



20189352

FILED
ALAMEDA COUNTY

JUN 01 2018

CLERK OF THE SUPERIOR COURT

By C.W. J. Deputy

1 RICHARD M. FRANCO (CBN 170970)
LAW OFFICE OF RICHARD M. FRANCO
2 6500 Estates Drive
Oakland, CA 94611
3 Ph: 510-684-1022
Email: rick@rfrancolaw.com

4 Attorney for Plaintiff
5 ENVIRONMENTAL RESEARCH CENTER, INC.

6 STACY E. DON (CBN 226737)
LAW OFFICE OF STACY E. DON
7 3007 Douglas Boulevard, Suite 100
Roseville, CA 95661
8 Ph: 916-749-4851
9 Email: sdon@sdonlaw.com

10 Attorney for Defendant
11 GAMMA ENTERPRISES, LLC, individually
and doing business as GAMMA LABS

12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **COUNTY OF ALAMEDA**

15 ENVIRONMENTAL RESEARCH CENTER,
16 INC., a non-profit California corporation,

17 Plaintiff,

18 vs.

19 GAMMA ENTERPRISES, LLC, individually
20 and doing business as GAMMA LABS, a New
York limited liability company,

21 Defendant.

CASE NO. RG17881989

**STIPULATED CONSENT
JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: November 13, 2017

Trial Date: None set

22
23
24 **1. INTRODUCTION**

25 **1.1** On November 13, 2017, Plaintiff Environmental Research Center, Inc. ("ERC"), a
26 non-profit corporation, as a private enforcer and in the public interest, initiated this action by
27 filing a Complaint for Injunctive Relief and Civil Penalties (the "Complaint") pursuant to the
28 provisions of California Health and Safety Code section 25249.5 *et seq.* ("Proposition 65"),

1 against GAMMA ENTERPRISES, LLC, individually and doing business as GAMMA LABS
2 (“GAMMA LABS”). In this action, ERC alleges that a number of products manufactured,
3 distributed, or sold by GAMMA LABS and/or its successors and assigns contain lead, a chemical
4 listed under Proposition 65, and expose consumers to this chemical at a level requiring a
5 Proposition 65 warning. These products (referred to hereinafter individually as a “Covered
6 Product” or collectively as “Covered Products”) are:

- 7 1) Gamma Labs 24K Strength Formula Mixed Berry
- 8 2) Gamma Labs G Fuel Energy Formula Peach Mango
- 9 3) Gamma Labs G Fuel Energy Formula Blue Ice
- 10 4) Gamma Labs G Fuel Energy Formula Watermelon
- 11 5) Gamma Labs G Fuel Energy Formula Fazeberry
- 12 6) Gamma Labs G Fuel Energy Formula Blood Orange
- 13 7) Gamma Labs G Fuel Energy Formula Kiwi Strawberry
- 14 8) Gamma Labs G Fuel Energy Formula Caffeine Free Orange
- 15 9) Gamma Labs G Fuel Energy Formula Coconut
- 16 10) Gamma Labs G Fuel Energy Formula Green Apple
- 17 11) Gamma Labs G Fuel Energy Formula Pink Lemonade
- 18 12) Gamma Labs G Fuel Energy Formula Lemon Lime
- 19 13) Gamma Labs G Fuel Energy Formula Pineapple
- 20 14) Gamma Labs G Fuel Energy Formula Tropical Rain
- 21 15) Gamma Labs G Fuel Energy Formula Mystery Flavor
- 22 16) Gamma Labs G Fuel Energy Formula Fruit Punch
- 23 17) Gamma Labs G Fuel Energy Formula Grape
- 24 18) Gamma Labs G Fuel Energy Formula Lemonade

25 **1.2** ERC and GAMMA LABS are hereinafter referred to individually as a “Party” or
26 collectively as the “Parties.”

27 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other
28 causes, helping safeguard the public from health hazards by reducing the use and misuse of

1 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,
2 and encouraging corporate responsibility.

3 **1.4** For purposes of this Consent Judgment, the Parties agree that GAMMA LABS is a
4 business entity that has employed ten or more persons at all times relevant to this action, and
5 qualifies as a “person in the course of business” within the meaning of Proposition 65. GAMMA
6 LABS manufactures, distributes, and/or sells the Covered Products.

