



GLICK LAW GROUP

225 Broadway, 19th Floor, San Diego, CA 92101
Tel: 619.382.3400 Fax: 619.615.2193
www.glicklawgroup.com

August 17, 2021

Via Certified Mail

Bigflysports, Inc.
Corporation Service Company (Registered Agent)
1900 W. Littleton Boulevard
Littleton, CO 80120

HealthCheck Systems Inc.
United States Corporate Agents, Inc.
221 N Broad St., Suite 3A
Middletown, DE 19709

Bigflysports, Inc.
Attn. Legal Department
60 Metro way
Secaucus, NJ 07094

Health Check Systems Corp.
Attn. Legal Department
4802 Glenwood Rd
Brooklyn, NY 11234

Accufitness, LLC
c/o Jon K. Fitzgerald
9250 E Costilla Ave. STE 600
Greenwood Village, CO 80112

Walmart, Inc.
CT Corporation System
818 W. 7th Street STE 930
Los Angeles, CA 90017

Re: Proposition 65 Notice of Violation

This notice amends the second amended notice AG #2021-00279 dated February 8, 2021. This amended notice adds the manufacturer Bigflysports, Inc. / Accufitness, LLC.

To Whom It May Concern:

We represent Environmental Health Advocates, Inc., an organization in the State of California acting in the interest of the general public. This letter serves as notice that the parties listed above are in violation of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act, commencing with section 25249.5 of the Health and Safety Code ("Proposition 65"). In particular, the violations alleged by this notice consist of types of harm that may potentially result from exposures to the toxic chemical Di(2-ethylhexyl) phthalate (DEHP). This chemical was listed as a carcinogen on January 1, 1988 and as a developmental/reproductive toxin on October 24, 2003.

The specific type of product that is causing exposures in violation of Proposition 65 is tape measures, including but not limited to the product detailed below:

	<u>Product Name</u>	<u>Manufacturer</u>	<u>Distributor/Retailer</u>
1.	AccuFitness MyoTape Body Tape Measure, 1 ea	Bigflysports, Inc./Accufitness, LLC Health Check Systems Corp. / HealthCheck Systems Inc.	Walmart, Inc.

The routes of exposure for the violations include dermal absorption, ingestion, and inhalation by consumers. These exposures occur through the reasonably foreseeable use of the product. The sales of this product have been occurring since at least August 2020, are continuing to this day and will continue to occur as long as the product subject to this notice is sold to and used by consumers.

Proposition 65 requires that a clear and reasonable warning is provided with these products regarding the exposures to Di(2-ethylhexyl) phthalate (DEHP) caused by ordinary use of the product. The Parties are in violation of Proposition 65 by failing to provide such warning to consumers and as a result of the sales of this product, exposures to Di(2-ethylhexyl) phthalate (DEHP) have been occurring without proper warnings.

Pursuant to Proposition 65, notice and intent to sue shall be provided to violators 60-days before filing a complaint. This letter provides notice of the alleged violation to the parties listed above and the appropriate governmental authorities. A summary of Proposition 65 is attached.

If you have any questions or wish to discuss any of the above, please contact me.

Sincerely,



Noam Glick

Enclosures

CERTIFICATE OF MERIT

I, Noam Glick, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice have violated Health and 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 has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is 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: Aug 17, 2021



Noam Glick, Attorney at Law

CERTIFICATE OF SERVICE

I, Jake Xu, declare that I am over the age of 18 years, and am not a party to the within action. I am employed in the County of San Diego, California, where the mailing occurs; and my business address is 225 Broadway, 19th Floor, San Diego, California 92101.

On August 17, 2021, I served the following documents: **(1) 60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(d); (2) CERTIFICATE OF MERIT; (3) PROPOSITION 65: A SUMMARY; and (4) CERTIFICATE OF MERIT ATTACHMENT (served only on the Attorney General)** on the parties listed below by placing a true and correct copy thereof in a sealed envelope, addressed to each party and depositing it at my business address with the U.S. Postal Service for delivery by Certified Mail with the postage thereon fully prepaid:

Via Certified Mail

Bigflysports, Inc.
Corporation Service Company (Registered Agent)
1900 W. Littleton Boulevard
Littleton, CO 80120

HealthCheck Systems Inc.
United States Corporate Agents, Inc.
221 N Broad St., Suite 3A
Middletown, DE 19709

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Brooklyn, NY 11234

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Los Angeles, CA 90017

Accufitness, LLC
c/o Jon K. Fitzgerald
9250 E Costilla Ave. STE 600
Greenwood Village, CO 80112

On August 17, 2021, I served the California Attorney General (via website Portal) by uploading a true and correct copy thereof as a PDF file via the California Attorney General's website.

