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15 Attorneys for Plaintiff  
16 **ERIKA MCCARTNEY**

17 **SUPERIOR COURT OF CALIFORNIA**  
18 **COUNTY OF SAN FRANCISCO**

19 ERIKA MCCARTNEY, in the public interest, )  
20 Plaintiff, )  
21 v. )  
22 UNITED NATURAL FOODS, INC.; BLUE )  
23 MARBLE BRANDS, LLC; UNITED )  
24 NATURAL TRADING, LLC, D/B/A )  
25 WOODSTOCK FARMS MANUFACTURING; )  
26 THRIVE MARKET, INC. and DOES 1 through )  
27 500, inclusive, )  
28 Defendants. )

CIVIL ACTION NO. CGC-19-575112

**[PROPOSED] CONSENT  
JUDGMENT**

[Cal. Health and Safety Code sec.  
25249.6, *et seq.*]

1           **1. INTRODUCTION**

2           **1.1** This Action arises out of the alleged violations of California’s Safe Drinking Water  
3 and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 *et seq.*  
4 (also known as and hereinafter referred to as “Proposition 65”) regarding the following product:  
5 goji berries (hereinafter the “Covered Product.”) Plaintiff alleges the Covered Product exposes  
6 consumers in California to lead (hereinafter the “Listed Chemical.”)

7           **1.2** Plaintiff Erika McCartney (“MCCARTNEY”) is a California resident acting as a  
8 private enforcer of Proposition 65. MCCARTNEY brings this Action in the public interest  
9 pursuant to California Health and Safety Code Section 25249.6. MCCARTNEY asserts that she  
10 is dedicated to, among other causes, helping safeguard the public from health hazards by reducing  
11 the use and misuse of hazardous and toxic chemicals and substances, facilitating a safe  
12 environment for consumers and employees, and encouraging corporate responsibility.

13           **1.3** Defendants United Natural Foods, Inc.; Blue Marble Brands, LLC; United Natural  
14 Trading, LLC, d/b/a Woodstock Farms Manufacturing (“WOODSTOCK”), and Thrive Market,  
15 Inc. (“THRIVE”) are herein after collectively referred to as “DEFENDANTS.”

16           **1.4** MCCARTNEY and DEFENDANTS are hereinafter sometimes referred to  
17 individually as a “Party” or collectively as the “Parties.”

18           **1.5** On or about May 12, 2016, and December 14, 2016, pursuant to California Health  
19 and Safety Code Section 25249.7(d)(1), MCCARTNEY served 60-Day Notices of Violation of  
20 Proposition 65 (“Notice of Violation”) on DEFENDANTS, various downstream sellers of the  
21 Product, the California Attorney General, other public enforcers. True and correct copies of the  
22 Notices of Violation are attached hereto as Exhibits A and B.

23           **1.6** After more than sixty (60) days passed since service of the Notices of Violation,  
24 and no designated governmental agency filed a complaint against DEFENDANTS with regard to  
25 the Covered Product or the alleged violations, MCCARTNEY filed a complaint (the “Complaint”)  
26 for injunctive relief and civil penalties. The Complaint is based on the allegations in the Notices  
27 of Violation in connection with the Covered Product.

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1           **1.7**     The Notices of Violation and Complaint allege that Defendants manufactured,  
2 distributed, and/or sold in California the Covered Product without first providing clear and  
3 reasonable warnings of alleged exposures to the Listed Chemical, in violation of California Health  
4 and Safety Code Section 25249.6. DEFENDANTS deny all material and factual allegations of the  
5 Notices of Violation, and specifically denies that the Plaintiff or California consumers have been  
6 harmed or damaged by its conduct. DEFENDANTS further assert that the levels of the Listed  
7 Chemical in the Covered Product are naturally occurring as the result of natural geological and  
8 plant processes. MCCARTNEY and DEFENDANTS each reserve all rights to allege additional  
9 facts, claims, and affirmative defenses if the Court does not approve this Consent Judgment.

10           **1.8**     The Parties enter into this Consent Judgment in order to settle, compromise and  
11 resolve disputed claims and avoid prolonged and costly litigation. Nothing in this Consent  
12 Judgment, nor compliance with its terms, shall constitute or be construed as an admission by any  
13 of the Parties, or by any of their respective officers, directors, shareholders, employees, agents,  
14 parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, distributors,  
15 wholesalers, or retailers, of any fact, conclusion of law, issue of law, violation of law, fault,  
16 wrongdoing, or liability, including without limitation, any admission concerning any alleged  
17 violation of Proposition 65. Except as expressly set forth herein, nothing in this Consent Judgment  
18 shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in  
19 any other or future legal proceeding. Provided, however, nothing in this Section shall affect the  
20 enforceability of this Consent Judgment.

21           **1.9**     The “Effective Date” of this Consent Judgment shall be the date this Consent  
22 Judgment is entered as a Judgment.

