

ENDORSED  
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ALAMEDA COUNTY

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20 THE SYNERGY COMPANY OF UTAH, LLC

21 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
22 COUNTY OF ALAMEDA

23 ENVIRONMENTAL RESEARCH  
24 CENTER, a California non-profit  
25 corporation,

26 Plaintiff,

27 v.

28 THE SYNERGY COMPANY OF UTAH,  
LLC; and DOES 1-100,

Defendants.

CASE NO. RG13686687

~~PROPOSED~~ STIPULATED  
CONSENT JUDGMENT; [PROPOSED]  
ORDER

Health & Safety Code § 25249.5 et seq.

Action Filed: July 05, 2013  
Trial Date: None set

~~PROPOSED~~ STIPULATED CONSENT JUDGMENT; [PROPOSED] ORDER

CASE NO. RG13686687

1     **1. INTRODUCTION**

2             **1.1**     On July 5, 2013, Plaintiff Environmental Research Center (“ERC”), a non-  
3 profit corporation, as a private enforcer, and in the public interest, initiated this action by  
4 filing a Complaint for Injunctive and Declaratory relief and Civil Penalties (the “Complaint”)  
5 pursuant to the provisions of California Health and Safety Code section 25249.5 et seq.  
6 (“Proposition 65”), against The Synergy Company of Utah, LLC and DOES 1-100  
7 (collectively “Synergy”). In this action, ERC alleges that the products manufactured,  
8 distributed or sold by Synergy, as more fully described below, contain lead, a chemical listed  
9 under Proposition 65 as a carcinogen and reproductive toxin, and that such products expose  
10 consumers at a level requiring a Proposition 65 warning. These products are: The Synergy  
11 Company Vita Synergy for Men (now called Organic Vita-Min-Herb for Men); The Synergy  
12 Company Vita Synergy for Women (now called Organic Vita-Min-Herb for Women); and  
13 The Synergy Company Pure Synergy (collectively, the “Covered Products”). ERC and  
14 Synergy are referred to individually as a “Party” or collectively as the “Parties.”  
15

16             **1.2**     ERC is a California non-profit corporation dedicated to, among other causes,  
17 helping safeguard the public from health hazards by reducing the use and misuse of hazardous  
18 and toxic chemicals, facilitating a safe environment for consumers and employees, and  
19 encouraging corporate responsibility.

20             **1.3**     Synergy is a business entity that employed ten or more persons. Synergy  
21 conducts or arranges the manufacture, distribution and sale of the Covered Products.

22             **1.4**     The Complaint is based on allegations contained in ERC’s Notice of Violations,  
23 dated June 1, 2011, that was served on the California Attorney General, other public  
24 enforcers, and Synergy. A true and correct copy of the Notice of Violations is attached as  
25 Exhibit A. More than 60 days have passed since the Notice of Violations was mailed, and no  
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1 designated public prosecutor has filed a complaint against Synergy with regard to the Covered  
2 Products or the alleged violations.

3  
4 **1.5** ERC's Notice of Violations and the Complaint allege that use of the Covered  
5 Products exposes persons in California to lead without first providing clear and reasonable  
6 warnings in violation of California Health and Safety Code section 25249.6. Synergy denies  
7 all material allegations contained in the Notice of Violations and Complaint and specifically  
8 denies that the Covered Products require a Proposition 65 warning or otherwise caused harm  
9 to any person. Synergy asserts that any detectible levels of lead in the Covered Products are  
10 the result of naturally occurring lead levels, as provided for in California Code of Regulations,  
11 Title 27, Section 25501(a).

12 **1.6** The Parties have entered into this Consent Judgment in order to settle,  
13 compromise and resolve disputed claims and thus avoid prolonged and costly litigation.  
14 Nothing in this Consent Judgment shall constitute or be construed as an admission by any of  
15 the Parties, or by any of their respective officers, directors, shareholders, employees, agents,  
16 parent companies, subsidiaries, divisions, affiliates, franchises, licensees, customers,  
17 suppliers, distributors, wholesalers, or retailers. Nothing in this Consent Judgment shall be  
18 construed as an admission by Synergy or ERC of any fact, issue of law, or violation of law,  
19 nor shall compliance with this Consent Judgment be construed as an admission by Synergy or  
20 ERC of any fact, issue of law, or violation of law, at any time, for any purpose, except the  
21 foregoing shall not impair enforcement of this Consent Judgment.

22 **1.7** Except as expressly set forth herein, including in Section 8.3, nothing in this  
23 Consent Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense  
24 the Parties may have in any other or future legal proceeding unrelated to these proceedings.