On August 17, 2021 I transmitted via electronic mail the above-listed documents to the electronic mail addresses of the City and/or District Attorneys who have specifically authorized e-mail service and the authorization appears on the Attorney General's web site.

See Attached Service List

On August 17, 2021, I served the following persons and/or entities at the last known address by placing a true and correct copy thereof in a sealed envelope and depositing it at my business address with the U.S. Postal Service for delivery with the postage thereon fully prepaid, and addressed as follows:

See Attached Service List

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

Executed on August 17, 2021, at San Diego, California.



Jake Xu

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. The reader is directed to the statute and OEHHA 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 make known 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 Period. 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 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 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 contaminant² 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.

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 and 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 copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

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 2017

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.

E-Mail Service List

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

Jeannine M. Pacioni, District Attorney
MONTEREY COUNTY
1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us

Allison Haley, District Attorney
NAPA COUNTY
1127 First Street, Suite C
Napa, CA 94559
CEPD@countyofnapa.org

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

Barbara Yook, District Attorney
CALAVERAS COUNTY
891 Mountain Ranch Rd.
San Andreas, CA 95249
Prop65Env@co.calaveras.ca.us

Alethea M. Sargent, Assistant District Attorney
SAN FRANCISCO COUNTY
350 Rhode Island Street
San Francisco, CA 94103
alethea.sargent@sfgov.org

Summer Stephan, District Attorney
SAN DIEGO COUNTY
330 West Broadway
San Diego, CA 92101
SanDiegoDAProp65@sdcda.org

Mark Ankorn, Deputy City Attorney
CITY OF SAN DIEGO
1200 Third Avenue
San Diego, CA 92101
CityAttyCrimProp65@sandiego.gov

Valerie Lopez, Deputy City Attorney
CITY OF SAN FRANCISCO
1390 Market Street, 7th Floor
San Francisco, CA 94102
Valerie.Lopez@sfcityattty.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

Bud Porter, 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 Drive
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
cfeprd@yolocounty.org

Tori Verber Salazar, District Attorney
SAN JOAQUIN COUNTY
222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Christopher Dalbey, Deputy District Attorney
SANTA BARBARA COUNTY
1112 Santa Barbara St.
Santa Barbara, CA 93101
DAProp65@co.santa-barbara.ca.us

Nancy O'Malley, District Attorney
ALAMEDA COUNTY
7776 Oakport Street, Suite 650
Oakland, CA 94621
CEPDProp65@acgov.org

Barbara M. Yook, District Attorney
CALAVERAS COUNTY
891 Mountain Ranch Road
San Andreas CA 95249
Prop65Env@co.calaveras.ca.us

David Hollister, District Attorney
PLUMAS COUNTY
520 Main St.
Quincy, CA 95971
davidhollister@countyofplumas.com

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

Jeffrey S. Rosell, District Attorney
SANTA CRUZ COUNTY
701 Ocean Street
Santa Cruz, CA 95060
Prop65DA@santacruzcounty.us

Kimberly Lewis, District Attorney
MERCED COUNTY
550 West Main Street
Merced, CA 95340
Prop65@countyofmerced.com

Clifford H. Newell, District Attorney
NEVADA COUNTY
201 Commercial Street
Nevada City, CA 95959
DA.Prop65@co.nevada.ca.us

Thomas L. Hardy, District Attorney
INYO COUNTY
168 North Edwards Street
Independence, CA 93526
inyoda@inyocounty.us

Walter W. Wall, District Attorney
MARIPOSA COUNTY
P.O. Box 730
Mariposa, CA 95338
mcda@mariposacounty.org

Morgan Briggs Gire, District Attorney
PLACER COUNTY
10810 Justice Center Drive
Roseville, CA 95678
prop65@placer.ca.gov

Mail Service List

District Attorney
ALAMEDA COUNTY
1225 Fallon St, Room 900
Oakland, CA 94612

District Attorney
ALPINE COUNTY
PO Box 248
Markleeville, CA 96120

District Attorney
AMADOR COUNTY
708 Court Street, #202
Jackson, CA 95642

District Attorney
BUTTE COUNTY
25 County Center Drive
Administration Building
Oroville, CA 95965

District Attorney
CALAVERAS COUNTY
891 Mountain Ranch Road
San Andreas, CA 95249

District Attorney
COLUSA COUNTY
346 5th Street, Suite. 101
Colusa, CA 95932

District Attorney
CONTRA COSTA COUNTY
900 Ward Street
Martinez, CA 94553

District Attorney
DEL NORTE COUNTY
450 H Street, Room 171
Crescent City, CA 95531