23 **2.     JURISDICTION AND VENUE**

24           The Parties stipulate that this Court has jurisdiction over the subject matter of this Action  
25 and personal jurisdiction over the Parties, that venue is proper in this Court, and that this Court has  
26 jurisdiction to enter this Consent Judgment pursuant to the terms set forth herein.

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

2 **3.1** Beginning on the Effective Date, DEFENDANTS shall be permanently enjoined  
3 from manufacturing for sale in California, directly selling to a consumer in California or  
4 “Distributing into California” Covered Product which contains greater than 17.64 parts per billion  
5 by weight of lead (“Lead Concentration Level”) without a Proposition 65 compliant warning,  
6 consistent with Section 3.3 below, unless exempted under Section 3.2 below, without Court  
7 modification of this Consent Judgment. “Distributing into California” or “Distribute into  
8 California” means to ship any of the Covered Product to California at retail, for resale, or to sell  
9 to a distributor that DEFENDANTS know or have reason to know may sell the Covered Product  
10 in California.

11 **3.2** All units of the Covered Product that have been or will have been distributed,  
12 shipped, or sold, or otherwise placed in the stream of commerce through and including the  
13 Effective Date of this Consent Judgment are exempt from the provisions of Sections 3.1 and 3.3  
14 and are included within the release in Sections 9.1 through 9.4. To be in compliance with the terms  
15 of this Consent Judgment, DEFENDANTS are not required to undertake any efforts or conduct to  
16 remove such Covered Product from the stream of commerce.


17 **3.3 Clear and Reasonable Warnings**

18 For Covered Product that do not meet the concentration threshold set forth in Section 3.1,  
19 DEFENDANTS shall provide one of the following warnings (“Warning”) as specified below:

20 3.3.1 Option 1

21 **WARNING:** Consuming this product can expose you to chemicals  
22 including lead, which is known to the State of California to cause  
23 cancer and birth defects or other reproductive harm. For more  
24 information, go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

25 3.3.2 Option 2

26  **WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

27 The Warning (either Option 1 or Option 2) shall be provided to consumers prior to the  
28 purchase of each Covered Product, whether it be online or on label. If the Warning is provided

1 on the container or label, it must be set off from other surrounding information and enclosed in a  
2 box and must be securely affixed using adhesives or printed upon the container or label. For  
3 Covered Product sold over the internet to a California address, the Warning shall appear on the  
4 checkout page or product page. If the Warning is provided on the product page, it may be provided  
5 by a clearly marked hyperlink using the word “WARNING” and linking to a separate page or pop-  
6 out window with the Option 1 or Option 2 Warning language. If provided on a checkout page, the  
7 Warning must be clearly linked to the Covered Product by use of an asterisk or other identifying  
8 method, and must be provided prior to the consumer’s purchase.

9       The Warning shall be displayed with such conspicuousness, as compared with other words,  
10 statements designs or devices on the outside packaging or labeling, or on the website, as to render  
11 it likely to be read and understood by an ordinary individual prior to use. The Warning shall be  
12 displayed in a font size no smaller than the largest of any other health or safety warnings on the  
13 website or the container or labeling.

14       DEFENDANTS may alternatively provide any safe harbor warning authorized by Title 27  
15 California Code of Regulations, as they may be hereinafter amended.

16 **4. NOTICE AND CURE**

17       **4.1** At any time more than 30 days after the Effective Date of this Consent Judgment,  
18 MCCARTNEY may provide DEFENDANTS with a Notice of Violation, alleging that COVERED  
19 PRODUCT does not comply with Section 3 of this Consent Judgment. MCCARTNEY shall  
20 provide DEFENDANTS with the Notice of Violation and two (2) copies of the documents and  
21 laboratory analyses that support the allegations of non-compliance. All testing pursuant to this  
22 Section shall be performed using a laboratory method that complies with performance and quality  
23 control factors appropriate for the method used, including limit of detection, qualification,  
24 accuracy, and precision that meets the following criteria: Inductively Coupled Plasma-Mass  
25 Spectrometry (“ICP-MS”) achieving a limit of a quantification of less than or equal to 10 parts per  
26 billion by weight. All testing pursuant to this Section shall be performed by an independent third-  
27 party laboratory, certified by the California Environmental Laboratory Accreditation Program or  
28

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

3 **4.2** Within 30 days of receiving a Notice of Violation, DEFENDANTS shall provide  
4 to MCCARTNEY its Notice of Election to contest or to not contest the Notice of Violation. If  
5 DEFENDANTS elect to not contest the Notice of Violation, they shall, within ten (10) business  
6 days of providing the Notice of Election, cure the violation by labeling all allegedly non-compliant  
7 units of the COVERED PRODUCT with a warning and provide MCCARTNEY with written  
8 notice confirming such action has been taken. If DEFENDANTS elect to not contest and otherwise  
9 complies with this paragraph, it shall be deemed to be in compliance with this Consent Judgment  
10 and MCCARTNEY may take no further action related to the alleged non-compliant products,  
11 provided, however, that DEFENDANTS shall be afforded only three (3) opportunities to cure any  
12 uncontested Notices of Violations under this paragraph.

