KJT LAWGROUP LLP

230 N. Maryland Ave. Suite 306
Glendale, CA 91206
P 818 507 8525
F 818 507 8588
info@KJTlawgroup.com

March 20, 2018

60-Day Notice of Violations:
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 *ET. SEQ.*
"PROPOSITION 65"

Dear Alleged Violators and Public Enforcement Agencies:

KJT Law Group, LLP represents Tamar Kaloustian ("Claimant"), a citizen of the State of California acting in the interest of the general public, in connection with this notice of violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code §§ 25249.5 *et seq.*, with respect to the products identified below.

This letter constitutes notification that the Alleged Violators, identified below, have violated Proposition 65 by failing to provide clear and reasonable warnings required by State law prior to exposing persons to hazardous chemicals listed pursuant to § 25249.8 H.&S.C. and 27 C.C.R. § 27001. Furthermore, this notice serves to provide notice of the intent to sue in the public interest, based thereon.

Pursuant to § 25249.7(d) of the statute, Claimant intends to bring an enforcement action against the above-referenced addressees sixty (60) days after the effective service of this notice unless public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations. A summary of the statute and its implementing regulations, which was prepared by the Office of Environmental Hazard Assessment, the lead agency designated under the State, is enclosed with the copy of this notice served upon the violators ("Proposition 65: A Summary"). The specific details of the violations that are the subject of this notice are provided below.

Alleged Violators. The names of the violators are:

NUTRAMARKS, LLC

Consumer Product. The specific product that is the subject of this notice is:

Product Name: THOMPSON PSYLLIUM HUSK POWDER
Retailer: AMAZON

Chemical(s) Involved. The name of the listed chemical involved in the violation is:

Lead

As the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) requires, the California Office of Environmental Health and Hazard Assessment (OEHHA) maintains the list of chemicals known to cause cancer, birth defects, reproductive or developmental harm. In this document, "lead and lead compounds" have

been listed as carcinogens since October 1, 1992 and "lead" has been listed as a developmental toxicant for males and females since February 27, 1987. 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.

Description of Violation

This notice addresses consumer exposure to lead. The Alleged Violators violated Proposition 65 because they failed to provide persons using the products with appropriate warnings that they are being exposed to lead in levels exceeding the allowable limits according to State law.

Route of Exposure

Use of the product identified above results in human exposure to lead. The primary route of lead exposure to consumers is through direct ingestion when consumers eat/drink the **THOMPSON PSYLLIUM HUSK POWDER**. These exposures take place throughout the State of California. No clear and reasonable warning is provided with regards to the carcinogenic and/or reproductive hazard of lead as required by State law.

Duration of Violations

These violations have been occurring every day since at least March 19, 2017, and every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided with regards to the carcinogenic and/or reproductive hazard of lead as required by State law or until these known toxic chemicals are removed or reduced to allowable levels in the products.

Counsel

The Claimant is represented in connection with this matter by and may only be contacted through:

Vache Thomassian, Esq.
KJT Law Group, LLP
230 North Maryland Ave. Suite 306 Glendale, CA 91206
Telephone: (818) 507-8525
Email: Vache@KJTLawGroup.com

In keeping with the public interest goals of the statute and the objective of protecting individuals and the community at-large from further toxic exposures, KJT Law Group, LLP is interested in seeking a constructive and immediate resolution of this matter in order to avoid continuing unwarned exposure to listed chemicals.

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Upon expiration of sixty (60) days following service of this notice, Claimant will file a complaint with claims under Proposition 65 against the addressees/defendants if state or local officials do not undertake enforcement action by that time.

All communications regarding this notice may be made to Vache Thomassian, Esq. at the above listed firm address and telephone number.