25 **1.8** The Effective Date of this Consent Judgment is the date on which it is entered as  
26 a Judgment by this Court.  
27  
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1     **2. JURISDICTION AND VENUE**

2             For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
3 jurisdiction over the allegations of violations contained in the Complaint and personal  
4 jurisdiction over Synergy as to the acts alleged in the Complaint, that venue is proper in  
5 Alameda County, and that this Court has jurisdiction to enter this Consent Judgment as a full and  
6 final resolution of all claims which were or could have been asserted in his action based on the  
7 facts alleged in the Notice of Violations and the Complaint.  
8

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

10            **3.1** Synergy shall not manufacture for sale in the State of California, distribute into  
11 the State of California<sup>1</sup>, or directly sell in the State of California, any Covered Products which  
12 expose a person to a daily dose of lead more than 0.5 micrograms per day, as determined  
13 under Sections 3.3 and 3.4, unless each such unit of the Covered Product (1) qualifies as a  
14 "Reformulated Covered Product" under Section 3.3, or (2) meets the warning requirements  
15 under Section 3.2. Synergy shall bring the Covered Products into compliance with this  
16 Section no later than five (5) months after the Effective Date (the "Compliance Date"). For  
17 all Covered Products, if the product has been manufactured and packaged into final form for  
18 consumer sale and use prior to the five month Compliance Date then such Covered Products  
19 may be sold and/or distributed into the State of California at any time. Six (6) months after  
20 the Effective Date, Synergy shall provide ERC with the last lot number and expiration date  
21 for the Covered Products which have been manufactured and placed in final form for  
22 consumer distribution as of the applicable Compliance Date.  
23

24            **3.2 Clear and Reasonable Warnings**

25  
26  
27            <sup>1</sup> As used in this Consent Judgment, the term "distribute into the State of California" shall  
28 mean Synergy directly ships a Covered Product into California for sale in California or sells a  
Covered Product to a distributor that Synergy knows will sell the Covered Product in California.

1 After the Compliance Date in Section 3.1, excepting such Covered Products as have been  
2 manufactured and packaged into final form for consumer sale and use prior to the Compliance  
3 Date, for any Covered Product that does not qualify as a Reformulated Covered Product under  
4 Section 3.3, the following warning shall be provided:  
5

6 **[California] [Proposition 65] WARNING: This product contains lead, a chemical**  
7 **known to the State of California to cause [cancer and] birth defects or other**  
8 **reproductive harm.**

9 The text in brackets is optional in Synergy's sole discretion except that Synergy shall use the  
10 phrase "cancer and" in the warning only if the maximum daily dose recommended on the label  
11 contains more than 15 micrograms of lead as determined pursuant to the provisions of Sections  
12 3.3, 3.4.1, 3.4.2, 3.4.3, 3.4.7, 3.4.8, and 3.4.9  
13

14 Synergy shall provide the warning in any one or more of the following manners: 1) on  
15 Synergy's checkout page on its website for California consumers prior to completion of the sale;  
16 2) on Synergy's receipt/invoice in or on boxes of Covered Products shipped to California; and/or  
17 3) on the label or container (other than on the underside or bottom of the container) of each  
18 individual unit of a Covered Product in retail stores in California or shipped to California  
19 consumers. No other statements about Proposition 65 or lead may be included on or near the  
20 warning text.  
21

- 22 1) In the website warning, Synergy shall identify each Covered Product to which the warning  
23 applies.  
24  
25 2) For the receipt/invoice warnings, the receipt/invoice shall identify each Covered Product to  
26 which the warning applies and the warning shall be present on the front of the  
27 receipt/invoice.  
28

1 Synergy must display the warning with such conspicuousness, as compared with other  
2 words, statements, or design of the label, container, webpage, or receipt/invoice, as applicable, to  
3 render the warning likely to be read and understood by an ordinary individual under customary  
4 conditions of purchase or use of the Covered Product.  
5

### 6 **3.3 Calculation of Lead Levels; Reformulated Covered Products**

7 A Reformulated Covered Product is one for which the maximum recommended daily  
8 serving on the label contains no more than 0.5 micrograms of lead per day as determined by the  
9 provisions in Section 3.4. As used in this Consent Judgment, "no more than 0.5 micrograms of  
10 lead per day" means that the samples of the testing performed by Synergy under Section 3.4  
11 yield a daily exposure of no more than 0.5 micrograms of lead (with daily exposure calculated  
12 pursuant to Section 3.4 of this Consent Judgment). For products that cause exposures in excess  
13 of 0.5 micrograms of lead per day, Synergy shall provide the warning set forth in Section 3.2.  
14 For purposes of determining which warning, if any, is required pursuant to Section 3.2, the  
15 second highest lead detection result of five (5) randomly selected samples of the Covered  
16 Products (as specified in the sample selection process set forth in Section 3.4.4) will be  
17 controlling.  
18  
19