13 **4.3** In the event DEFENDANTS elect to contest the allegations contained in any Notice  
14 of Violation MCCARTNEY sends pursuant to this Section, DEFENDANTS may provide  
15 MCCARTNEY along with its Notice of Election any evidence that, in DEFENDANTS' judgment,  
16 supports its position. In the event MCCARTNEY agrees with DEFENDANTS' position, it shall,  
17 within fifteen (15) days of receiving such Notice of Election and evidence notify DEFENDANTS  
18 of their agreement and MCCARTNEY shall take no further action regarding the alleged non-  
19 compliant COVERED PRODUCT subject to the Notice and the evidence that DEFENDANTS  
20 provided. If MCCARTNEY disagrees with DEFENDANTS' position, MCCARTNEY shall,  
21 within 30 days, notify DEFENDANTS of such and shall, in writing, provide DEFENDANTS with  
22 the reasons for the same. Thereafter, the Parties shall meet and confer in an attempt to resolve  
23 their dispute upon mutually acceptable terms.

24 **4.4** If, within 60 days of receipt of a Notice of Violation, (a) there is no resolution of  
25 the meet and confer process required under 4.3; (b) DEFENDANTS fail to provide written Notice  
26 of Election to not contest the Notice of Violation; or (c) DEFENDANTS fail to correct any  
27 uncontested violations identified in the Notice of Violation within 30 days, MCCARTNEY may,  
28 at her election, seek to enforce the terms and conditions contained in this Consent Judgment in the

1 Superior Court of the State of California, or may initiate an enforcement action for new violations  
2 pursuant to Health & Safety Code § 25249.7(d). In any such proceeding, MCCARTNEY may  
3 seek whatever fines, costs, penalties, or remedies as may be provided for by law of any violation  
4 of Proposition 65 or this Consent Judgment.

5 **5. REQUIRED MONETARY PAYMENTS**

6 **5.1** DEFENDANTS shall make the payments set forth below within ten (10) days of  
7 the Effective Date, which shall be a full and final satisfaction of any and all civil penalties, payment  
8 in lieu of all civil penalties, and attorneys’ fees and costs.

9 **5.2** The payment will be in the form of four separate checks sent to counsel for  
10 MCCARTNEY, James Wheaton, Environmental Law Foundation, 1222 Preservation Park Way,  
11 Suite 200, Oakland, CA 94612. The checks shall be payable to the following parties and the  
12 payment shall be apportioned as follows:

13 **5.3** \$37,500 as civil penalties pursuant to California Health and Safety Code Section  
14 25249.7(b)(1). Of this amount, (1) \$28,125 shall be made payable to the Office of Environmental  
15 Health Hazard Assessment; (2) \$4,000 shall be payable to MCCARTNEY; (2) \$2,875 shall be  
16 payable to St. Jude’s Children’s Hospital; and (3) \$2,500 shall be payable to *CancerCare*, a  
17 qualified 501(c)(3) charitable organization, dedicated to providing financial aid to cancer patients  
18 for treatment costs. MCCARTNEY’s counsel will forward the civil penalty to OEHHA.

19 **5.4** \$78,500 payable to James Wheaton as reimbursement of MCCARTNEY’s  
20 attorneys’ fees, costs, investigation and litigation expenses (“Attorney’s Fees and Costs”).

21 **6. MODIFICATION OF CONSENT JUDGMENT**

22 **6.1** This Consent Judgment may be modified only by: (i) Written agreement and  
23 stipulation of the Parties and upon having such stipulation entered as a modified Consent Judgment  
24 by the Court; or (ii) Upon entry of a modified Judgment by the Court pursuant to a motion by one  
25 of the Parties after exhausting the meet and confer process set forth as follows. If either Party  
26 requests or initiates a modification of this Consent Judgment, then that Party shall meet and confer  
27 with the other Party in good faith before filing a motion with the Court seeking to modify the  
28 Consent Judgment. MCCARTNEY is entitled to reimbursement of all reasonable attorneys’ fees

1 and costs regarding the Parties' meet and confer efforts for any modification requested or initiated  
2 by DEFENDANTS. Similarly, DEFENDANTS are entitled to reimbursement of all reasonable  
3 attorney's fees and costs regarding the Parties' meet and confer efforts for any modification  
4 requested or initiated by MCCARTNEY. If, despite their meet and confer efforts, the Parties are  
5 unable to reach agreement on any proposed modification, the Party seeking the modification may  
6 file the appropriate motion and the prevailing Party on such motion shall be entitled recover its  
7 reasonable fees and costs associated with such motion. One basis, but not the exclusive basis, for  
8 DEFENDANTS to seek a modification of this Consent Judgment is if Proposition 65 is changed,  
9 narrowed, limited, or otherwise rendered inapplicable in whole or in part to the Covered Product  
10 or either Listed Chemical due to legislative change, a change in the implementing regulations,  
11 court decisions, or other legal basis.