Regards,

Vache Thomassian, Esq.
KJT Law Group, LLP

Attachments:

- Certificate of Merit
- Supporting Documentation for Certificate of Merit (to Attorney General Only)
- Proposition 65: A Summary
- Proof of Service (including DA Service List)

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CERTIFICATE OF MERIT

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

I, Vache Thomassian, hereby declare:

1) This Certificate of Merit accompanies the attached sixty (60) day notice in which it is alleged the parties identified in the notice have violated Health & Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2) I am the attorney for the noticing parties.
3) I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemicals that are the subject of the action.
4) Based on the information obtained through those consultations, and on all 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 plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5) The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e. (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: March 20, 2018

Vache Thomassian, Esq.
KJT Law Group, LLP

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. Please refer to the statute and OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: http://oehha.ca.gov/prop65/law/P65law72003.html. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.[1] These implementing regulations are available online at: http://oehha.ca.gov/prop65/law/P65Regs.html.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 List." Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

[1] All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: http://www.oehha.ca.gov/prop65/law/index.html.

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly say that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (http://www.oehha.ca.gov/prop65/law/index.html) to determine all applicable exemptions, the most common of which are the following:

Grace Periods. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all full and part-time employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: http://www.oehha.ca.gov/prop65/getNSRLs.html for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: http://www.oehha.ca.gov/prop65/ getNSRLs.html for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in a Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant[2] it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

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[2] See Section 25501(a)(4)

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27, sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to $2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;

- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;

- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;

- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties or any reimbursement for costs and attorney's fees, if the notice of violation was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of $500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city greater than 750,000 in population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHHA's website at: http://oehha.ca.gov/prop65/law/p65law72003.html. The notice is reproduced here:

Date:
Name of Noticing Party or attorney for Noticing Party:
Address:
Phone number:

SPECIAL COMPLIANCE PROCEDURE
PROOF OF COMPLIANCE

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

1. **You have actually taken the corrective steps that you have certified in this form.**
2. **The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice.**
3. **The Noticing Party receives the required $500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.**
4. **This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.**

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

The alleged violation is for an exposure to: (check one)

___Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

___A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

____Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

___Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

IMPORTANT NOTES:

1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.
2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action

over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Date :
Name of Noticing Party or attorney for Noticing Party:
Address:
Phone number:

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE

Certification of Compliance
Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of $500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

[ ] Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
[ ] Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately showing its placement on my premises; OR
[ ] Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

Certification
My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

_____ _____
Signature of alleged violator or authorized representative Date

_____
Name and title of signatory

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May 2014

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

PROOF 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 action. I am employed in the County of Los Angeles, State of California my business address is 230 North Maryland Avenue, Suite 306, Glendale, CA 91206.

On **March** 20**, 2018** I served the following documents: **60-DAY NOTICE OF VIOLATIONS; 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 the the party listed below and depositing it in a US Postal Service Office with the postage fully prepaid for delivery by **Certified Mail**:

NUTRAMARKS, INC.
1500 Kearns Blvd
Park City, UT 84060
United States

On **March** 20**, 2018** I served the following documents: **60-DAY NOTICE OF VIOLATIONS; CERTIFICATE OF MERIT; SUPPORTING DOCUMENTATION FOR CERTIFICATE OF MERIT; THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY**

on the following parties by uploading the foregoing documents at the webpage listed below:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Ste. 2000
Post Office Box 70550
Oakland, California 94612-0550
https://oag.ca.gov/prop65/add-60-day-notice

On **March** 20**, 2018** I served the following documents: **60-DAY NOTICE OF VIOLATIONS; CERTIFICATE OF MERIT; THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY**

on each of the parties of the Service List attached hereto. I effected service 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 US Postal Service with the postage fully prepaid.

Executed under penalty of perjury pursuant to the laws of the State of California in Glendale, California on **March** 20**, 2018.**

Aleena Sivazlian

KJT LAWGROUP LLP
230 N. Maryland Ave. Suite 306
Glendale, CA 91206

SERVICE LIST

ALAMEDA COUNTY
The Honorable Nancy O'Malley
District Attorney
1225 Fallon Street, Room 900
Oakland, CA 94612

ALPINE COUNTY
The Honorable Karen Dustman
District Attorney
P.O. Box 248
Markleeville, CA 96120

AMADOR COUNTY
The Honorable Todd Riebe
District Attorney
708 Court Street, #202
Jackson, CA 95642

BUTTE COUNTY
The Honorable Michael Ramsey
District Attorney
25 County Center Drive –
Administration Building
Oroville, CA 95965