7 **1.5** The Complaint is based on allegations contained in ERC’s Notice of Violation
8 dated August 25, 2017 that was served on the California Attorney General, other public
9 enforcers, and GAMMA LABS (“Notice”). A true and correct copy of the 60-Day Notice dated
10 August 25, 2017 is attached hereto as **Exhibit A** and incorporated herein by reference. More
11 than 60 days have passed since the Notice was served on the Attorney General, public
12 enforcers, and GAMMA LABS and no designated governmental entity has filed a complaint
13 against GAMMA LABS with regard to the Covered Products or the alleged violations.

14 **1.6** ERC’s Notice and Complaint allege that use of the Covered Products exposes
15 persons in California to lead without first providing clear and reasonable warnings in violation
16 of California Health and Safety Code section 25249.6. GAMMA LABS denies all material
17 allegations contained in the Notice and Complaint.

18 **1.7** The Parties have entered into this Consent Judgment in order to settle,
19 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.
20 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute or
21 be construed as an admission by any of the Parties or by any of their respective officers,
22 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, franchisees,
23 licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact, issue of law, or
24 violation of law.

25 **1.8** Except as expressly set forth herein, nothing in this Consent Judgment shall
26 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in any
27 current or future legal proceeding unrelated to these proceedings.

1 **1.9** The Effective Date of this Consent Judgment is the date on which it is entered as
2 a Judgment by this Court.

3 **2. JURISDICTION AND VENUE**

4 For purposes of this Consent Judgment and any further court action that may become
5 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter
6 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction
7 over GAMMA LABS as to the acts alleged in the Complaint, that venue is proper in Alameda
8 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
9 resolution of all claims up through and including the Effective Date which were or could have
10 been asserted in this action based on the facts alleged in the Notice and Complaint.

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

12 **3.1** Beginning on the Effective Date, GAMMA LABS shall be permanently
13 enjoined from manufacturing for sale in the State of California, “Distributing into the State of
14 California”, or directly selling in the State of California, any Covered Products which expose a
15 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day unless it
16 meets the warning requirements under Section 3.2.

17 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State
18 of California” shall mean to directly ship a Covered Product into California for sale in
19 California or to sell a Covered Product to a distributor that GAMMA LABS knows or has
20 reason to know will sell the Covered Product in California.

21 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure
22 Level” shall be measured in micrograms, and shall be calculated using the following formula:
23 micrograms of lead per gram of product, multiplied by grams of product per serving of the
24 product (using the largest serving size appearing on the product label), multiplied by servings
25 of the product per day (using the largest number of servings in a recommended dosage
26 appearing on the product label), which equals micrograms of lead exposure per day. If no
27 recommended daily serving size is provided on the label, then the daily serving size shall equal
28 one.

1 **3.2 Clear and Reasonable Warnings**

2 If GAMMA LABS is required to provide a warning pursuant to Section 3.1, the following
3 warning must be utilized (“Warning”):

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

7 GAMMA LABS shall use the phrase “cancer and” in the Warning if GAMMA LABS has reason
8 to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as
9 determined pursuant to the quality control methodology set forth in Section 3.4 or if GAMMA
10 LABS has reason to believe that another Proposition 65 chemical is present which may require a
11 cancer warning.

12 The Warning shall be securely affixed to or printed upon the container or label of each
13 Covered Product. In addition, for any Covered Product sold over the internet by GAMMA
14 LABS or its authorized resellers, the Warning shall appear on the checkout page when a
15 California delivery address is indicated for any purchase of any Covered Product. An asterisk or
16 other identifying method must be utilized to identify which products on the checkout page are
17 subject to the Warning.

18 The Warning shall be at least the same size as the largest of any other health or safety
19 warnings also appearing on its website or on the label or container of GAMMA LABS’ product
20 packaging and the word “**WARNING**” shall be in all capital letters and in bold print. No
21 statements intended to or likely to have the effect of diminishing the impact of, or reducing the
22 clarity of, the Warning on the average lay person shall accompany the Warning. Further, no
23 statements may accompany the Warning that state or imply that the source of the listed chemical
24 has an impact on or results in a less harmful effect of the listed chemical.