12 **7. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT**

13 **7.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate  
14 this Consent Judgment.

15 **7.2** Subject to Section 4, any Party may, by motion or application for an order to show  
16 cause filed with this Court, enforce the terms and conditions contained in this Consent Judgment.  
17 The prevailing party in any such motion or application may request that the Court award its  
18 reasonable attorneys' fees and costs associated with such motion or application.

19 **7.3** Before filing a motion or application for an order to show cause, MCCARTNEY  
20 shall provide DEFENDANTS with 30 (thirty) days written notice of any alleged violations of the  
21 terms and conditions contained in this Consent Judgment. As long as DEFENDANTS cures any  
22 such alleged violations within the 30 (thirty) day period (or if any such violation cannot practicably  
23 be cured within 30 days, it expeditiously initiates a cure within 30 days and completes it as soon  
24 as practicable), then DEFENDANTS shall not be in violation of the Consent Judgment.

25 **8. APPLICATION OF CONSENT JUDGMENT**

26 This Consent Judgment shall apply to and be binding upon the Parties and their respective  
27 successors and assigns, and it shall be deemed to inure to the benefit of the Parties and their  
28 respective privies, successors, and assigns.



1 **9. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

2 **9.1** This Consent Judgment is a full, final, and binding resolution between  
3 MCCARTNEY, on behalf of herself and in the public interest, and DEFENDANTS, and each of  
4 their past and present officers, directors, owners, shareholders, employees, agents, attorneys,  
5 parent companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers,  
6 distributors, wholesalers, private labelers, co-packers, retailers, and all other upstream and  
7 downstream entities and persons in the distribution chain of any Covered Product, and the  
8 predecessors, successors and assigns of any of them, (collectively, “Released Parties”), of any and  
9 all direct or derivative violations (or claimed violations) of Proposition 65 or its implementing  
10 regulations for failure to provide Proposition 65 warnings of exposure to the Listed Chemical from  
11 the handling, use, or consumption of the Covered Product and fully resolves all claims that have  
12 been or could have been asserted in this Action for alleged failure to provide Proposition 65  
13 warnings regarding the Listed Chemical for Covered Products manufactured, sold or distributed  
14 into California by DEFENDANTS before the Effective Date. Excluded from this release are any  
15 third-party downstream internet distributors.

16 MCCARTNEY, on behalf of herself and in the public interest, hereby forever releases and  
17 discharges, Released Parties, from any and all claims and causes of action and obligations to pay  
18 damages, restitution, fines, civil penalties, payment in lieu of civil penalties and expenses  
19 (including but not limited to expert analysis fees, expert fees, attorney’s fees and costs)  
20 (collectively, “Claims”) arising under, based on, or derivative of Proposition 65 or its  
21 implementing regulations or any other statutory or common law claims based on alleged exposure  
22 to the Listed Chemical from the Covered Product and/or failure to warn about the Listed Chemical,  
23 as set forth in the Notice of Violation and the Complaint.

24 **9.2** Compliance with the terms of this Consent Judgment shall be deemed to constitute  
25 compliance by any Released Party with Proposition 65 regarding alleged exposures to the Listed  
26 Chemical from the Covered Product manufactured, sold or distributed into California by  
27 DEFENDANTS on and after the Effective Date.

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1           **9.3**     It is possible that other Claims not known to MCCARTNEY arising out of the facts  
2 alleged in the Notice of Violation or the Complaint and relating to Covered Product that were  
3 manufactured, sold or distributed into California by DEFENDANTS before the Effective Date will  
4 develop or be discovered. MCCARTNEY, on behalf of herself only, acknowledges that the Claims  
5 released herein include all known and unknown Claims and waives California Civil Code Section  
6 1542 as to any such unknown Claims. California Civil Code Section 1542 reads as follows:

7           **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE**  
8           **CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT**  
9           **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE**  
10           **RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE**  
11           **MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE**  
12           **DEBTOR OR RELEASED PARTY.”**

13 MCCARTNEY, on behalf of herself only, acknowledges and understands the significance and  
14 consequences of this specific waiver of California Civil Code section 1542.

15           **9.4**     MCCARTNEY, on one hand, and DEFENDANTS, on the other hand, each release  
16 and waive all Claims they may have against each other for any statements or actions made or  
17 undertaken by them in connection with the Notice of Violation or the Complaint. However, this  
18 shall not affect or limit any Party’s right to seek to enforce the terms of this Consent Judgment.

