, violators are subject to a civil
6 penalty of up to \$2,500 per day for each violation. Id., section 25249.7 (b).

7
8 **V**

9 **STATEMENT OF FACTS**

10 15. Defendant Petra manufactures, distributes and/sells Petra Body Revive Bodywash BR
11 300, Petra Athleticare Bodywash AC300, Petra Body Revive Aloe and Green Tea Bodywash BR
12 325-A, Petra Athleticare, Hair + Body Shampoo AC 400, and Petra Body Revive, Hair + Body
13 Shampoo BR 350 ("Covered Products") as set forth in Exhibit A. These products contain 1,4-
14 dioxane.

15
16 16. Petra has knowingly and intentionally exposed thousands of persons to 1,4-dioxane,
17 from the Covered Products without providing a Proposition 65 warning. The company has at all
18 times relevant hereto been aware that the Covered Products contain 1,4-dioxane and that persons
19 using these products are exposed to the chemical. Petra manufactures, distributes and markets the
20 Covered Products with knowledge that exposures to 1,4-dioxane occur.

21
22 17. Petra has failed to provide users of the Covered Products with a clear and reasonable
23 warning that they are being exposed to a chemical known to the State of California to cause cancer.

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FIRST CAUSE OF ACTION

(Violation of section 25249.6 of the Health and Safety Code, Failure to Provide Clear and Reasonable Warning under Proposition 65)

18. David Steinman refers to paragraphs 1-17, inclusive, and incorporates them herein by this reference.

19. By committing the acts alleged above, Petra has, in the course of doing business, knowingly and intentionally exposed people to a chemical known to the State of California to cause cancer without first giving clear and reasonable warning to such individuals, within the meaning of Health & Safety Code section 25249.6.

20. Said violations render each defendant liable for civil penalties up to \$2,500 (two thousand, five hundred dollars) per day, for each violation.

21. Petra's continued violation of the law will irreparably harm David Steinman and the public interest in whose behalf plaintiff brings this action, for which there is no adequate remedy at law.

SECOND CAUSE OF ACTION

(Declaratory Relief)

22. David Steinman refers to paragraphs 1-21, inclusive, and incorporates them herein by this reference.

23. There exists an actual controversy relating to the legal rights and duties of the parties, within the meaning of Code of Civil Procedure section 1060, between plaintiff and defendant concerning:

a) whether Petra has exposed individuals to a chemical known to the State of California to cause cancer without providing clear and reasonable warning.

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VI

PRAYER

WHEREFORE plaintiff prays for relief as follows:

1. On the First Cause of Action, for civil penalties for each and every violation according to proof;

2. On the First Cause of Action, and pursuant to Health & Safety Code section 25249.7 (a), for such temporary restraining orders, preliminary and permanent injunctive orders, or other orders, prohibiting Petra from exposing persons to 1,4-dioxane without providing clear and reasonable warnings;

3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil Procedure section 1060 declaring:

a. that Petra has exposed individuals to a chemical known to the State of California to cause cancer without providing clear and reasonable warning; and

4. On all Causes of Action, for reasonable attorneys' fees pursuant to section 1021.5 of the Code of Civil Procedure or the substantial benefit theory;

5. For costs of suit herein; and

6. For such other relief as the Court may deem just and proper.

Dated: May 12, 2011

By



Michael Freund
Attorney for David Steinman

MICHAEL FREUND
ATTORNEY AT LAW
1915 ADDISON STREET
BERKELEY, CALIFORNIA 94704-1101

TEL 510/540-1992
FAX 510/540-9543
EMAIL FREUND1@AOL.COM

February 11, 2011

VIA CERTIFIED MAIL

Sam Maduri, President
Petra Hygienic Systems International Limited
86 Moyal Court
Concord, Ontario Canada L4K 4R8

John Mickelson, Vice President Sales
Petra Hygienic Systems International Limited
1280 Southern Way
Sparks, NV 89431-6121

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

VIA PRIORITY MAIL

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

Re: Notice of Violations Against Petra Hygienic Systems International Limited for Violation of California Health & Safety Code Section 25249.5 et seq.

Dear Addressees:

I represent David Steinman, a committed environmentalist, journalist, consumer health advocate, publisher and author. His major books include Diet for a Poisoned Planet (1990, 2007); The Safe Shopper's Bible (1995); Living Healthy in a Toxic World (1996); and Safe Trip to Eden: Ten Steps to Save the Planet Earth from Global Warming Meltdown (2007). Through this Notice of Violations, Mr. Steinman seeks to reduce exposure to 1,4-dioxane.