25 GAMMA LABS must display the above Warning with such conspicuousness, as compared
26 with other words, statements, design of the label, container, or on its website, as applicable, to
27 render the Warning likely to be read and understood by an ordinary individual under customary
28 conditions of purchase or use of the product.

3.3 Reformulated Covered Products

1 A Reformulated Covered Product is one for which the “Daily Lead Exposure Level” is no
2 greater than 0.5 micrograms of lead per day as determined by the quality control methodology
3 described in Section 3.4.

4 **3.4 Testing and Quality Control Methodology**

5 **3.4.1** Beginning within one year of the Effective Date, GAMMA LABS shall
6 arrange for lead testing of the Covered Products at least once a year for a minimum of five
7 consecutive years by arranging for testing of five randomly selected samples of each of the
8 Covered Products, in the form intended for sale to the end-user, which GAMMA LABS intends
9 to sell or is manufacturing for sale in California, directly selling to a consumer in California or
10 “Distributing into the State of California.” If tests conducted pursuant to this Section
11 demonstrate that no Warning is required for a Covered Product during each of five consecutive
12 years, then the testing requirements of this Section will no longer be required as to that Covered
13 Product. However, if during or after the five-year testing period, GAMMA LABS changes
14 ingredient suppliers for any of the Covered Products and/or reformulates any of the Covered
15 Products, GAMMA LABS shall test that Covered Product annually for at least four (4)
16 consecutive years after such change is made.

17 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest
18 lead detection result of the five (5) randomly selected samples of the Covered Products will be
19 controlling.

20 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a
21 laboratory method that complies with the performance and quality control factors appropriate
22 for the method used, including limit of detection, qualification, accuracy, and precision that
23 meets the following criteria: Inductively Coupled Plasma-Mass Spectrometry (“ICP-MS”)
24 achieving a limit of quantification of less than or equal to 0.010 mg/kg or any other testing
25 method subsequently agreed to in writing by the Parties and approved by the Court through
26 entry of a modified consent judgment.

27 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an
28 independent third party laboratory certified by the California Environmental Laboratory

1 Accreditation Program or an independent third-party laboratory that is registered with the
2 United States Food & Drug Administration.

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

6 **3.4.6** Within sixty (60) days of ERC's written request, GAMMA LABS shall
7 deliver lab reports obtained pursuant to Section 3.4 to ERC. GAMMA LABS shall retain all
8 test results and documentation for a period of five years from the date of each test.

9 **4. SETTLEMENT PAYMENT**

10 **4.1** In full satisfaction of all potential civil penalties, additional settlement payments,
11 attorney's fees, and costs, GAMMA LABS shall make a total payment of \$118,500 ("Total
12 Settlement Amount") to ERC in six (6) equal monthly payments of \$19,750, with the first
13 payment due within 5 business days of the Effective Date ("Due Date"). GAMMA LABS shall
14 make these payments by wire transfer to ERC's escrow account, for which ERC will give
15 GAMMA LABS the necessary account information. The Total Settlement Amount shall be
16 apportioned as follows:

17 **4.2** \$21,226.18 shall be considered a civil penalty pursuant to California Health and
18 Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$15,919.63) of the civil penalty to
19 the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe
20 Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety
21 Code section 25249.12(c). ERC will retain the remaining 25% (\$5,306.55) of the civil penalty.

22 **4.3** \$5,991.31 shall be distributed to ERC as reimbursement to ERC for reasonable
23 costs incurred in bringing this action.

24 **4.4** \$15,919.61 shall be distributed to ERC as an Additional Settlement Payment
25 ("ASP"), pursuant to California Code of Regulations, title 11, sections 3203, subdivision (d) and
26 3204. ERC will utilize the ASP for activities that address the same public harm as allegedly
27 caused by GAMMA LABS in this matter. These activities are detailed below and support ERC's
28 overarching goal of reducing and/or eliminating hazardous and toxic chemicals in dietary

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

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

26 ERC shall be fully accountable in that it will maintain adequate records to document and
27 will be able to demonstrate how the ASP funds will be spent and can assure that the funds are
28 being spent only for the proper, designated purposes described in this Consent Judgment. ERC

1 shall provide the Attorney General, within thirty days of any request, copies of documentation
2 demonstrating how such funds have been spent.