19 **10. CONSTRUCTION AND SEVERABILITY**

20           **10.1** The terms and conditions of this Consent Judgment have been reviewed by the  
21 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to  
22 fully discuss the terms and conditions with its counsel. In any subsequent interpretation or  
23 construction of this Consent Judgment, the terms and conditions shall not be construed against any  
24 Party.

25           **10.2** In the event that any of the provisions of this Consent Judgment is held by a court  
26 to be unenforceable, the validity of the remaining enforceable provisions shall not be adversely  
27 affected.

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1           **10.3** The terms and conditions of this Consent Judgment shall be governed by and  
2 construed in accordance with the laws of the State of California.

3 **11. PROVISION OF NOTICE**

4           All notices required to be given to either Party to this Consent Judgment by the other shall  
5 be in writing and sent to the following agents listed below by: (a) first-class, registered, (b) certified  
6 mail, (b) overnight courier, or (c) personal delivery to the following:

7 **For Erika McCartney:**

8           James Wheaton  
9           ENVIRONMENTAL LAW FOUNDATION  
10           1222 Preservation Park Way, Suite 200  
11           Oakland, California 94612

12 **For Thrive Market, Inc.**

13           Office of General Counsel  
14           Attn: Craig M. Abruzzo  
15           Thrive Market, Inc.  
16           4509 Glencoe Avenue  
17           Marina Del Rey, CA 90292

18 **For DEFENDANTS:**

19           Patrick Del Duca, Esq.  
20           ZUBER LAWLER & DEL DUCA LLP  
21           350 S. Grand Avenue, 32nd Floor  
22           Los Angeles, California 90071

23  
24           Office of the General Counsel  
25           United Natural Foods, Inc.  
26           313 Iron Horse Way  
27           Providence, Rhode Island 02908

28 **12. COURT APPROVAL**

1           **12.1** Upon execution of this Consent Judgment by the Parties, MCCARTNEY shall  
2 prepare and file a Motion for Court Approval. The Parties shall use their reasonable best efforts  
3 to support entry of this Consent Judgment.

4           **12.3** If the Court does not approve this Consent Judgment it shall be null and void and  
5 have no force or effect.

6 **13. EXECUTION AND COUNTERPARTS**

7           This Consent Judgment may be executed in counterparts, which taken together shall be  
8 deemed one document. A facsimile or .pdf signature shall be construed as valid and as the original  
9 signature.

10 **14. ENTIRE AGREEMENT, AUTHORIZATION**

11           **14.1** This Consent Judgment contains the sole and entire agreement and understanding  
12 of the Parties with respect to the entire subject matter herein, and any and all prior discussions,  
13 negotiations, commitments and understandings related hereto. No representations, oral or  
14 otherwise, express or implied, other than those contained herein have been made by any Party. No  
15 other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist  
16 or to bind any Party.

17           **14.2** Each signatory to this Consent Judgment certifies that he or she is fully authorized  
18 by the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly  
19 provided herein, each Party shall bear its own fees and costs.

20 **15. REQUEST FOR FINDINGS AND FOR APPROVAL**

21           **15.1** This Consent Judgment has come before the Court upon the request of the Parties.  
22 The parties request the Court to fully review this Consent Judgment and, being fully informed  
23 regarding the matters which are the subject of this action, to:

24           (a) Find that the terms and provisions of this Consent Judgment represent a good faith  
25 settlement of all matters raised by the allegations of the Complaint, that the matter has been  
26 diligently prosecuted, and that the public interest is served by such settlement; and (b) Make the  
27 findings pursuant to California Health and Safety Code Section 25249.7(f)(4), and approve the  
28 Settlement, and this Consent Judgment.

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6 **IT IS SO STIPULATED.**

7 Dated: 8/13/19

  
Erika McCartney

10 Dated: 8/22/19

UNITED NATURAL TRADING, LLC,  
D/B/A WOODSTOCK FARMS  
MANUFACTURING

Name: Jill E. Suth

Its: President + Secretary

18 Dated: 8/22/19

BLUE MARBLE BRANDS, LLC

Name: Jill E. Suth

Its: President + Secretary

23 Dated: 8/22/19

UNITED NATURAL FOODS, INC.

Name: Jill E. Suth

Its: Chief legal officer, general  
Counsel + Corporate Secretary

28 Dated: \_\_\_\_\_

THRIVE MARKET, INC., D/B/A THRIVE  
MARKET TECHNOLOGIES

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Dated: August 22, 2019

THRIVE MARKET, INC., D/B/A THRIVE  
MARKET TECHNOLOGIES

Name: CRAIG M. ABRUZZO



Its: GENERAL COUNSEL

APPROVED AS TO FORM:

Dated: \_\_\_\_\_

ENVIRONMENTAL LAW FOUNDATION  
APRIL M. STRAUSS, A PC

By: \_\_\_\_\_  
April M. Strauss  
Attorneys for Plaintiff

Dated: \_\_\_\_\_

ZUBER LAWLER & DEL DUCA, LLP

By: \_\_\_\_\_  
Patrick Del Duca  
Attorney for Defendants


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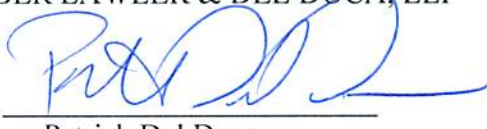
Dated: 8/13/19