### 20 **3.4 Testing and Quality Control Methodology**

21 **3.4.1** For purposes of this Consent Judgment, for the Organic Vita-Min-Herb  
22 for Men and Organic Vita-Min-Herb for Women Covered Products, the daily lead exposure  
23 levels shall be measured in micrograms, and shall be calculated using the following formula:  
24 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
25 Covered Product (using the largest serving size directed on the product label), multiplied by  
26 servings of the Covered Product per day (using the largest number of servings recommended  
27  
28

1 as a daily serving), which equals micrograms of lead exposure per day. For purposes of this  
2 Consent Judgment, for the Pure Synergy Covered Product, daily lead exposure levels shall be  
3 calculated using the following formula: micrograms of lead per gram of product, multiplied  
4 by 3.5 grams of product, multiplied by one serving per day (provided there are no directions  
5 on the product label to consume more than one serving per day), which equals micrograms of  
6 lead exposure per day.

7  
8 **3.4.2** All testing pursuant to this Consent Judgment shall be performed using a  
9 laboratory method that complies with the performance and quality control factors appropriate  
10 for the method used, including limit of detection, limit of qualification, accuracy, and  
11 precision and meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry  
12 (ICP-MS) achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other  
13 testing method subsequently agreed upon in writing by the Parties.

14 **3.4.3** All testing pursuant to this Consent Judgment shall be performed by an  
15 independent third-party laboratory certified by the California Environmental Laboratory  
16 Accreditation Program for the analysis of heavy metals or an independent third-party  
17 laboratory that is registered with the United States Food & Drug Administration. Synergy  
18 may perform this testing itself only if it provides, in an attachment to the test results Synergy  
19 provides to ERC, proof that its laboratory meets the requirements in Section 3.4.2 and this  
20 Section 3.4.3. Nothing in this Consent Judgment shall limit Synergy's ability to conduct, or  
21 require that others conduct, additional testing of the Covered Products, including the raw  
22 materials used in their manufacture.

23 **3.4.4** Synergy shall arrange, for at least three (3) consecutive years and at least  
24 once per year prior to each anniversary of the Effective Date, for the lead testing of five (5)  
25 randomly selected samples chosen from available lots of each Covered Product in the form  
26 intended for sale to the end-user to be distributed or sold to California consumers. Available  
27

1 lots shall be those lots manufactured after the Compliance Date. If five (5) different lots are  
2 not available, then samples shall be drawn from such lots as are available. If tests conducted  
3 pursuant to this Section demonstrate that no warning is required for a Covered Product during  
4 each of three consecutive years, then the testing requirements of this Section will no longer be  
5 required as to that Covered Product. However, if after the three-year period, Synergy  
6 materially reformulates any of the Covered Products, Synergy shall test that Covered Product  
7 at least once after such change is made. Synergy shall send the five (5) test results undertaken  
8 pursuant to this Consent Judgment to ERC. Such results shall be sent to ERC within 30 days  
9 after each anniversary of the Effective Date. The testing requirements discussed in Section 3.4  
10 are not applicable to any Covered Product for which Synergy has provided the warning as  
11 specified in Section 3.2. Nothing in this Consent Judgment limits or prevents Synergy from  
12 conducting any additional testing of any Covered Products, any ingredients therein, or any  
13 other products.  
14

15 **3.4.5** Synergy shall retain all test results and documentation for a period of  
16 four years from the date of each test.

17 **3.4.6.** Defendant shall continue employing good manufacturing practices, which  
18 may be adjusted from time to time, and shall continue employing quality control measures,  
19 which may be adjusted from time to time, intended to reduce natural chemical contaminants to  
20 the "lowest level currently feasible," as this term is used in 21 C.F.R. Section 110.110(c) (2001).

21 **3.4.7 Calculation of "Naturally Occurring" Lead Content.** Synergy shall not  
22 be required to warn respecting exposures to lead deemed "naturally occurring" under this  
23 Consent Judgment. Such "naturally occurring" lead amounts shall be deducted from the  
24 exposure levels calculated under Section 3.4.1 for the Organic Vita-Min-Herb for Men and  
25 Organic Vita-Min-Herb for Women Covered Products. For the purposes of Section 3 of this  
26 Consent Judgment, the amount of lead deemed "naturally occurring" in the Organic Vita-Min-  
27 Herb for Men and Organic Vita-Min-Herb for Women Covered Products is the sum of the  
28



1 amounts of "naturally occurring" lead supplied by the quantity of each ingredient listed in Table  
 2 3.4.7 that is present in the maximum daily dose recommended on the label of the Covered  
 3 Product. For each ingredient, the amount of "naturally occurring" lead is listed in Table 3.4.7 in  
 4 micrograms ("mcg") of "naturally occurring" lead per gram of the ingredient contained in the  
 5 maximum daily dose recommended on the label of the Covered Product. If the amount of  
 6 elemental calcium contained in the maximum daily dose recommended on the label of a Covered  
 7 Product exceeds 1500 milligrams, then the amount of "naturally occurring" lead supplied by  
 8 each ingredient listed in Table 3.4.7 is limited to that amount of lead supplied by the quantity of  
 9 the ingredient that would be contained in that fraction of the maximum daily dose of the Covered  
 10 Product that would supply only 1500 milligrams of elemental calcium.

