

**SUMMONS**  
**(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**NOTICE TO DEFENDANT: (Aviso a Acusado)**

MCDONALD'S CORPORATION; BURGER KING CORPORATION;  
and DOE DEFENDANTS NO. 1-1000, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:**  
**(A Ud. le está demandando)**

COUNCIL FOR EDUCATION AND RESEARCH ON TOXICS, a  
California corporation, acting as a private  
attorney general in the public interest;

You have **30 CALENDAR DAYS** after this  
summons is served on you to file a typewritten  
response at this court.

A letter or phone call will not protect you; your  
typewritten response must be in proper legal form  
if you want the court to hear your case.

If you do not file your response on time, you may  
lose the case, and your wages, money and  
property may be taken without further warning  
from the court.

There are other legal requirements. You may want  
to call an attorney right away. If you do not know  
an attorney, you may call an attorney referral  
service or a legal aid office (listed in the phone  
book).

Después de que le entreguen esta citación judicial usted  
tiene un plazo de 30 DIAS CALENDARIOS para presentar  
una respuesta escrita a máquina en esta corte.

Una carta o una llamada telefónica no le ofrecerá  
protección; su respuesta escrita a máquina tiene que  
cumplir con las formalidades legales apropiadas si usted  
quiere que la corte escuche su caso.

Si usted no presenta su respuesta a tiempo, puede perder  
el caso, y le pueden quitar su salario, su dinero y otras  
cosas de su propiedad sin aviso adicional por parte de la  
corte.

Existen otros requisitos legales. Puede que usted quiera  
llamar a un abogado inmediatamente. Si no conoce a un  
abogado, puede llamar a un servicio de referencia de  
abogados o a una oficina de ayuda legal (vea el directorio  
telefónico).

The name and address of the court is: *(El nombre y dirección de la corte es)*

Los Angeles County Superior Court  
111 N. Hill Street  
111 N. Hill Street  
Los Angeles, CA 90012  
Central District

CASE NUMBER (Número del caso) **BC280980**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

*(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)*  
Raphael Metzger, Esq. SBN 116020 (562) 436-1561 (562) 437-4499  
Law Offices of Raphael Metzger  
401 E. Ocean Boulevard  
Suite 800  
Long Beach, CA 90802

DATE:  
*(Fecha)*

Clerk, by \_\_\_\_\_, Deputy  
*(Actuario) (Delegado)*

**JOHN A. CLARKE CLERK**  
**STEPHAN SIANEZ**

[SEAL]  
**SEP 05 2002**

**NOTICE TO THE PERSON SERVED: You are served**

- 1.  as an individual defendant
- 2.  as the person sued under the fictitious name of (specify)
- 3.  on behalf of (specify):

- under:  CCP 416.10 (corporation)  CCP 416.60 (minor)  
 CCP 416.20 (defunct corporation)  CCP 416.70 (conservatee)  
 CCP 416.40 (association or partnership)  CCP 416.90 (individual)  
 other:

- 4.  by personal delivery on (date):

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WWW.TOXICTORTS.COM

LAW OFFICES OF  
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**CONFORMED COPY**  
OF ORIGINAL FILED  
Los Angeles Superior Court

SEP 05 2002

John A. Clarke, Executive Officer/Clerk  
By ~~John A. Clarke~~ **STEPHANIE SIANEZ** Deputy

Attorneys for Plaintiff,  
Council for Education and  
Research on Toxics ("CERT")

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

**BC280980**

COUNCIL FOR EDUCATION AND )  
RESEARCH ON TOXICS, a California )  
corporation, acting as a private )  
attorney general in the public )  
interest; )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
MCDONALD'S CORPORATION; BURGER )  
KING CORPORATION; and DOE )  
DEFENDANTS NO. 1-1000, inclusive )  
 )  
Defendants. )

CASE NO. BC  
*Assigned to the Honorable*  
COMPLAINT FOR VIOLATIONS OF  
PROPOSITION 65 AND THE UNFAIR  
BUSINESS PRACTICES ACT

1 Plaintiff, Council for Education and Research on Toxics,  
2 alleges:

3 1. Plaintiff, Council for Education and Research on Toxics  
4 ("CERT"), is a California public benefit corporation whose charitable  
5 purposes include education and research on toxic substances.  
6 Plaintiff brings this action as a private attorney general in the  
7 public interest pursuant to Health and Safety Code § 25249.7 and  
8 Business and Professions Code § 17203.

9 2. Defendant, McDonald's Corporation, is a foreign  
10 corporation which, at all material times hereto, was doing business  
11 throughout the State of California.

12 3. Defendant, Burger King Corporation, is a foreign  
13 corporation, which at all material times hereto, was doing business  
14 throughout the State of California.