ENVIRONMENTAL LAW FOUNDATION  
APRIL M. STRAUSS, A PC

By:   
April M. Strauss  
Attorneys for Plaintiff

Dated: August 15, 2019

ZUBER LAWLER & DEL DUCA, LLP

By:   
Patrick Del Duca  
Attorney for Defendants

**JUDGMENT**

Based upon the Parties’ Stipulation, and good cause appearing therefor, this Consent Judgment is approved and judgment is hereby entered according to its terms.

**IT IS SO ORDERED, ADJUDGED AND DECREED.**

Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Judge of the Superior Court

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**Exhibit A**

May 12, 2016

**60-DAY NOTICE OF VIOLATIONS OF  
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET. SEQ.  
(PROPOSITION 65)**

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Erika McCartney in this matter. Ms. McCartney has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et. seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with the identified products. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Ms. McCartney intends to file a private enforcement action in the public interest 60 days after effective service of the is notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is an attachment with the copy of this letter served to the alleged Violators identified below.

**Alleged Violators.** The name of the companies covered by this notice that violated Proposition 65 (hereinafter "the Violator") are:

**Woodstock Farms Mfg.  
United Natural Foods, Inc.  
Blue Marble Brands, LLC  
United Natural Trading, LLC**

**Consumer Products and Listed Chemical.** The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

**Woodstock Farms Organic Goji Berries – Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that Ms. McCartney may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

**Route of Exposure.** The consumer exposures that are the subject of this notice result from the purchase, acquisition, and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least May 12, 2015, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because it failed to provide persons using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, Ms. McCartney is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) recall any products already sold, or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such products; (2) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; and (3) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as expensive and time-consuming litigation. It should be noted that counsel cannot (1) finalize any settlement until after the 60-day notice period has expired; or (2) speak for the California Attorney General or any District or City Attorney who has received this notice. Therefore, while reaching an agreement may satisfy the claims alleged herein, such agreement may not be satisfactory to public prosecutors.

Ms. McCartney has retained me as legal counsel in connection with this matter. Her address is 1341 58<sup>th</sup> Ave. #11, Oakland, California, 94621. Her telephone number is 707.502.8635. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



---

Robert B. Hancock

**Attachments**

Certificate of Merit

Certificate of Service

OEHHA Summary (to Violators only)

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

**CERTIFICATE OF MERIT**

**Re: Notice of Proposition 65 Violations**

Robert B. Hancock declares:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposures to the listed chemicals that are the subject of the action.

4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.

5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: May 12, 2016



---

Robert B. Hancock

**CERTIFICATE OF SERVICE**

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

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action.

On May 12, 2016, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET. SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current CEO or President  
United Natural Foods, Inc.  
313 Iron Horse Way  
Providence, RI 02908

Current Manager or Managing Member  
United Natural Trading, LLC  
96 Executive Avenue  
Edison, NJ 08817

Current Manager or Managing Member  
Blue Marble Brands LLC  
313 Iron Horse Way  
Providence, RI 02908

Current CEO, President, Manager or  
Managing Member  
United Natural Brands  
96 Executive Avenue  
Edison, NJ 08817

Current CEO, President, Manager or  
Managing Member  
Woodstock Farms Mfg.  
96 Executive Avenue  
Edison, NJ 08817

On May 12, 2016, I served the following documents: **NOTICE OF VIOLATION CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(l)** 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, Suite 2000  
Post Office Box 70550  
Oakland, CA 94612-0550  
<https://oag.ca.gov/prop65/add-60-day-notice>

On May 12, 2016, I served the following documents: **NOTICE OF VIOLATION CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto. As to those parties listed by mailing address only, 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 U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail. As to those parties having an e-mail address listed, I effected service by transmitting the document via electronic transmission to the e-mail address listed.

Executed under penalty of perjury pursuant to the laws of the State of California on May 12, 2016.