11 **TABLE 3.4.7**

| <u>INGREDIENT</u>   | <u>NATURALLY OCCURRING AMOUNT OF LEAD</u>    |
|---------------------|--|
| Calcium (elemental) | 0.8 mcg Pb per gram of elemental Calcium     |
| Ferrous Fumarate    | 0.4 mcg Pb per gram of Ferrous Fumarate      |
| Zinc Oxide          | 8.0 mcg Pb per gram of Zinc Oxide            |
| Magnesium Oxide     | 0.4 mcg Pb per gram of Magnesium Oxide       |
| Magnesium Carbonate | 0.332 mcg Pb per gram of Magnesium Carbonate |
| Magnesium Hydroxide | 0.4 mcg Pb per gram of Magnesium Hydroxide   |
| Zinc Gluconate      | 0.8 mcg Pb per gram of Zinc Gluconate        |
| Potassium Chloride  | 1.1 mcg Pb per gram of Potassium Chloride.   |

21 **3.4.8 Reporting of "Naturally Occurring" Allowances.** ERC acknowledges that  
 22 Synergy has provided calculations documenting how the "naturally occurring" allowances are  
 23 determined in the current formulations of the Organic Vita-Min-Herb for Men and Organic Vita-  
 24 Min-Herb for Women Covered Products. If Synergy materially reformulates either Covered  
 25 Product within three (3) years of the Effective Date, Synergy shall provide to ERC updated  
 26 calculations of the "naturally occurring" allowances in the reformulated products. After the three  
 27 (3) year period, ERC may in writing request updated calculations of the "naturally occurring"  
 28

1 allowances in the materially reformulated Organic Vita-Min-Herb for Men and Organic Vita-  
2 Min-Herb for Women Covered Products, and may request test results documenting lead levels in  
3 such materially reformulated products. Synergy shall provide such requested information within  
4 fifteen (15) business days of Synergy's receipt of ERC's request.

5       **3.4.9.** Should there be an amendment to Proposition 65 or should OEHHA adopt a final  
6 regulation that establishes a Maximum Allowable Dose Level ("MADL") applicable to the  
7 ingestion of lead that is more or less stringent than 0.5 micrograms per day, this Consent  
8 Judgment shall be deemed modified to incorporate that new MADL on the date the amendment  
9 becomes final or the regulation becomes effective; provided, however, such time period shall be  
10 extended to include the completion through final appeal of timely filed legal challenges. The  
11 new MADL shall thereafter replace the references in this Consent Judgment to 0.5 micrograms.  
12 Synergy shall have six (6) months after modification of the MADL to come into compliance with  
13 such amended terms of this Consent Judgment. In addition, if ERC agrees in a future court  
14 approved consent judgment under Proposition 65 that additional ingredients include "naturally  
15 occurring" lead, as that term is used in California Code of Regulations, title 27, Section 25501,  
16 then either Party may move the Court to modify this Consent Judgment to include such  
17 additional "naturally occurring" allowance or allowances.

#### 18       **4. SETTLEMENT PAYMENT**

19       **4.1** In full satisfaction of all potential civil penalties, payment in lieu of civil  
20 penalties, attorney's fees, and costs, Synergy shall make a total payment of \$160,000.00 by  
21 check within ten business days of receiving the Notice of Entry of Judgment. Said payment  
22 shall be for the following:

23       **4.2** \$25,956.00 shall be payable as civil penalties pursuant to California Health  
24 and Safety Code section 25249.7(b)(1). Of this amount, \$19,467.00 shall be payable to the  
25 Office of Environmental Health Hazard Assessment ("OEHHA") and \$6,489.00 shall be  
26 payable to Environmental Research Center. California Health and Safety Code section  
27

1 25249.12(c)(1) & (d). Synergy shall send both civil penalty payments to ERC's counsel who  
2 will be responsible for forwarding the civil penalty.

3 4.3 \$31,447.00 shall be payable to Environmental Research Center as  
4 reimbursement to ERC for (A) reasonable costs associated with the enforcement of  
5 Proposition 65 and other costs incurred as a result of work in bringing this action; and  
6 (B) \$73,955.00 shall be payable to Environmental Research Center in lieu of further civil  
7 penalties, for the day-to-day business activities such as (1) continued enforcement of  
8 Proposition 65, which includes work, analyzing, researching and testing consumer products  
9 that may contain Proposition 65 chemicals, focusing on the same or similar type of ingestible  
10 products that are the subject matter of the current action; (2) the continued monitoring of past  
11 consent judgments and settlements to ensure companies are in compliance with Proposition  
12 65; and (3) giving a donation of \$3,892.00 to the Woman's Voices For The Earth to address  
13 reducing toxic chemical exposures in California.  
14

15 4.4 \$24,750.00 shall be payable to Michael Freund as reimbursement of ERC's  
16 attorney's fees.