3 **4.5** \$27,000 shall be distributed to the Law Office of Richard M. Franco as
4 reimbursement of ERC's attorney's fees, while \$48,362.90 shall be distributed to ERC for its
5 in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and
6 costs.

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

16 **5. MODIFICATION OF CONSENT JUDGMENT**

17 **5.1** This Consent Judgment may be modified only as to injunctive terms (i) by
18 written stipulation of the Parties and upon entry by the Court of a modified consent judgment or
19 (ii) by motion of either Party pursuant to Section 5.3 or 5.4 and upon entry by the Court of a
20 modified consent judgment.

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

1 proposed modification, ERC shall provide to GAMMA LABS a written basis for its position.
2 The Parties shall continue to meet and confer for an additional thirty (30) days in an effort to
3 resolve any remaining disputes. Should it become necessary, the Parties may agree in writing
4 to different deadlines for the meet-and-confer period.

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

10 **5.4** Where the meet-and-confer process does not lead to a joint motion or
11 application in support of a modification of the Consent Judgment, then either Party may seek
12 judicial relief on its own. In any such contested court proceeding, ERC may seek costs and any
13 attorney's fees incurred in opposing the motion pursuant to California Code of Civil Procedure
14 section 1021.5.

15 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**
16 **JUDGMENT**

17 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or terminate
18 this Consent Judgment.

19 **6.2** If ERC alleges that any Covered Product fails to qualify as a Reformulated
20 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall
21 inform GAMMA LABS in a reasonably prompt manner of its test results, including information
22 sufficient to permit GAMMA LABS to identify the Covered Products at issue. GAMMA LABS
23 shall, within sixty (60) days following such notice, provide ERC with testing information, from
24 an independent third-party laboratory meeting the requirements of Sections 3.4.3 and 3.4.4,
25 demonstrating GAMMA LABS' compliance with the Consent Judgment, if warranted. The
26 Parties shall first attempt to resolve the matter prior to ERC taking any further legal action.

27 **7. APPLICATION OF CONSENT JUDGMENT**

28 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their

1 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,
2 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,
3 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no
4 application to any Covered Product which is distributed or sold exclusively outside the State of
5 California and which is not used by California consumers.

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

7 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,
8 on behalf of itself and in the public interest, and GAMMA LABS and its respective officers,
9 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,
10 franchisees, licensees, customers (not including private label customers of GAMMA LABS),
11 distributors, wholesalers, retailers, and all other upstream and downstream entities in the
12 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any
13 of them, including but not limited to G Fuel, LLC (collectively, "Released Parties"). ERC, on
14 behalf of itself and in the public interest, hereby fully releases and discharges the Released
15 Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages,
16 penalties, fees, costs, and expenses asserted, or that could have been asserted from the
17 handling, use, or consumption of the Covered Products, as to any alleged violation of
18 Proposition 65 or its implementing regulations arising from the failure to provide Proposition
19 65 warnings on the Covered Products regarding lead up to and including the Effective Date.

20 **8.2** ERC on its own behalf only, and GAMMA LABS on its own behalf only,
21 further waive and release any and all claims they may have against each other and/or their
22 successors and assigns for all actions or statements made or undertaken in the course of seeking
23 or opposing enforcement of Proposition 65 in connection with the Notice and Complaint up
24 through and including the Effective Date, provided, however, that nothing in Section 8 shall
25 affect or limit any Party's right to seek to enforce the terms of this Consent Judgment.

26 **8.3** It is possible that other claims not known to the Parties, arising out of the facts
27 alleged in the Notice and Complaint, and relating to the Covered Products, will develop or be
28 discovered. ERC on behalf of itself only, and GAMMA LABS on behalf of itself only,

1 acknowledge that this Consent Judgment is expressly intended to cover and include all such
2 claims up through and including the Effective Date, including all rights of action therefore.
3 ERC and GAMMA LABS acknowledge that the claims released in Sections 8.1 and 8.2 above
4 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to
5 any such unknown claims. California Civil Code section 1542 reads as follows:

6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
7 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
8 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
9 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
10 OR HER SETTLEMENT WITH THE DEBTOR.

11 ERC on behalf of itself only, and GAMMA LABS on behalf of itself only, acknowledge and
12 understand the significance and consequences of this specific waiver of California Civil Code
13 section 1542.