CALAVERAS COUNTY
The Honorable Barbara Yook
District Attorney
891 Mountain Ranch Road
San Andreas, CA 95249

CONTRA COSTA COUNTY
The Honorable Mark Peterson
District Attorney
900 Ward Street
Martinez, CA 94553

COLUSA COUNTY
The Honorable John Poyner
District Attorney
346 5th Street, Suite 101
Colusa, CA 95932

DEL NORTE COUNTY
The Honorable Dale P. Trigg
District Attorney
450 H Street, Room 171
Crescent City, CA 95531

EL DORADO COUNTY
The Honorable Vernon Pierson
District Attorney
515 Main Street
Placerville, CA 95667

FRESNO COUNTY
The Honorable Lisa Smittcamp
District Attorney
2220 Tulare Street, Suite 1000
Fresno, CA 93721

GLENN COUNTY
The Honorable Dwayne Stewart
District Attorney
P.O. Box 430
Willows, CA 95988

HUMBOLDT COUNTY
The Honorable Maggie Fleming
District Attorney
825 5th Street
Eureka, CA 95501

IMPERIAL COUNTY
The Honorable Gilbert G. Otero
District Attorney
940 W. Main Street, Suite 102
El Centro, CA 92243

INYO COUNTY
The Honorable Thomas L. Hardy
District Attorney
168 North Edwards
Independence, CA 93526

KERN COUNTY
The Honorable Lisa Green
District Attorney
1215 Truxtun Avenue
Bakersfield, CA 93301

KINGS COUNTY
The Honorable Keith Fagundes
District Attorney
1400 West Lacey Blvd.
Hanford, CA 93230

LAKE COUNTY
The Honorable Donald Anderson
District Attorney
255 N. Forbes Street
Lakeport, CA 95453

LASSEN COUNTY
The Honorable Stacey L. Montgomery
District Attorney
2950 Riverside Drive
Susanville, CA 96130

LOS ANGELES COUNTY
The Honorable Jackie Lacey
District Attorney
211 W. Temple Street, Suite 1200
Los Angeles, CA 90012

MADERA COUNTY
The Honorable David Linn
District Attorney
209 W. Yosemite Avenue
Madera, CA 93637

MARIN COUNTY
The Honorable Edward Berberian
District Attorney
3501 Civic Center Drive, Room 130
San Rafael, CA 94903

MARIPOSA COUNTY
The Honorable Tom Cooke
District Attorney
P.O. Box 730
Mariposa, CA 95338

MENDOCINO COUNTY
The Honorable C. David Eyster
District Attorney
P.O. Box 1000
Ukiah, CA 95482

MERCED COUNTY
The Honorable Larry Morse II
District Attorney
550 W. Main Street
Merced, CA 95340

MODOC COUNTY
The Honorable Jordan Funk
District Attorney
204 S. Court Street Room 202
Alturas, CA 96101

MONO COUNTY
The Honorable Tim Kendall
District Attorney
P.O. Box 2053
Mammoth Lakes, CA 93546

MONTEREY COUNTY
The Honorable Dean Flippo
District Attorney
P.O. Box 1131
Salinas, CA 93902

NAPA COUNTY
The Honorable Allison Haley
District Attorney
1127 First Street, Suite C
Napa, CA 94559

NEVADA COUNTY
The Honorable Clifford Newell
District Attorney
201 Commercial Street
Nevada City, CA 95959

ORANGE COUNTY
The Honorable Tony Rackauckas
District Attorney
401 Civic Center Drive West
Santa Ana, CA 92701

PLACER COUNTY
The Honorable R. Scott Owens
District Attorney
10810 Justice Center Drive
Roseville, CA 95678

PLUMAS COUNTY
The Honorable David Hollister
District Attorney
520 Main Street, Room 404
Quincy, CA 95971

RIVERSIDE COUNTY
The Honorable Michael Hestrin
3960 Orange Street
Riverside, CA 92501

SAN BENITO COUNTY
The Honorable Candice Hooper-Mancino
District Attorney
419 4th Street, 2nd Floor
Hollister, CA 95023

SAN BERNARDINO COUNTY
The Honorable Michael Ramos
District Attorney
303 W. Third Street, 6th Floor
San Bernardino, CA 92415