17 4.5 Synergy shall mail or deliver the payments in this Section by check to the  
18 Law Office of Michael Freund at the address stated in Section 11. Synergy will be provided  
19 with taxpayer identification information to enable Synergy to process the payments.

## 20 5. MODIFICATION OF CONSENT JUDGMENT

21 5.1 This Consent Judgment may be modified only (i) by written stipulation of the  
22 Parties or pursuant to Section 5.4 and (ii) upon entry by the Court of a modified consent  
23 judgment. The Attorney General shall be served with any such stipulations or motions to  
24 modify this Consent Judgment.

25 5.2 If Synergy seeks to modify this Consent Judgment under Section 5.1, then  
26 Synergy must provide written notice to ERC of its intent ("Notice of Intent"). If ERC seeks to  
27

1 meet and confer regarding the proposed modification in the Notice of Intent, then ERC must  
2 provide written notice to Synergy within thirty days of receiving the Notice of Intent. If ERC  
3 notifies Synergy in a timely manner of ERC's intent to meet and confer, then the Parties shall  
4 meet and confer in good faith as required in this Section. The Parties shall meet in person  
5 within thirty (30) days of ERC's notification of its intent to meet and confer. Within thirty  
6 days of such meeting, if ERC disputes the proposed modification, ERC shall provide to  
7 Synergy a written basis for its position. The Parties shall continue to meet and confer for an  
8 additional thirty (30) days in an effort to resolve any remaining disputes. The Parties may  
9 agree in writing to different deadlines for the meet-and-confer period.  
10

11 **5.3** In the event that Synergy initiates or otherwise requests a modification under  
12 Section 5.1, Synergy shall reimburse ERC its costs and reasonable attorney's fees for the time  
13 spent in the meet-and-confer process and filing and arguing a joint motion or application in  
14 support of a modification of this Consent Judgment. ERC shall notify Synergy  
15 approximately at the time when ERC's costs and attorneys fees meet or are likely to exceed  
16 \$4000.00, so that Synergy may reasonably track such expenses.

17 **5.4** Where the meet-and-confer process does not lead to a joint motion or  
18 application in support of a modification of this Consent Judgment, then either Party may seek  
19 judicial relief on its own. In such a situation, the prevailing party may seek to recover costs  
20 and reasonable attorney's fees. As used in the preceding sentence, the term "prevailing party"  
21 means a party who is successful in obtaining relief more favorable to it than the relief that the  
22 other party was amenable to providing during the Parties' good faith attempt to resolve the  
23 dispute that is the subject of the modification.

24 **5.5** Nothing in this Consent Judgment shall preclude Synergy from seeking to  
25 modify this Consent Judgment to establish that any ingredient or ingredients not set forth in  
26  
27  
28

1 Table 3.4.7 contain lead that is "naturally occurring" at the lowest level currently feasible as  
2 stated in California Code of Regulations, title 27, Section 25501.

3 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
4 **JUDGMENT**

5 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or  
6 terminate this Consent Judgment.

7 **6.2** Only after it complies with Section 15 below may any Party, by motion or  
8 application for an order to show cause filed with this Court, enforce the terms and conditions  
9 contained in this Consent Judgment.

10 **6.3** If ERC alleges any violation of this Consent Judgment, the Parties shall first  
11 attempt to resolve the matter prior to ERC taking further legal action. In addition, if ERC  
12 alleges that any Covered Product fails to qualify as a Reformulated Covered Product (for  
13 which ERC alleges that no warning has been provided), then ERC shall inform Synergy in a  
14 reasonably prompt manner of its test results, including information sufficient to permit  
15 Synergy to identify the Covered Products at issue. ERC may not allege a violation of the  
16 warning obligations of this Consent Judgment unless one is established based on application  
17 of the same provisions applicable to Synergy set forth in Sections 3.1, 3.2, 3.3, 3.4.1, 3.4.2,  
18 3.4.3, 3.4.7, 3.4.8 and 3.4.9. Synergy shall, within thirty days following such notice, provide  
19 ERC with testing information, from an independent third-party laboratory meeting the  
20 requirements of Sections 3.4.2 and 3.4.3, demonstrating Defendant's compliance with this  
21 Consent Judgment, if warranted. The Parties shall first attempt to resolve the matter prior to  
22 ERC taking any further legal action.