14 **8.4** Compliance with the terms of this Consent Judgment shall be deemed to
15 constitute compliance with Proposition 65 by any releasee regarding alleged exposures to lead
16 in the Covered Products as set forth in the Notice and Complaint.

17 **8.5** Nothing in this Consent Judgment is intended to apply to any occupational or
18 environmental exposures arising under Proposition 65, nor shall it apply to any of GAMMA
19 LABS' products other than the Covered Products.

20 **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

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

23 **10. GOVERNING LAW**

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

26 **11. PROVISION OF NOTICE**

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

FOR ENVIRONMENTAL RESEARCH CENTER, INC.:

1 Chris Heptinstall, Executive Director, Environmental Research Center
2 3111 Camino Del Rio North, Suite 400
3 San Diego, CA 92108
4 Tel: (619) 500-3090
5 Email: chris_erc501c3@yahoo.com

6 With a copy to:

7 RICHARD M. FRANCO
8 LAW OFFICE OF RICHARD M. FRANCO
9 6500 Estates Drive
10 Oakland, CA 94611
11 Ph: 510-684-1022
12 Email: rick@rfrancolaw.com

13 GAMMA ENTERPRISES, LLC, individually
14 and doing business as GAMMA LABS

15 Raquel Colby
16 Gamma Enterprises, LLC
17 113 Alder Street
18 West Babylon, NY 11704
19 Ph: 631-755-1080
20 Email: legal@gfuel.com

21 With a copy to:

22 STACY E. DON
23 LAW OFFICE OF STACY E. DON
24 3007 Douglas Boulevard, Suite 100
25 Roseville, CA 95661
26 Ph: 916-749-4851
27 Email: sdon@sdonlaw.com

28 **12. COURT APPROVAL**

29 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a
30 Motion for Court Approval. The Parties shall use their best efforts to support entry of this
31 Consent Judgment.

32 **12.2** If the California Attorney General objects to any term in this Consent Judgment,
33 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible
34 prior to the hearing on the motion.

35 **12.3** If this Stipulated Consent Judgment is not approved by the Court, it shall be
36 void and have no force or effect.

1 **13. EXECUTION AND COUNTERPARTS**

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

5 **14. DRAFTING**

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

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

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

19 **16. ENFORCEMENT**

20 ERC may, by motion or order to show cause before the Superior Court of Alameda
21 County, enforce the terms and conditions contained in this Consent Judgment. In any action
22 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,
23 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.
24 To the extent the failure to comply with the Consent Judgment constitutes a violation of
25 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent Judgment,
26 but may seek in another action whatever fines, costs, penalties, or remedies as are provided by
27 law for failure to comply with Proposition 65 or other laws.

1 **17. ENTIRE AGREEMENT, AUTHORIZATION**

2 17.1 This Consent Judgment contains the sole and entire agreement and
3 understanding of the Parties with respect to the entire subject matter herein, and any and all
4 prior discussions, negotiations, commitments, and understandings related hereto. No
5 representations, oral or otherwise, express or implied, other than those contained herein have
6 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to
7 herein, shall be deemed to exist or to bind any Party.

8 17.2 Each signatory to this Consent Judgment certifies that he or she is fully
9 authorized by the Party he or she represents to stipulate to this Consent Judgment.

10 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**
11 **CONSENT JUDGMENT**

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

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

18 (2) Make the findings pursuant to California Health and Safety Code section
19 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

20 **IT IS SO STIPULATED:**

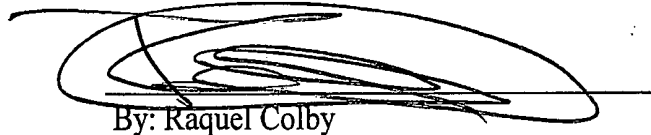
21 Dated: March 29, 2018

ENVIRONMENTAL RESEARCH
CENTER, INC.