---

Robert B. Hancock

### Service List

District Attorney,  
Alameda County  
1225 Fallon St., Rm. 900  
Oakland, CA 94612

District Attorney,  
Alpine County  
P.O. Box 248  
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District Attorney,  
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708 Court St., #202  
Jackson, CA 95642

District Attorney, Butte County  
25 County Center Dr.  
Oroville, CA 95965

District Attorney,  
Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney,  
Colusa County  
547 Market St.  
Colusa, CA 95932

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El Centre, CA 92243

District Attorney, Inyo County  
230 W. Line St.  
Bishop, CA 93514

District Attorney, Kern County  
1215 Truxtun Ave.  
Bakersfield, CA 93301

District Attorney,  
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1400 West Lacey Boulevard  
Hanford, CA 93230

District Attorney, Lake County  
255 N. Forbes St.  
Lakeport, CA 95453

District Attorney,  
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209 West Yosemite Ave.  
Madera, CA 93637

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Mariposa, CA 95338

District Attorney,  
Mendocino County  
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Ukiah, CA 95482

District Attorney,  
Merced County  
2222 M St.  
Merced, CA 95340

District Attorney,  
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204 S Court St., Rm. 202  
Alturas, CA 96101-4020

District Attorney,  
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Salinas, CA 93902  
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Roseville, CA 95678

District Attorney,  
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Quincy, CA 95971

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Riverside, CA 92501  
[Prp65@rivcod.ca.gov](mailto:Prp65@rivcod.ca.gov)

District Attorney,  
Sacramento County  
901 "G" St.  
Sacramento, CA 95814

District Attorney,  
San Benito County  
419 Fourth St., 2nd Fl.  
Hollister, CA 95023

District Attorney,  
San Bernardino County  
316 N. Mountain View Ave.  
San Bernardino, CA 92415

District Attorney,  
San Diego County  
330 W. Broadway, Rm. 1300  
San Diego, CA 92101

District Attorney,  
San Francisco County  
850 Bryant St., Rm. 322  
San Francisco, CA 94103

District Attorney,  
San Joaquin County  
P.O. Box 990  
Stockton, CA 95201

District Attorney,  
San Luis Obispo County  
1035 Palm St. Rm. 450  
San Luis Obispo, CA 93408

District Attorney,  
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400 County Ctr., 3rd Fl.  
Redwood City, CA 94063

District Attorney,  
Santa Barbara County  
1112 Santa Barbara St.  
Santa Barbara, CA 93101

District Attorney,  
Santa Clara County  
70 West Hedding St.  
San Jose, CA 95110  
[EPUC@da.sccgov.org](mailto:EPUC@da.sccgov.org)

District Attorney,  
Santa Cruz County  
701 Ocean St., Rm. 200  
Santa Cruz, CA 95060

District Attorney,  
Shasta County  
1355 West St.  
Redding, CA 96001

District Attorney,  
Sierra County  
PO Box 457  
Downville, CA 95936

District Attorney,  
Siskiyou County  
P.O. Box 986  
Yreka, CA 96097

District Attorney,  
Solano County  
675 Texas St., Ste. 4500  
Fairfield, CA 94533

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600 Administration Dr.,  
Rm. 212J  
Santa Rosa, CA 95403  
[ib@ca.complaints.gov](mailto:ib@ca.complaints.gov)

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832 12th St., Ste. 300  
Modesto, CA 95353

District Attorney,  
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446 Second St.  
Yuba City, CA 95991

District Attorney,  
Tehama County  
P.O. Box 519  
Red Bluff, CA 96080

District Attorney,  
Trinity County  
P.O. Box 310  
Weaverville, CA 96093

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Visalia, CA 93291  
[Prp65@ca.complaints.gov](mailto:Prp65@ca.complaints.gov)

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423 N. Washington St.  
Sonora, CA 95370

District Attorney,  
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Ventura, CA 93009  
[district@opdcventura.org](mailto:district@opdcventura.org)

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301 2nd St.  
Woodland, CA 95695  
[cepd@yolo.ca.gov](mailto:cepd@yolo.ca.gov)

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215 Fifth St., Ste. 152  
Marysville, CA 95901

Los Angeles City Attorney's  
Office  
City Hall East  
200 N. Main St., Rm. 800  
Los Angeles, CA 90012

Office of the City Attorney  
City of Sacramento  
915 I St., 4th Fl.  
Sacramento, CA 95814

San Diego City Attorney's  
Office  
1200 3rd Ave., Ste. 1620  
San Diego, CA 92101

San Francisco City Attorney's  
Office  
City Hall, Rm. 234  
1 Dr. Carlton B Goodlett Place  
San Francisco, CA 94102

San Jose City Attorney's Office  
200 E. Santa Clara St.,  
16th Fl.  
San Jose, CA 95113

**Exhibit B**



Melvin B. Pearlston  
Senior Counsel



Of Counsel  
Robert B. Hancock

December 14, 2016

**60-DAY NOTICE OF VIOLATIONS OF  
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET. SEQ.  
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Erika McCartney in this matter. Ms. McCartney has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et. seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with the identified products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Ms. McCartney intends to file a private enforcement action in the public interest 60 days after effective service of the is notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is an attachment with the copy of this letter served to the alleged Violator identified below.