23 **7. APPLICATION OF CONSENT JUDGMENT**

24 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
25 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
26 divisions, affiliates, franchisees, licensees, customers (excluding private labelers), distributors,  
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28

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KM

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1 wholesalers, retailers, predecessors, successors, and assigns. This Consent Judgment shall have  
2 no application to Covered Products which are exclusively distributed and/or sold outside the  
3 State of California. With respect to Covered Products that are distributed and/or sold both inside  
4 and outside of California, the requirements in this Consent Judgment apply to the Covered  
5 Products only to the extent that the distribution and/or sales occur in California. This Consent  
6 Judgment shall terminate without further action by any Party when Synergy no longer  
7 manufactures, distributes or sells all of the Covered Products and all of such Covered Products  
8 previously "distributed for sale in California" have reached their expiration dates and are no  
9 longer sold.  
10  
11

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

13 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,  
14 on behalf of itself and in the public interest, and Synergy, of any alleged violation of  
15 Proposition 65 or its implementing regulations for failure to provide Proposition 65 warnings  
16 of exposure to lead from the handling, use, or consumption of the Covered Products and fully  
17 resolves all claims that have been or could have been asserted in this action up to and  
18 including the Effective Date for failure to provide Proposition 65 warnings for the Covered  
19 Products. ERC, on behalf of itself and in the public interest, hereby releases and discharges  
20 Synergy and its respective officers, directors, shareholders, employees, agents, parent  
21 companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers (not  
22 including private label customers of Synergy), distributors, wholesalers, retailers, and all  
23 other upstream and downstream entities in the distribution chain of any Covered Product, and  
24 the predecessors, successors and assigns of any of them (collectively, "Released Parties"),  
25 from any and all claims, actions, causes of action, suits, demands, liabilities, damages,  
26 penalties, fees, costs and expenses asserted, or that could have been asserted, as to any alleged  
27  
28

*VM*

1 violations of Proposition 65 arising from or relating to the failure to provide Proposition 65  
2 warnings regarding lead in the Covered Products.

3       **8.2**       ERC, on behalf of itself only, hereby releases and discharges the Released  
4 Parties from all known and unknown claims for alleged violations of Proposition 65 arising  
5 from or relating to alleged exposures to lead in the Covered Products as set forth in the  
6 Complaint and the Notice of Violations. It is possible that other claims not known to the  
7 Parties arising out of the facts alleged in the Notice of Violations or the Complaint and  
8 relating to the Covered Products will develop or be discovered. ERC, on behalf of itself only,  
9 acknowledges that this Consent Judgment is expressly intended to cover and include all such  
10 claims, including all rights of action therefore. ERC has full knowledge of the contents of  
11 California Civil Code section 1542. ERC, on behalf of itself only, acknowledges that the  
12 claims released in Sections 8.1 and 8.2 above may include unknown claims, and nevertheless  
13 waives California Civil Code section 1542 as to any such unknown claims. California Civil  
14 Code section 1542 reads as follows:

15  
16       A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR  
17       DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME  
18       OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE  
19       MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

20 ERC, on behalf of itself only, acknowledges and understands the significance and  
21 consequences of this specific waiver of California Civil Code Section 1542.

22       **8.3**       Compliance with the terms of this Consent Judgment shall be deemed to  
23 constitute compliance by any Released Party with Proposition 65 regarding alleged exposures  
24 to lead in the Covered Products as set forth in the Notice of Violations and the Complaint  
25 regardless of when such Covered Products are sold to California consumers.  
26  
27  
28

1           **8.4**     Nothing in this Consent Judgment is intended to apply to any occupational or  
2 environmental exposures arising under Proposition 65, nor shall it apply to any of Synergy's  
3 products other than the Covered Products.

4           **8.5**     ERC and Synergy each release and waive all claims they may have against  
5 each other for any statements or actions made or undertaken by them in connection with the  
6 Notice of Violations or the Complaint; provided, however, that nothing in Section 8 shall  
7 affect or limit any Party's right to seek to enforce the terms of this Consent Judgment.

8           **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

9     In the event that any of the provisions of this Consent Judgment is held by a court to be  
10 unenforceable, the validity of the remaining enforceable provisions shall not be adversely  
11 affected.

12           **10. GOVERNING LAW**

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

15           **11. PROVISION OF NOTICE**

16     All notices required to be given to either Party to this Consent Judgment by the other shall be in  
17 writing and sent to the following agents listed below by: (a) first-class, registered, or certified  
18 mail; (b) overnight courier; or (c) personal delivery. Courtesy copies via email may also be sent.  
19  
20

21           **FOR ENVIRONMENTAL RESEARCH CENTER:**

22     Chris Heptinstall, Executive Director  
23     Environmental Research Center  
24     3111 Camino Del Rio North, Suite 400  
25     San Diego, CA 92108

26     With a copy to:

27     Michael Freund (SBN 99687)  
28     Michael Freund & Associates  
29     1919 Addison Street, Suite 105  
30     Berkeley, California 94704-1101