SAN DIEGO COUNTY
The Honorable Bonnie Dumanis
District Attorney
330 W. Broadway, Suite 1300
San Diego, CA 92101

SAN LUIS OBISPO COUNTY
The Honorable Dan Dow
District Attorney
Courthouse Annex, 4th Floor
San Luis Obispo, CA 93408

SAN MATEO COUNTY
The Honorable Stephen M. Wagstaffe
District Attorney
400 County Center, 3rd Floor
Redwood City, CA 94063

SACRAMENTO COUNTY
The Honorable Anne Marie Schubert
District Attorney
901 G Street
Sacramento, CA 95814

SAN JOAQUIN COUNTY
The Honorable Tori Verber Salazar
District Attorney
P.O. Box 990
Stockton, CA 95202

SAN FRANCISCO COUNTY
The Honorable George Gascon
District Attorney
880 Bryant Street, 3rd Floor
San Francisco, CA 94103

SANTA BARBARA COUNTY
The Honorable Joyce Dudley
District Attorney
1112 Santa Barbara Street
Santa Barbara, CA 93101

SANTA CLARA COUNTY
The Honorable Jeffrey Rosen
District Attorney
70 W. Hedding Street, West Wing
San Jose, CA 95110

SANTA CRUZ COUNTY
The Honorable Jeff Rosell
District Attorney
701 Ocean Street, Room 200
Santa Cruz, CA 95060

SHASTA COUNTY
The Honorable Stephen Carlton
District Attorney
1355 West Street
Redding, CA 96001

SIERRA COUNTY
The Honorable Lawrence Allen
District Attorney
100 Courthouse Square
Downieville, CA 95936

SISTIYOU COUNTY
The Honorable James Kirk Andrus
District Attorney
P.O. Box 986
Yreka, CA 96097

SOLANO COUNTY
The Honorable Krishna A. Abrams
District Attorney
675 Texas Street, Suite 4500
Fairfield, CA 94533

SONOMA COUNTY
The Honorable Jill Ravitch
District Attorney
600 Administration Drive, Room 212J
Santa Rosa, CA 95403

STANISLAUS COUNTY
The Honorable Birgit Fladager
District Attorney
832 12th Street, Suite 300
Modesto, CA 95353

SUTTER COUNTY
The Honorable Amanda L. Hopper
District Attorney
446 Second Street, Suite 102
Yuba City, CA 95991

TEHAMA COUNTY
The Honorable Gregg Cohen
District Attorney
P.O. Box 519
Red Bluff, CA 96080

TRINITY COUNTY
The Honorable Eric Heryford
District Attorney
P.O. Box 310
Weaverville, CA 96093

TULARE COUNTY
The Honorable Tim Ward
District Attorney
221 South Mooney Boul., Suite 224
Visalia, CA 93291

TUOLUMNE COUNTY
The Honorable Laura Krieg
District Attorney
423 N. Washington Street
Sonora, CA 95370

VENTURA COUNTY
The Honorable Gregory Totten
District Attorney
800 S. Victoria Avenue
Ventura, CA 93009

YUBA COUNTY
The Honorable Patrick McGrath
District Attorney
215 Fifth Street, Suite 152
Marysville, CA 95901

YOLO COUNTY
The Honorable Jeffery Reisig
District Attorney
301 Second Street
Woodland, CA 95695

CITY OF LOS ANGELES
City Attorney's Office
City Hall East
200 N. Main Street, Room 800
Los Angeles, CA 90012

CITY OF SACRAMENTO
Office of the City Attorney
915 I Street, 4th Floor
Sacramento, CA 95814

CITY OF SAN DIEGO
City Attorney's Office
1200 3rd Avenue, Suite 1620
San Diego, CA 92101

CITY OF SAN FRANCISCO
City Attorney's Office
City Hall, Room 234
1 Dr. Carlton B Goodlett Place
San Francisco, CA 94102

CITY OF SAN JOSE
City Attorney's Office
200 E. Santa Clara Street, 16th Floor
San Jose, CA 95113

CITY OF OAKLAND
City Attorney's Office
City Hall, 6th Floor
1 Frank Ogawa Plaza
Oakland, CA 94612