15 4. The true names and capacities of Defendants Does 1  
16 through 1000 are unknown to Plaintiff, who therefore sues said  
17 defendants by such fictitious names. Plaintiff will amend this  
18 complaint to state the true names and capacities of said fictitious  
19 defendants when they have been ascertained.

20 5. Plaintiff is informed and believes and alleges, that  
21 at all material times, Defendants were acting in an individual,  
22 corporate, partnership, associate, conspiratorial or other capacity  
23 or as the agent, employee, co-conspirator, or alter ego of their co-  
24 defendants, and in doing the acts herein alleged, were acting within  
25 the course and scope of their authority as such partner, associate,  
26 agent, employee, co-conspirator, or alter ego, and with the  
27 permission, consent, knowledge, authorization, ratification and  
28 direction of their co-defendants.

JURISDICTION AND VENUE

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6. This Court has jurisdiction over this case pursuant to Cal. Const. Art. VI, § 10, and pursuant to the Safe Drinking Water and Toxic Enforcement Act ("Proposition 65") and the Unfair Business Practices Act.

7. CERT has satisfied all the jurisdictional conditions precedent to maintaining this action by mailing notices of the violations to the persons entitled to receive them, as required by Health and Safety Code § 25249.7, along with Certificates of Merit and the Summary of Proposition 65, all in accordance with the provisions of 22 C.C.R. § 12903.

8. All said notices of violation were mailed at least 70 days prior the date on which this action was filed (60 days for the notice required by Health and Safety Code § 25249.7(d), plus 10 days for mailing the notice to out-of-state defendants as required by Code of Civil Procedure § 1013).

9. More than 70 days have passed since copies of the notices were mailed to all the above-referenced governmental authorities, and neither the Attorney General, any district attorney, nor any city attorney has filed a complaint against defendants for the violations alleged in the notices.

10. The County of Los Angeles is a proper venue for this action pursuant to Code of Civil Procedure § 395, Health and Safety Code § 25249.7, and Bus. & Prof. Code § 17203, and because the causes of action and many of the violations arose in the County of Los Angeles.

//

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DISEASE, CANCER, AND TOXIC INJURIES

SUMMARY OF PROPOSITION 65

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3 11. In November 1986, California voters overwhelmingly  
4 approved an initiative to address growing concerns about exposure to  
5 toxic chemicals. That initiative is now officially known as the Safe  
6 Drinking Water and Toxic Enforcement Act, but is commonly referred  
7 to by its original name, "Proposition 65."

8 12. Proposition 65 requires the Governor to publish a list  
9 of chemicals that are known to the State of California to cause  
10 cancer, birth defects or other reproductive harm. Agents that cause  
11 cancer are called carcinogens; those that cause birth defects or  
12 other reproductive harm are called reproductive toxicants. The list,  
13 which must by law be updated at least once a year, contained more  
14 than 550 chemicals as of May 15, 1998.

15 13. Any company with ten or more employees that operates  
16 within the State or sells products in California must comply with the  
17 requirements of Proposition 65. Under Proposition 65, businesses are  
18 prohibited from knowingly discharging listed chemicals into sources  
19 of drinking water, and are required to provide a clear and reasonable  
20 warning before knowingly and intentionally exposing persons to a  
21 listed chemical.

22 14. Proposition 65 authorizes the Attorney General,  
23 district attorneys, and county and local prosecutors, as well as  
24 private citizens, to bring suit against violators to enjoin future  
25 violations and to obtain civil penalties for past violations.

26 15. Proposition 65's warning requirement serves as an  
27 incentive for business to substitute less toxic chemicals for listed  
28 chemicals and to warn the public where substitution is unfeasible.



GENERAL ALLEGATIONS

1  
2  
3 21. For many years, Defendants have engaged in the fast  
4 food business in California, selling hamburgers and french fries to  
5 millions of customers throughout the State of California.

6 22. Since January 1990 and continuing to the present,  
7 Defendants have exposed and continue to expose numerous consumers  
8 purchasing french fries at all of their restaurants located within  
9 the State of California, including within the cities of Los Angeles,  
10 San Diego, San Francisco, and San Jose, to high levels of acrylamide  
11 - a toxic chemical contained in Defendants' french fries which is  
12 ingested by customers consuming said french fries.

13 23. Exposures to acrylamide unavoidably occurred via  
14 ingestion whenever a consumer purchased and thereafter consumed  
15 Defendants' acrylamide-containing french fries from January 1990 and  
16 continuing to the present.

17 24. Recent scientific studies have shown that Defendants'  
18 french fries contain approximately 100 times more acrylamide than the  
19 maximum level permitted by the World Health Organization for drinking  
20 water.