1 Telephone: (510) 540-1992  
2 Facsimile: (510) 540-5543  
3 freund1@aol.com

4 **FOR THE SYNERGY COMPANY OF UTAH, LLC**

5 Judith Praitis (SBN 151303)  
6 Amy P. Lally (SBN 198555)  
7 SIDLEY AUSTIN LLP  
8 555 West Fifth Street, Suite 4000  
9 Los Angeles, California 90013-1010  
10 Telephone: (213)896-6000  
11 Facsimile: (213) 896-6600  
12 Email: jpraitis@sidley.com  
13 Email: alally@sidley.com

14 With a copy to:

15 Current CEO or President  
16 The Synergy Company of Utah, LLC  
17 2279 Resource Blvd  
18 Moab, UT 84532

19 **12. COURT APPROVAL**

20 **12.1** If this Stipulated Consent Judgment is not approved by the Court, it shall be  
21 void and have no force or effect.

22 **12.2** ERC shall comply with California Health and Safety Code section 25249.7(f)  
23 and with Title II of the California Code Regulations, Section 3003.

24 **13. EXECUTION AND COUNTERPARTS**

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

28 **14. DRAFTING**

The terms of this Consent Judgment have been reviewed by the respective counsel for the each  
Party prior to signing, and each Party has had an opportunity to fully discuss the terms with

1 counsel. The Parties agree that, in any subsequent interpretation and construction of this Consent  
2 Judgment entered thereon, the terms and provisions shall not be construed for or against any  
3 Party based on which counsel drafted said provision.  
4

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

6 If a dispute arises with respect to either Party's compliance with the terms of this Consent  
7 Judgment entered by the Court, the Parties shall meet in person or by telephone and endeavor to  
8 resolve the dispute in an amicable manner. No action or motion may be filed in the absence of  
9 such a good faith attempt to resolve the dispute beforehand. In the event an action or motion is  
10 filed, however, the prevailing party may seek to recover costs and reasonable attorney's fees. As  
11 used in the preceding sentence, the term "prevailing party" means a party who is successful in  
12 obtaining relief more favorable to it than the relief that the other party was amenable to providing  
13 during the Parties' good faith attempt to resolve the dispute that is the subject of such  
14 enforcement action.  
15

16 **16. ENTIRE AGREEMENT, AUTHORIZATION**

17 **16.1** This Consent Judgment contains the sole and entire agreement and  
18 understanding of the Parties with respect to the entire subject matter herein, and any and all  
19 prior discussions, negotiations, commitments and understandings related hereto. No  
20 representations, oral or otherwise, express or implied, other than those contained herein have  
21 been made by any Party. No other agreements, oral or otherwise, unless specifically referred  
22 to herein, shall be deemed to exist or to bind any Party.  
23

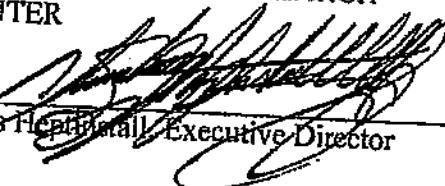
24 **16.2** Each signatory to this Consent Judgment certifies that he or she is fully  
25 authorized by the Party he or she represents to stipulate to this Consent Judgment. Except as  
26 explicitly provided herein, each Party shall bear its own fees and costs.  
27  
28

17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF  
CONSENT JUDGMENT

This Consent Judgment has come before the Court upon the motion of Plaintiff. The Parties request the Court to fully review this Consent Judgment and, being fully informed regarding the matters which are the subject of this action, to make the findings pursuant to California Health and Safety Code section 25249.7(f)(4) to approve this Consent Judgment.

IT IS SO STIPULATED:

Dated: 12/12/, 2013


ENVIRONMENTAL RESEARCH  
CENTER  
By:   
Chris Heptinstall, Executive Director

Dated: \_\_\_\_\_, 2013

THE SYNERGY COMPANY OF UTAH,  
LLC  
By: \_\_\_\_\_  
Daniel Naistadt

APPROVED AS TO FORM:

Dated: 12/12, 2013

ENVIRONMENTAL RESEARCH  
CENTER  
By:   
Michael Freund  
Michael Freund & Associates

1 **17. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
2 **CONSENT JUDGMENT**

3 This Consent Judgment has come before the Court upon the motion of Plaintiff. The Parties  
4 request the Court to fully review this Consent Judgment and, being fully informed regarding the  
5 matters which are the subject of this action, to make the findings pursuant to California Health  
6 and Safety Code section 25249.7(f)(4) to approve this Consent Judgment.  
7

