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OCT 24 2011

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT

By: K. Main, Deputy

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7 Attorney for Plaintiff Environmental Research Center

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF MARIN**

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

13 **Plaintiff,**

14 **v.**

15 **GENESIS PURE, LLC and**
16 **DOES 1-100**

17 **Defendants.**

Case No: **CIV 1105277**

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

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

18
19
20 Plaintiff Environmental Research Center hereby alleges:

BY FAX

21
22 **I**
23 **INTRODUCTION**

24
25 I. Plaintiff Environmental Research Center (hereinafter "Plaintiff" or "ERC") brings this
26 action as a private attorney general enforcer and in the public interest pursuant to Health & Safety
27 Code Section 25249.7 (d). This complaint seeks injunctive and declaratory relief and civil penalties
28

1 to remedy Defendant Genesis Pure, LLC's ("Genesis Pure") failure to warn consumers that they
2 have been exposed to lead from several of the company's nutritional health products. Lead is a
3 chemical known to the State of California to cause cancer, birth defects and other reproductive
4 harm. 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 these
7 chemicals.
8

10 II

11 PARTIES

12 2. Plaintiff ERC is a California non-profit corporation dedicated to, among other causes, helping
13 safeguard the public from health hazards by bringing about a reduction in the use and misuse of
14 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and
15 encouraging corporate responsibility.
16

17 3. Defendant Genesis Pure is a business that manufactures, distributes and/or sells nutritional
18 health products that have exposed users to lead in the State of California within the relevant statute
19 of limitations period. These Covered Products include Health Trim Natural Weight Loss Ionic
20 Blend; Health Trim Metabolic Boost; CardioClean; Genesis Pure LLC Fusion; Genesis Pure LLC –
21 Health Trim Natural Weight Loss Fruit & Fiber mix; and Genesis Pure LLC – Health Trim Natural
22 Weight Loss Cacao. Genesis Pure is a company subject to Proposition 65 as it employs ten or more
23 persons.
24

25 4. Defendants Does I-100, are named herein under fictitious names, as their true names and
26 capacities are unknown to Plaintiff. ERC is informed and believes, and thereon alleges, that each
27 of said Does is responsible, in some actionable manner, for the events and happenings hereinafter
28

1 referred to, either through said Defendant's conduct, or through the conduct of its agents, servants or
2 employees, or in some other manner, causing the harms alleged by ERC in this complaint. When
3 said true names and capacities of Does are ascertained, ERC will seek leave to amend this complaint
4 to set forth the same.
5

6 III

7 JURISDICTION AND VENUE

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

11 6. The Complaint is based on allegations contained in a Notice of Violation dated June 3,
12 2011, served on the California Attorney General, other public enforcers and Genesis Pure. A
13 true and correct copy of the Notices of Violation is attached hereto as Exhibit A. More than 60
14 days have passed since the Notices of Violation were mailed and no public enforcement entity
15 has filed a complaint in this case.
16

17 7. This Court is the proper venue for the action because the causes of action have arisen in the
18 County of Marin where some of the violations of law have occurred. Furthermore, this Court is the
19 proper venue under Code of Civil Procedure Section 395.5 and Health & Safety Code Section
20 25249.7.
21

22 IV

23 STATUTORY BACKGROUND

24 A. Proposition 65

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

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 consumer
5 product exposures. A "consumer product exposure is an exposure which results from a person's
6 acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer
7 good, or any exposure that results from receiving a consumer service." 27 CCR Section 25601 (b).

8 11. Whenever a clear and reasonable warning is required under Health & Safety Code Section
9 25249.6, the "method employed to transmit the warning must be reasonably calculated considering
10 the alternative methods available under the circumstances, to make the warning message available
11 prior to exposure." 27 CCR Section 25601. The warning requirement may be satisfied by a
12 warning that appears on a product's label or other labeling, shelf labeling, signs, a system of signs,
13 public advertising identifying the system and toll-free information services, or any other, system,
14 that provides clear and reasonable warnings. *Id.*, Section 25603.1 (a) – (d).

15 12. Proposition 65 establishes a procedure by which the State is to develop a list of
16 chemicals "known to the State to cause cancer or reproductive toxicity." Health & Safety Code
17 Section 25249.8. There is no duty to provide a clear and reasonable warning until 12-months after
18 the chemical was published on the State list. *Id.*, Section 25249.10 (b). Lead was listed as a
19 chemical known to the State of California to cause developmental toxicity and male and female
20 reproductive toxicity on February 27, 1987. Lead was listed as a chemical known to the State of
21 California to cause cancer on October 1, 1992. Title 27, Cal. Code 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
25
26
27
28

1 pursuant to Health & Safety Code Section 25249.7 (c).

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

8
9 V

10 **STATEMENT OF FACTS**

11 15. Genesis Pure has manufactured, distributed and/or sold the Covered Products
12 containing lead to the State of California. Consumers have been ingesting these products for
13 many years, without any knowledge of their exposure to lead, a very dangerous chemical.