21 25. Acrylamide is a toxic chemical known to the State of  
22 California to cause cancer and has been listed since January 1, 1990  
23 as a carcinogen on the list of carcinogenic chemicals published by  
24 the Governor of the State of California at 22 California Code of  
25 Regulations § 1200(b).

26 26. Because acrylamide is listed in Proposition 65 as a  
27 carcinogen, pursuant to Health & Safety Code § 25249.6, Defendants  
28 were and are required to warn their customers that their french fries

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1 contain a chemical known by the State of California to cause cancer  
 2 before exposing said customers to acrylamide contained in their  
 3 french fries.

4 27. Since January 1990, Defendants have violated and  
 5 continue to violate California Health & Safety Code § 25249.6 by  
 6 exposing millions of individuals within the State of California to  
 7 acrylamide without first giving clear and reasonable warnings to said  
 8 individuals that their french fries contain a chemical known by the  
 9 State of California to cause cancer.

10 28. The violations of California Health & Safety Code §  
 11 25249.6 are numerous and have occurred continuously and uninterrupted  
 12 since January 1, 1990 (the date on which acrylamide was listed as a  
 13 carcinogen on the Governor's List of Chemicals Known to the State to  
 14 Cause Cancer) to the present at all of Defendants' restaurants  
 15 located within the State of California during this period and at all  
 16 places where "take-out" was purchased from Defendants' restaurants.  
 17 The timing of the violations is such that they occurred every moment  
 18 that every individual within the State of California consumed  
 19 Defendants' french fries without first receiving the required  
 20 Proposition 65 warnings from January 1990 and continuing to the  
 21 present.

22 29. At all material times hereto, Defendants concealed  
 23 from Californians and from Plaintiff that their french fries  
 24 contained a chemical known to the state to cause cancer.

25 30. At all material times hereto, Defendants fraudulently  
 26 concealed from Plaintiff herein and from Californians exposed to  
 27 their french fries material facts concerning the toxic, neurotoxic,  
 28 and carcinogenic toxic hazards of their french fries.

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31. Defendants' concealment of the carcinogenic hazards of their french fries was sufficiently complete that Plaintiff did not know, nor in the exercise of reasonable care could Plaintiff have known, that Defendants were knowingly and intentionally exposing Californians to carcinogens and reproductive toxins in violation of Proposition 65, until Plaintiff discovered such in April 2002.

32. By mailing Defendants notice of their violations of Proposition 65, the statute of limitations on Plaintiff's claims against Defendants is further equitably tolled.

FIRST CAUSE OF ACTION

Violation of the Safe Drinking Water and Toxic Enforcement Act  
Exposing People to Carcinogen without Warning  
California Health and Safety Code § 25249.6  
(By Plaintiff Against all Defendants)

33. Plaintiff refers to paragraphs 1 through 32, and, by this reference, incorporates said paragraphs hereat in full.

34. At all times material hereto, Defendants were doing business in the State of California.

35. In the course of doing business in the State of California, since at least January 1, 1990 (the date on which acrylamide was listed as a chemical known to the State of California to cause cancer) and continuing to the present, Defendants knowingly and intentionally exposed individuals to acrylamide in their french fries, without first giving clear and reasonable warning to such individuals.

//

SECOND CAUSE OF ACTION

For Violation of the Unfair Competition Act  
Cal. Bus. & Prof. Code §§ 17200 et seq.  
(By Plaintiff Against all Defendants)

36. Plaintiff refers to paragraphs 1 through 35, and, by this reference, incorporates said paragraphs hereat as though set forth in full.

37. At all times material hereto, Defendants have conducted business in California, employing more than 10 persons.

38. In the course of doing business in the State of California, beginning at least as early as January 1, 1990, and continuing to the present, Defendants knowingly and intentionally violated laws of the State of California, as set forth hereinafter.

39. Defendants violated California Health and Safety Code § 25249.6 by knowingly and intentionally exposing individuals to acrylamide in their french fries, without first giving clear and reasonable warning to such individuals.

40. Defendants violated Cal. Business & Professions Code § 17500 by labeling their french fries as vegetarian, implying that they were healthy and would combat cancer, even though Defendants knew, or by the exercise of reasonable care should have known, that their french fries contained acrylamide, a chemical known to the State of California to cause cancer, and that such statements were either false or misleading or both.

41. Defendants also violated Business & Professions Code § 17200 et seq. by engaging in the foregoing unlawful, unfair, and fraudulent business practices and business conduct.

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PRAYER FOR JUDGMENT AND RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

Injunctive Relief

1. For a temporary restraining order, preliminary injunction, permanent injunction, and such other injunctive relief as may be had pursuant to Health and Safety Code § 25249.7(a), enjoining Defendants from exposing persons to acrylamide in their french fries sold in the State of California without first providing clear and reasonable warning that their french fries contain a chemical known to the State of California to cause cancer.