8  
9 **IT IS SO STIPULATED:**

10  
11 Dated: \_\_\_\_\_, 2013

ENVIRONMENTAL RESEARCH  
CENTER

12  
13  
14 By: \_\_\_\_\_  
Chris Heptinstall, Executive Director

15  
16 Dated: 12/11, 2013

17 THE SYNERGY COMPANY OF UTAH,  
LLC

18 By:   
Daniel Naistadt

19  
20  
21 **APPROVED AS TO FORM:**

22  
23 Dated: \_\_\_\_\_, 2013

ENVIRONMENTAL RESEARCH  
CENTER


24  
25 By: \_\_\_\_\_  
Michael Freund  
Michael Freund & Associates

26  
27  
28 **[PROPOSED] STIPULATED CONSENT JUDGMENT; [PROPOSED] ORDER**

CASE NO. RG13686687

1 Dated: 12/12, 2013

2 THE SYNERGY COMPANY OF UTAH,  
3 LLC

4 By:   
5 Judith Fraites  
6 Amy P. Lally  
7 SIDLEY AUSTIN LLP

8 **JUDGMENT**

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

11  
12 Dated: March 7, 2014

13 Wynne Carvill  
14 Judge of the Superior Court

15  
16  
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28 ~~[PROPOSED]~~ STIPULATED CONSENT JUDGMENT; [PROPOSED] ORDER

CASE NO. RG13686687



## Environmental Research Center

5694 Mission Center Road #199

San Diego, CA 92108

619.309.4194

June 1, 2011

### VIA CERTIFIED MAIL

Current CEO or President  
The Synergy Company of Utah, LLC  
2279 Resource Blvd  
Moab, UT 84532

Mitchell M. May  
(The Synergy Company of Utah, LLC's  
Registered Agent for Service of Process)  
2279 Resource Blvd  
Moab, UT 84532

Office of the California Attorney General  
Prop 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 of California Health & Safety Code Section 25249.5 *et seq.***

Dear Addressees:

I am the Executive Director of the Environmental Research Center ("ERC") in connection with this Notice of Violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, which is codified at California Health & Safety Code Section 25249.5 *et seq.* and also referred to as Proposition 65.

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.

Exhibit A

The name of the Company covered by this Notice that violated Proposition 65 is:

**The Synergy Company of Utah, LLC**

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

**The Synergy Company Vita Synergy for Men - Lead**  
**The Synergy Company Vita Synergy for Women - Lead**  
**The Synergy Company Pure Synergy – 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 as chemical known to cause cancer.

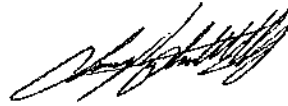
This letter is a Notice to The Synergy Company of Utah, LLC and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This Notice covers all violations of Proposition 65 involving The Synergy Company of Utah, LLC currently known to ERC from the information 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, has been provided to the Noticed Company with a copy of this letter.

The Synergy Company of Utah, LLC has manufactured, marketed, distributed, and/or sold the listed products, which have exposed and continue to expose numerous individuals within California to the identified chemicals. The primary route of exposure to these chemicals has been through ingestion, but may have also occurred through inhalation and/or dermal contact. The time period of these violations commenced one year after the listed dates set forth above and are ongoing. 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's label. The Synergy Company of Utah, LLC violated Proposition 65 because the Company has failed to provide an appropriate warning to persons using these products that they are being exposed to the identified chemical.

Pursuant to Section 25249.7(d) of the statute, ERC intends to file a citizen enforcement action sixty days after effective service of this Notice unless The Synergy Company of Utah, LLC agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65 and ERC's objectives in pursuing this Notice, 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.

I am the contact person at ERC in this case, and although you may contact me directly at the above address and phone number, please direct all questions concerning this notice to ERC's attorney, Michael Freund, address: 1915 Addison Street, Berkley, California, 94704-1101, telephone no.: 510-540-1992, e-mail: [Freund1@aol.com](mailto:Freund1@aol.com).

Sincerely,



---

Chris Heptinstall  
Executive Director  
Environmental Research Center

cc: Karen Evans

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to The Synergy Company of Utah, LLC and its Registered Agent for Service only)
- Additional Supporting Information for Certificate of Merit (to AG only)



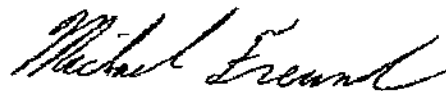
**CERTIFICATE OF MERIT**

**Re: Environmental Research Center's Notice of Proposition 65 Violations by The Synergy Company of Utah, LLC**

I, Michael Freund, 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: June 1, 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 1, 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 CEO or President  
The Synergy Company of Utah, LLC  
2279 Resource Blvd  
Moab, UT 84532

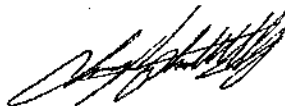
Mitchell M. May  
(The Synergy Company of Utah, LLC's  
Registered Agent for Service of Process)  
2279 Resource Blvd  
Moab, UT 84532

On June 1, 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 1, 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 1, 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 1, 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, 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