22
23 By: 
24 Chris Hepinstall, Executive Director

1 Dated: March 29, 2018

GAMMA ENTERPRISES, LLC,
individually and doing business as
GAMMA LABS

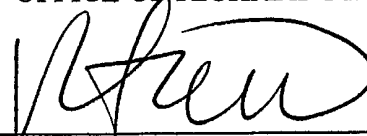


By: Raquel Colby
Its: General Counsel

9 **APPROVED AS TO FORM:**

10 Dated: March 29, 2018

LAW OFFICE OF RICHARD M. FRANCO

By: 

Richard M. Franco
Attorney for Plaintiff Environmental
Research Center, Inc.

15 Dated: March 29, 2018

LAW OFFICE OF STACY E. DON

By: 

Stacy E. Don
Attorney for Defendant Gamma
Enterprises, LLC, individually and doing
business as Gamma Labs

21 **ORDER AND JUDGMENT**

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

24 IT IS SO ORDERED, ADJUDGED AND DECREED.

25
26 Dated: 6/1, 2017



Judge of the Superior Court

EXHIBIT A

1

2

3

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

LAW OFFICE OF RICHARD M. FRANCO

**6500 ESTATES DRIVE
OAKLAND, CA 94611
510.684.1022
RICK@RFRANCOLAW.COM**

VIA CERTIFIED MAIL

Current President or CEO
Gamma Enterprises, LLC,
individually and doing business as
Gamma Labs
113 Alder Street
West Babylon, NY 11704

Current President or CEO
Gamma Enterprises, LLC,
individually and doing business as
Gamma Labs
115 Alder Street
West Babylon, NY 11704

VIA ELECTRONIC MAIL

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

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

Dije Ndreu, Deputy District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Allison Haley, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

VIA ELECTRONIC MAIL

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

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

Gregory Alker, Assistant District Attorney
San Francisco County
732 Brannan Street
San Francisco, CA 94103
gregory.alker@sfgov.org

Tori Verber Salazar, District Attorney
San Joaquin County
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th
Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

Yen Dang, Supervising Deputy District
Attorney
Santa Clara County
70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

VIA ELECTRONIC MAIL

Stephan R. Passalacqua, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
jbarnes@sonoma-county.org

Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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

VIA ELECTRONIC MAIL

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

VIA ONLINE SUBMISSION

Office of the California Attorney General

VIA FIRST CLASS MAIL

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

Re: Notice of Violations of California Health & Safety Code Section 25249.5 *et seq.*

Dear Addressees:

I represent the Environmental Research Center, Inc. ("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.

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

Gamma Enterprises, LLC, individually and doing business as Gamma Labs

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

1. Gamma Labs 24K Strength Formula Mixed Berry - Lead
2. Gamma Labs G Fuel Energy Formula Peach Mango - Lead
3. Gamma Labs G Fuel Energy Formula Blue Ice - Lead
4. Gamma Labs G Fuel Energy Formula Watermelon - Lead

5. **Gamma Labs G Fuel Energy Formula Fazeberry - Lead**
6. **Gamma Labs G Fuel Energy Formula Blood Orange - Lead**
7. **Gamma Labs G Fuel Energy Formula Kiwi Strawberry -Lead**
8. **Gamma Labs G Fuel Energy Formula Caffeine Free Orange -Lead**
9. **Gamma Labs G Fuel Energy Formula Coconut - Lead**
10. **Gamma Labs G Fuel Energy Formula Green Apple - Lead**
11. **Gamma Labs G Fuel Energy Formula Pink Lemonade - Lead**
12. **Gamma Labs G Fuel Energy Formula Lemon Lime - Lead**
13. **Gamma Labs G Fuel Energy Formula Pineapple - Lead**
14. **Gamma Labs G Fuel Energy Formula Tropical Rain - Lead**
15. **Gamma Labs G Fuel Energy Formula Mystery Flavor - Lead**
16. **Gamma Labs G Fuel Energy Formula Fruit Punch - Lead**
17. **Gamma Labs G Fuel Energy Formula Grape - Lead**
18. **Gamma Labs G Fuel Energy Formula Lemonade - 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.

This letter is a notice to the Violator and the appropriate governmental authorities of the Proposition 65 violations concerning the listed products. This notice covers all violations of Proposition 65 involving the Violator 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, is enclosed with the copy of this letter to the Violator.