This letter constitutes notification that Petra Hygienic Systems International Limited ("Petra") has 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).

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

Petra Body Revive Bodywash BR 300 – 1,4-dioxane
Petra Athleticare Bodywash AC300 – 1,4-dioxane
Petra Body Revive Aloe and Green Tea Bodywash BR 325-A – 1,4-dioxane

Petra Athleticare, Hair + Body Shampoo AC 400 – 1,4-dioxane
Petra Body Revive, Hair + Body Shampoo BR 350 – 1,4-dioxane

Petra has manufactured, marketed, distributed and/or sold the listed products which have exposed and continue to expose numerous individuals within California to 1,4-dioxane. This chemical was listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer on January 1, 1988. The time period of these violations commenced one year after the listed dates above. The primary route of exposure has been through dermal contact with the products. Additional exposures may occur through oral and inhalation exposure.

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. Petra is in violation of Proposition 65 because the company failed to provide a warning to persons using the noticed products that they are being exposed to 1,4-dioxane. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing users of these products, including children, to this chemical without first providing a 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). There are no warnings currently present on the company's label for these products.

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, David Steinman 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 Mr. Steinman from information now available to us. Mr. Steinman is continuing his investigation 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.

If you have any questions, please contact my office at your earliest convenience.

Sincerely,



Michael Freund

cc: David Steinman

Attachments:

- Certificate of Merit
- Certificate of Service
- OEHHA Summary to Petra
- Additional Supporting Information for Certificate of Merit (to Attorney General only)

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

I, Michael Freund hereby declare:

1. This Certificate of Merit accompanies the attached Notice of Violations in which it is alleged that the party identified in the Notice has violated Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party David Steinman. Mr. Steinman is a committed environmentalist, journalist, consumer health advocate, publisher and author. The Notice of Violations alleges that the party identified has exposed persons in California to 1,4-dioxane from the specified consumer products. Please refer to the Notice of Violations for additional details regarding the product names and alleged violations.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action. In particular, I have consulted with the chemists who conducted the laboratory testing for 1,4-dioxane of this product and I have relied on the testing results. The testing was conducted by a reputable testing laboratory by experienced scientists. These facts, studies or other data derived through this investigation overwhelmingly demonstrate that the party identified in the Notice of Violations exposes persons to 1,4-dioxane through dermal contact. There may be additional exposures through inhalation and oral exposure.
4. Based on the information obtained through these consultants and on other information in my possession, I believe there is sufficient evidence that human exposures exist from exposure to the listed products from the noticed party. Furthermore, I believe there is a reasonable and

meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of this Certificate of Merit served on the California Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code Section 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: February 11, 2011



Michael Freund
Attorney for David Steinman

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action; my business address is 1915 Addison Street, Berkeley, California 94704. On February 11, 2011 I served the within:

Notice of Violations of California Health & Safety Code Sections 25239.5 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 enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Berkeley, California for delivery by Certified Mail:

Sam Maduri, President
Petra Hygienic Systems International Limited
86 Moyal Court
Concord, Ontario Canada L4K 4R8

John Mickelson, Vice President Sales
Petr Hygienic Systems International Ltd.
1280 Southern Way
Sparks, NV 89431-6121

On February 11, 2011 I served the following: **Notice of Violations of California Health & Safety Code Sections 25239.5 et seq; Certificate of Merit; Additional Supporting Information for Certificate of Merit as Required by Health & Safety Code Section 25249.7 (d) (1)** on the following by placing a true and correct copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Berkeley, California for delivery by Certified Mail:

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

On February 11, 2011 I served the following: **Notice of Violations of California Health & Safety Code Sections 25239.5 et seq; Certificate of Merit** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Berkeley, California for delivery by Priority Mail.

I, Michael Freund, declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on February 11, 2011 at Berkeley, California.



Michael Freund

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
October 22, 2010

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.
October 22, 2010

District Attorney, Placer County
10910 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 95811

District Attorney, San Benito County
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District Attorney, San Bernardino County
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San Bernardino, CA 92415-0004

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San Diego, CA 92101

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District Attorney, San Joaquin County
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Stockton, CA 95201

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San Luis Obispo, CA 93408

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

District Attorney, Stanislaus County
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Modesto, CA 95353

District Attorney, Sutter County
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Yuba City, CA 95991

District Attorney, Tehama County
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Red Bluff, CA 96080

District Attorney, Trinity County
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Weaverville, CA 96093

District Attorney, Tulare County
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Visalia, CA 93291

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Sonora, CA 95370

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

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301 2nd Street
Woodland, CA 95695

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

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Los Angeles, CA 90012

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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