**Alleged Violator.** The name of the companies covered by this notice that violated Proposition 65 (hereinafter "the Violators") are:

**Thrive Market, Inc., d/b/a Thrive Market Technologies, Inc.**

**Consumer Products and Listed Chemical.** The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

**Thrive Market Goji Berries**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that Ms. McCartney may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

**Route of Exposure.** The consumer exposures that are the subject of this notice result from the purchase, acquisition, and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least December 14, 2015, as well as every day since the products were introduced into

the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, Ms. McCartney is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) recall any products already sold, or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such products; (2) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; and (3) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as expensive and time-consuming litigation. It should be noted that counsel cannot (1) finalize any settlement until after the 60-day notice period has expired; or (2) speak for the California Attorney General or any District or City Attorney who has received this notice. Therefore, while reaching an agreement may satisfy the claims alleged herein, such agreement may not be satisfactory to public prosecutors.

Ms. McCartney has retained me as legal counsel in connection with this matter. Her address is 1341 58<sup>th</sup> Ave. #11, Oakland, California, 94621. Her telephone number is 707.502.8635. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



---

Robert B. Hancock  
rbh@lawyer.com

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Violators only)

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

**CERTIFICATE OF MERIT**

**Re: Notice of Proposition 65 Violations**

Robert B. Hancock declares:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposures to the listed chemicals that are the subject of the action.

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: December 14, 2016

  
\_\_\_\_\_  
Robert B. Hancock

**CERTIFICATE OF SERVICE**

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

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action.

On December 14, 2016, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET. SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Thrive Market, Inc.  
d/b/a Thrive Market Technologies, Inc.  
4509 Glencoe Avenue  
Marina del Rey, CA 90292

On December 14, 2016, I served the following documents: **NOTICE OF VIOLATION CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(l)** 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  
P.O. Box 70550  
Oakland, CA 94612-0550  
<https://oag.ca.gov/prop65/add-60-day-notice>

On December 14, 2016, I served the following documents: **NOTICE OF VIOLATION CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto. As to those parties listed by mailing address only, 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 U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail. As to those parties having an e-mail address listed, I effected service by transmitting the document via electronic transmission to the e-mail address listed.

Executed under penalty of perjury pursuant to the laws of the State of California on December 14, 2016.

  
\_\_\_\_\_  
Robert B. Hancock

### Service List

District Attorney,  
Alameda County  
1225 Fallon St., Rm. 900  
Oakland, CA 94612

District Attorney,  
Alpine County  
P.O. Box 248  
Markleeville, CA 96120

District Attorney,  
Amador County  
708 Court St., #202  
Jackson, CA 95642

District Attorney, Butte County  
25 County Center Dr.  
Oroville, CA 95965

District Attorney,  
Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney,  
Colusa County  
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Eureka, CA 95501

District Attorney,  
Imperial County  
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El Centre, CA 92243

District Attorney, Inyo County  
230 W. Line St.  
Bishop, CA 93514

District Attorney, Kern County  
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Bakersfield, CA 93301

District Attorney,  
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Hanford, CA 93230

District Attorney, Lake County  
255 N. Forbes St.  
Lakeport, CA 95453

District Attorney,  
Lassen County  
220 S. Lassen St., Ste. 8  
Susanville, CA 96130

District Attorney,  
Los Angeles County  
210 W. Temple St., Ste. 1800  
Los Angeles, CA 90012

District Attorney,  
Madera County  
209 West Yosemite Ave.  
Madera, CA 93637

District Attorney,  
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District Attorney,  
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District Attorney,  
Mendocino County  
P.O. Box 1000  
Ukiah, CA 95482

District Attorney,  
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Merced, CA 95340

District Attorney,  
Modoc County  
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Alturas, CA 96101-4020

District Attorney,  
Mono County  
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Bridgeport, CA 93517

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Santa Ana, CA 92701

District Attorney,  
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Ste. 240  
Roseville, CA 95678

District Attorney,  
Plumas County  
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Quincy, CA 95971

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Sacramento, CA 95814

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Hollister, CA 95023

District Attorney,  
San Bernardino County  
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San Bernardino, CA 92415

District Attorney,  
San Diego County  
330 W. Broadway, Rm. 1300  
San Diego, CA 92101

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San Francisco, CA 94103

District Attorney,  
San Joaquin County  
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Stockton, CA 95201

District Attorney,  
San Luis Obispo County  
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San Luis Obispo, CA 93408

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Redwood City, CA 94063

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Santa Barbara, CA 93101

District Attorney,  
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District Attorney,  
Santa Cruz County  
701 Ocean St., Rm. 200  
Santa Cruz, CA 95060

District Attorney,  
Shasta County  
1355 West St.  
Redding, CA 96001

District Attorney,  
Sierra County  
PO Box 457  
Downieville, CA 95936

District Attorney,  
Siskiyou County  
P.O. Box 986  
Yreka, CA 96097

District Attorney,  
Solano County  
675 Texas St., Ste. 4500  
Fairfield, CA 94533

District Attorney,  
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600 Administration Dr.,  
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District Attorney,  
Stanislaus County  
832 12th St., Ste. 300  
Modesto, CA 95353

District Attorney,  
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