The Violator has manufactured, marketed, distributed, and/or sold the listed products, which has exposed and continues to expose numerous individuals within California to the identified chemical, lead. The consumer exposures that are the subject of this notice result from the recommended use of these products by consumers. The route of exposure to lead has been through ingestion. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to lead. The method of warning should be a warning that appears on the product's label. The Violator violated Proposition 65 because it failed to provide an appropriate warning to persons using and/or handling these products that they are being exposed to lead. Each of these ongoing violations has occurred on every day since August 25, 2014, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users.

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 Violator agrees in an enforceable written instrument to: (1) reformulate the listed products so as to eliminate further exposures to the identified chemical; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Consistent with the public interest goals of Proposition 65 and my client's objectives in pursuing this notice, ERC is interested in seeking a constructive

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

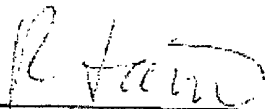
August 25, 2017

Page 4

resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemical and expensive and time consuming litigation.

ERC's Executive Director is Chris Heptinstall, and is located at 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. 619-500-3090. ERC has retained me in connection with this matter. We suggest that communications regarding this Notice of Violations should be directed to my attention at the above listed law office address and telephone number.

Sincerely,



Rick Franco

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Gamma Enterprises, LLC, individually and doing business as Gamma Labs)

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

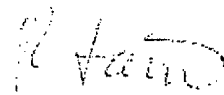
CERTIFICATE OF MERIT

Re: Environmental Research Center, Inc.'s Notice of Proposition 65 Violations by Gamma Enterprises, LLC, individually and doing business as Gamma Labs

I, Rick Franco, 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: August 25, 2017



Rick Franco

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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

I am a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On August 25, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, 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 each of the parties listed below and depositing it in a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
Gamma Enterprises, LLC,
individually and doing business as
Gamma Labs
113 Alder Street
West Babylon, NY 11704

Current President or CEO
Gamma Enterprises, LLC,
individually and doing business as
Gamma Labs
115 Alder Street
West Babylon, NY 11704

On August 25, 2017, between 10:00 a.m. and 4:30 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice> :

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

On August 25, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

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

Dijc Ndreu, Deputy District Attorney
Monterey County
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

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

Allison Haley, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
August 25, 2017
Page 7

Paul E. Zellerbach, District Attorney
Riverside County
3072 Orange Street
Riverside, CA 92501
Prop65@rivcoda.org

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

Gregory Alker, Assistant District Attorney
San Francisco County
732 Brannan Street
San Francisco, CA 94103
gregory.alker@sfgov.org

Tori Verber Salazar, District Attorney
San Joaquin County
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

Yen Dang, Supervising Deputy District Attorney
Santa Clara County
70 W Hedding St
San Jose, CA 95110
EPU@da.sccgov.org

Stephan R. Passalacqua, District Attorney
Sonoma County
600 Administration Dr
Sonoma, CA 95403
jbarnes@sonoma-county.org

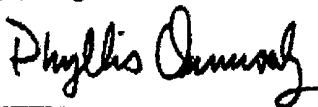
Phillip J. Cline, District Attorney
Tulare County
221 S Mooney Blvd
Visalia, CA 95370
Prop65@co.tulare.ca.us

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

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

On August 25, 2017 between 10:00 a.m. and 4:30 p.m. Eastern Time, I served the following documents: NOTICE OF VIOLATIONS, 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 with the postage fully prepaid for delivery by First Class Mail.

Executed on August 25, 2017, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*
August 25, 2017

Page 8

Service List

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95455	District Attorney, San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92401	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Alpine County P.O. Box 248 Markleville, CA 96120	District Attorney, Los Angeles County Hall of Justice 211 West Temple St., Ste 1200 Los Angeles, CA 90012	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Amador County 708 Court Street, Suite 202 Jackson, CA 95642	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	San Francisco City Attorney City Hall, Room 234 1 Dr Carlton B Goodlett Pl. San Francisco, CA 94102
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95060	
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Shasta County 1355 West Street Redding, CA 96001	
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Sierra County PO Box 457 Downsville, CA 95936	
District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Modoc County 294 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097	
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533	
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354	
District Attorney, Humboldt County 825 5th Street 4th Floor Eureka, CA 95501	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991	
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080	
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093	
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	District Attorney, Tuolumne County 423 N. Washington Street Sonoma, CA 95370	
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230		District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901	