District Attorney
EL DORADO COUNTY
778 Pacific St
Placerville, CA 95667

District Attorney
FRESNO COUNTY
2220 Tulare Street, Suite. 1000
Fresno, CA 93721

District Attorney
GLENN COUNTY
PO Box 430
Willows, CA 95988

District Attorney
HUMBOLDT COUNTY
825 5th Street
Eureka, CA 95501

District Attorney
IMPERIAL COUNTY
940 West Main Street, Suite. 102
El Centro, CA 92243

District Attorney
TULARE COUNTY
221 South Mooney Blvd., Suite
224
Visalia, CA 93291

District Attorney
TUOLUMNE COUNTY
423 No. Washington Street
Sonora, CA 95370

Richard Doyle City Attorney
CITY OF SAN JOSE
200 East Santa Clara Street
San Jose, CA 95113

District Attorney
INYO COUNTY
168 N Edwards St
Independence, CA 93526

District Attorney
KERN COUNTY
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney
KINGS COUNTY
1400 West Lacey Blvd.
Hanford, CA 93230

District Attorney
LAKE COUNTY
255 N. Forbes Street
Lakeport, CA 95453

District Attorney
LASSEN COUNTY
220 S. Lassen Street, Suite. 8
Susanville, CA 96130

District Attorney
LOS ANGELES COUNTY
210 W. Temple Street
Los Angeles, CA 90012

District Attorney
MADERA COUNTY
209 West Yosemite Avenue
Madera, CA 93637

District Attorney
MARIN COUNTY
3501 Civic Center Drive, Room
130
San Rafael, CA 94903

District Attorney
MARIPOSA COUNTY
PO BOX 730
Mariposa, CA 95338

District Attorney
MENDOCINO COUNTY
PO BOX 1000
Ukiah, CA 95482

District Attorney
MODOC COUNTY
204 S. Court Street, Room 202
Alturas, CA 96101

District Attorney
MONO COUNTY
PO BOX 2053
Mammoth Lakes, CA 93546

District Attorney
VENTURA COUNTY
800 South Victoria Avenue
Ventura, CA 93009

District Attorney
YOLO COUNTY
301 Second Street
Woodland, CA 95695

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

City Attorney
CITY OF SAN DIEGO
1200 Third Ave, 3rd Flr
San Diego, CA 92101

District Attorney
NAPA COUNTY
1127 First Street, Ste. C
Napa, CA 94559

District Attorney
ORANGE COUNTY
700 Civic Center Drive West
Santa Ana, CA 92701

District Attorney
PLACER COUNTY
10810 Justice Center Drive
Roseville, CA 95678

District Attorney
PLUMAS COUNTY
520 Main Street, Room 404
Quincy, CA 95971

District Attorney
SACRAMENTO COUNTY
901 G Street
Sacramento, CA 95812

District Attorney
SAN BENITO COUNTY
419 4th Street
Hollister, CA 95023

District Attorney
SAN BERNARDINO COUNTY
303 W. Third Street
San Bernardino, CA 92415

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

District Attorney
SAN FRANCISCO COUNTY
880 Bryant Street, Third Floor
San Francisco, CA 94103

District Attorney
SAN JOAQUIN COUNTY
PO BOX 990
Stockton, CA 95202

District Attorney
YUBA COUNTY
215 Fifth Street, Suite. 152
Marysville, CA 95901

City Attorney
CITY OF LOS ANGELES
200 N. Main Street
Los Angeles, CA 90012

District Attorney
SAN LUIS OBISPO
1035 Palm St
San Luis Obispo, CA 93408

District Attorney
SAN MATEO COUNTY
400 County Center, Third Floor
Redwood City, CA 94063

District Attorney
SANTA BARBARA COUNTY
1112 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney
SANTA CLARA COUNTY
70 West Hedding Street, West
Wing
San Jose, CA 95110

District Attorney
SANTA CRUZ COUNTY
701 Ocean Street, Room 200
Santa Cruz, CA 95060

District Attorney
SHASTA COUNTY
1355 West Street
Redding, CA 96001

District Attorney
SIERRA COUNTY
100 Courthouse Square
Downieville, CA 95936

District Attorney
SISKIYOU COUNTY
PO BOX 986
Yreka, CA 96097

District Attorney
SOLANO COUNTY
675 Texas Street, Suite 4500
Fairfield, CA 94533

District Attorney
SONOMA COUNTY
600 Administration Drive, Room
212J
Santa Rosa, CA 95403

District Attorney
STANISLAUS COUNTY
832 12th Street, Suite 300
Modesto, CA 95353

District Attorney
SUTTER COUNTY
446 Second Street, Suite 102
Yuba City, CA 95991

District Attorney
TEHAMA COUNTY
PO BOX 519
Red Bluff, CA 96080

District Attorney
TRINITY COUNTY
PO BOX 310
Weaverville, CA 96093