14
15 16. For many years, Genesis Pure has knowingly and intentionally exposed numerous persons
16 to lead, without providing a Proposition 65 warning. Prior to ERC's Notice of Violations, Genesis
17 Pure failed to provide a warning on the label of the Covered Products, nor was there any mention on
18 the company's website that the products contained lead. Genesis Pure has at all times relevant
19 hereto been aware that the Covered Products contained lead and that persons using these products
20 have been exposed to the chemical. The company's website represents to the public that the
21 products have organic and natural ingredients, and healing and life enhancing properties. Genesis
22 Pure has been aware of the lead in the Covered Products and has failed to disclose the presence of
23 this chemical to the public, who continue to believe that the products are healthy and pure.

24
25 17. Prior to ERC's Notice of Violations, Genesis Pure failed to provide consumers of the
26 Covered Products with a clear and reasonable warning that they have been exposed to a chemical
27 known to the State of California to cause cancer, birth defects and other reproductive harm.
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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. ERC refers to paragraphs 1-17, inclusive, and incorporates them herein by this reference.

19. By committing the acts alleged above, Genesis Pure has, in the course of doing business, knowingly and intentionally exposed users of the Covered Products to lead, a chemical known to the State of California to cause cancer, birth defects and other reproductive harm without first giving clear and reasonable warning to such individuals, within the meaning of Health & Safety Code Section 25249.6.

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

SECOND CAUSE OF ACTION

(Declaratory Relief)

21. ERC refers to paragraphs 1-20, inclusive, and incorporates them herein by this reference.

22. 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 ERC and Genesis Pure concerning:

a) whether Genesis Pure has exposed individuals to a chemical known to the State of California to cause cancer, birth defects and other reproductive harm without providing clear and reasonable warning.

VI

PRAYER

WHEREFORE ERC prays for relief as follows:

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

3
4 2. On the First Cause of Action, and pursuant to Health & Safety Code Section 25249.7 (a), for
5 such temporary restraining orders, preliminary and permanent injunctive orders, or other orders,
6 prohibiting Genesis Pure from exposing persons to lead without providing clear and reasonable
7 warning;

8
9 3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil
10 Procedure Section 1060 declaring:

11 a. that Genesis Pure has exposed individuals to a chemical known to the State of California
12 to cause, birth defects and other reproductive harm without providing clear and reasonable warning;
13 and

14
15 4. On all Causes of Action, for reasonable attorneys' fees pursuant to Section 1021.5 of the Code
16 of Civil Procedure or the substantial benefit theory;

17 5. For costs of suit herein; and

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

19 Dated: October 21, 2011

20
21 By



22
23 Michael Freund
24 Attorney for Environmental Research Center
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MICHAEL FREUND
ATTORNEY AT LAW
1915 ADDISON STREET
BERKELEY, CALIFORNIA 94704-101

TEL 510/540-1992
FAX 510/540-5543
EMAIL FREUND1@AOL.COM

June 3, 2011

**NOTICE OF VIOLATIONS 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 ("ERC"), 5694 Mission Center Road #199, San Diego, CA 92108; Tel. (619) 309- 4194. 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 Section 25249.7(d) of the statute, 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 an attachment with the copy of 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:

Genesis Pure, LLC

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:

Health Trim Natural Weight Loss Ionic Blend - Lead
Health Trim Metabolic Boost - Lead
CardioClean - Lead
Genesis Pure LLC fusion - Lead

EXHIBIT A

Genesis Pure LLC - HealthTrim Natural Weight Loss Fruit & Fiber mix - Lead
Genesis Pure LLC - HealthTrim Natural Weight Loss Cacao - 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.

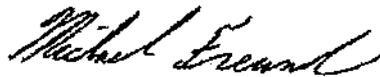
Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least June 3, 2008, 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 handling and/or using 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; and (2) pay an appropriate civil penalty. 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 me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Michael Freund

June 3, 2011

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cc: Karen Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Genesis Pure, LLC and its Registered Agent for Service of Process only)

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

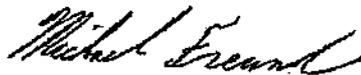
CERTIFICATE OF MERIT

Re: Environmental Research Center's Notice of Proposition 65 Violations by Genesis Pure, LLC

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the parties 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 violators 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 3, 2011



Michael Freund
Attorney for Environmental Research Center

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 June 3, 2011, 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 President or CEO
Genesis Pure, LLC
772 E Utah Valley Dr Suite 388
American Fork, UT 84003

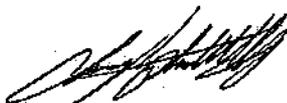
Tim Hough
(Genesis Pure, LLC's Registered Agent
for Service of Process)
772 E Utah Valley Dr Suite 388
American Fork, UT 84003

On June 3, 2011, 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 June 3, 2011, 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 June 3, 2011, 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.*

June 3, 2011

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, 2nd 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
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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
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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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- District Attorney, Siskiyou County
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- District Attorney, Solano County
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- District Attorney, Sonoma County
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Santa Rosa, CA 95403
- District Attorney, Stanislaus County
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Modesto, CA 95353
- District Attorney, Sutter County
446 Second Street
Yuba City, CA 95991
- District Attorney, Tehama County
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Red Bluff, CA 96080
- District Attorney, Trinity County
Post Office Box 310
Weaverville, CA 96093
- District Attorney, Tulare County
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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 2nd 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