2. For a temporary restraining order, preliminary injunction, permanent injunction, and such other injunctive relief as may be had pursuant to Business & Professions Code §§ 17202, 17203, 17204 and 17205, enjoining Defendants from committing the unlawful, unfair, and fraudulent acts alleged herein.

Civil Penalties

3. For civil penalties, pursuant to Health & Safety Code § 25249.7(b), not to exceed \$2,500 per day for each and every violation by each and every Defendant of Proposition 65, in addition to all other penalties established by law.

Specific and Preventive Relief

4. For such specific and preventive relief as may be necessary and appropriate, pursuant to Business & Professions Code § 17202, to enforce any of the penalties ordered by the Court.

Other Equitable Relief

5. For such other equitable relief, including other cy pres relief, as may be necessary to effectuate justice and to remedy adverse health effects of Californians exposed to acrylamide in Defendants' french fries.

Attorney's Fees and Costs

6. For Plaintiff's costs and reasonable attorney's fees, pursuant to California Code of Civil Procedure § 1021.5.

Other Relief

7. For such other and additional relief as the Court deems proper and just.

DATED: September 3, 2002

LAW OFFICES OF RAPHAEL METZGER  
A Professional Law Corporation



\_\_\_\_\_  
RAPHAEL METZGER, ESQ.  
Attorneys for Plaintiff  
Council for Education and  
Research on Toxics ("CERT")

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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Raphael Metzger, Esq. SBN 116020 Law Offices of Raphael Metzger 401 E. Ocean Boulevard Suite 800 Long Beach, CA 90802 TELEPHONE NO.: (562) 437-4499 FAX NO.: (562) 436-1561 ATTORNEY FOR (Name): Plaintiffs	FOR COURT USE ONLY <b>CONFORMED COPY</b> OF ORIGINAL FILED Los Angeles Superior Court SEP 05 2002 John A. Clarke, Executive Officer/Clerk By <u>STEPHANIE SIANEZ</u> Deputy
INSERT NAME OF COURT, JUDICIAL DISTRICT, AND BRANCH COURT, IF ANY: Los Angeles County Superior Court Central Civil West	CASE NUMBER: ASSIGNED JUDGE: <b>BC 280980</b>
CASE NAME: CERT v. MCDONALDS	CIVIL CASE COVER SHEET <input type="checkbox"/> Limited <input checked="" type="checkbox"/> Unlimited
Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 1811)	CIVIL CASE COVER SHEET <input type="checkbox"/> Limited <input checked="" type="checkbox"/> Unlimited

Please complete all five (5) items below.

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b> <input type="checkbox"/> Auto (22) <b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <b>Non-PI/PD/WD (Other) Tort</b> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (e.g., discrimination, false arrest) (08) <input type="checkbox"/> Defamation (e.g., slander, libel) (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (e.g., legal malpractice) (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <b>Employment</b> <input type="checkbox"/> Wrongful termination (36)	<input type="checkbox"/> Other employment (15) <b>Contract</b> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Collections (e.g., money owed, open book accounts) (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <b>Real Property</b> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (e.g., quiet title) (26) <b>Unlawful Detainer</b> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <b>Judicial Review</b> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11)	<input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39) <b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 1800-1812)</b> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Claims involving mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Toxic tort/Environmental (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <b>Enforcement of Judgment</b> <input type="checkbox"/> Enforcement of judgment (e.g., sister state, foreign, out-of-county abstracts) (20) <b>Miscellaneous Civil Complaint</b> <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) <b>Miscellaneous Civil Petition</b> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case  is  is not complex under rule 1800 of the California Rules of Court. If case is complex, mark the factors requiring exceptional judicial management:

- |  |  |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties   | d. <input type="checkbox"/> Large number of witnesses  |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination and related actions pending in one or more courts in other counties, states or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence   | f. <input type="checkbox"/> Substantial post-disposition judicial disposition  |

3. Type of remedies sought (check all that apply):

- a.  monetary    b.  nonmonetary; declaratory or injunctive relief    c.  punitive

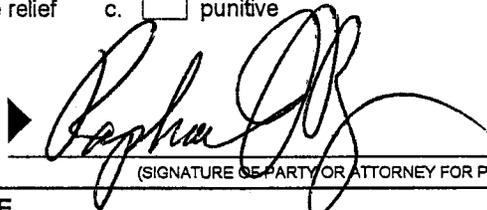
4. Number of causes of action (specify): **2**

5. This case  is  is not a class action suit.

Date: September 4, 2002

Raphael Metzger, Esq. SBN 116020

(TYPE OR PRINT NAME)

  
 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate, Family, or Welfare and Institutions Code). (Cal. Rules of Court, rule 982.2.)
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 1800 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet shall be used for statistical purposes only.