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FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF ORANGE
 CENTRAL JUSTICE CENTER
 OCT 27 2010
 ALAN CARLSON, Clerk of the Court
 BY J. TRAN, DEPUTY

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 8 **SUPERIOR COURT OF CALIFORNIA**
 9 **COUNTY OF ORANGE – CENTRAL JUSTICE CENTER**

10 **30-2010**

11 ZACHARY HALLSTROM, an individual,
 12 Plaintiff,
 13 vs.
 14 CYTOSPORT, INC., a California corporation;
 and DOES 1-100, Inclusive,
 15 Defendants.
 16

Case No. **00420087**

**COMPLAINT FOR CIVIL PENALTY AND
 INJUNCTIVE RELIEF**

**JUDGE GREGORY MUNOZ
 DEPT. C13**

17
 18 **I. INTRODUCTION**

19 1. This Complaint seeks an injunction to remedy Defendants' failure to warn consumers
 20 that the CytoSport Muscle Milk Powder chocolate flavored product ("Muscle Milk") manufactured
 21 and distributed by Defendant CytoSport, Inc. ("CytoSport") exposes consumers to cadmium and lead,
 22 chemicals known to the State of California to cause cancer and/or reproductive toxicity. Under the
 23 Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code Section 25249.6,
 24 also known as "Proposition 65," businesses must provide persons with a "clear and reasonable
 25 warning" before exposing them to such chemicals.
 26
 27
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1 **II. THE PARTIES**

2 2. Plaintiff Zachary Hallstrom (“Plaintiff”) is a resident of California who brings this
3 action pursuant to Health and Safety Code Section 25249.7(d), which permits such an action to be
4 brought by “any person in the public interest.”

5 3. Plaintiff is informed and believes, and upon such information and belief alleges, that
6 Defendant CytoSport is a California corporation with its principal place of business in Benicia,
7 California. Plaintiff is informed and believes, and upon such information and belief alleges, that
8 CytoSport distributes Muscle Milk containing cadmium and lead for sale to consumers within the State
9 of California.

10 4. Plaintiff does not know the true names or capacities of the persons or entities sued
11 herein as Does 1 to 100, inclusive, and therefore sues such defendants by such fictitious names.
12 Plaintiff is informed and believes and thereon alleges that each of the DOE defendants is in some
13 manner legally responsible for the wrongful conduct alleged by Plaintiff herein. Plaintiff will amend
14 this Complaint to set forth the true names and capacities of these defendants when they have been
15 ascertained, along with appropriate charging allegations, as may be necessary.

16 **III. JURISDICTION AND VENUE**

17 5. This Court has jurisdiction pursuant to Article VI, section 10, of the California
18 Constitution, because this case is a cause not given by statute to other trial courts.

19 6. This Court has jurisdiction over the Defendants named above because they do sufficient
20 business in California, or otherwise have sufficient minimum contacts in California to render the
21 exercise of jurisdiction over them by the California courts consistent with traditional notions of fair
22 play and substantial justice.

23 7. Venue is proper in this Court because the cause arises in the County of Orange, where
24 some of the violations of law have occurred.

25 **IV. STATUTORY BACKGROUND**

26 **A. Proposition 65.**

27 8. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
28 passed as “Proposition 65” by a vote of the people of California in November of 1986.

1 9. The warning requirement of Proposition 65 is contained in Health and Safety Code
2 Section 25249.6, which provides: “No person in the course of doing business shall knowingly and
3 intentionally expose any individual to a chemical known to the state to cause cancer or reproductive
4 toxicity without first giving clear and reasonable warning to such individual, except as provided in
5 Section 25249.10.”

6 10. Proposition 65 also establishes a procedure by which the state is to develop a list of
7 chemicals “known to the state to cause cancer or reproductive toxicity.” (Health & Safety Code §
8 25249.8.) No warning need be given concerning a listed chemical until one year after the chemical
9 first appears on the list. (Health & Safety Code § 25249.10(b).)

10 11. Proposition 65 provides that any person that “violates or threatens to violate” the statute
11 may be enjoined in any court of competent jurisdiction. (Health & Safety Code § 25249.7(a).) To
12 “threaten to violate” is defined to mean “to create a condition in which there is a substantial
13 probability that a violation will occur. (Health & Safety Code § 25249.11(e).) In addition, violators
14 are liable for civil penalties of up to \$2,500 per day for each violation, recoverable in a civil action.
15 (Health & Safety Code § 25249.7(b).)

16 12. Actions to enforce the law “may be brought by any person in the public interest” if:

17 (1) “The private action is commenced more than 60 days from the date that the person
18 has given notice of an alleged violation of Section 25249.5 or 25249.6 that is the subject of the
19 private action to the Attorney General and the district attorney, city attorney, or prosecutor in
20 whose jurisdiction the violation is alleged to have occurred, and to the alleged violator. If the
21 notice alleges a violation of Section 25249.6, the notice of the alleged violation shall include a
22 certificate of merit executed by the attorney for the noticing party The certificate of merit
23 shall state that the person executing the certificate has consulted with one or more persons with
24 relevant and appropriate experience or expertise who has reviewed facts, studies, or other data
25 regarding the exposure to the listed chemical that is the subject of the action, and that, based on
26 that information, the person executing the certificate believes there is a reasonable and
27 meritorious case for the private action;” and

1 (2) “Neither the Attorney General, any district attorney, any city attorney, nor any
2 prosecutor has commenced and is diligently prosecuting an action against the violation.”

3 (Health & Safety Code § 25249.7(d)(1), (2).)

4 13. Implementing regulations promulgated by the State’s lead agency for implementation
5 of Proposition 65 provide that the warning method “must be reasonably calculated, considering the
6 alternative methods available under the circumstances, to make the warning message available to the
7 individual prior to exposure.” (27 Cal. Code Regs. § 25601.)

8 14. The regulations prescribe certain types of warnings that are considered valid, including:
9 (a) warnings on labels; (b) identification at the retail outlet through “shelf labeling, signs, menus, or a
10 combination thereof,” and (c) “[a] system of signs, public advertising identifying the system and toll-
11 free information services, or any other system that provides clear and reasonable warning.” (27 Cal.
12 Code Regs. § 25603.1(a)-(d).)

13 **V. FACTUAL BACKGROUND**

14 15. Cadmium was listed under Proposition 65 as a chemical known to the State of
15 California to cause cancer and/or reproductive toxicity on October 1, 1987. Lead was listed under
16 Proposition 65 as a chemical known to the State of California to cause cancer and/or reproductive
17 toxicity on October 1, 1992. (27 Cal. Code Regs. § 27001(b).)

18 16. The following allegations are likely to have evidentiary support after a reasonable
19 opportunity for further investigation or discovery: Muscle Milk contains average cadmium levels of
20 5.6 micrograms in three daily servings, which exceeds the USP limit of 5 micrograms per day, and the
21 product contains an average lead level of 13.5 micrograms in three daily servings, which exceeds the
22 USP limit of 10 micrograms per day. Use of Muscle Milk, which is ingested by drinking the product,
23 results in human exposures to cadmium and lead. These exposures occur in homes, workplaces and
24 everywhere else throughout California where the product is ingested or used.

25 17. Each Defendant has manufactured, distributed, and/or sold Muscle Milk for sale or use
26 within the State of California.

1 18. The following allegation is likely to have evidentiary support after a reasonable
2 opportunity for further investigation or discovery: Each Defendant employs at least 10 or more
3 people.

4 19. The following allegation is likely to have evidentiary support after a reasonable
5 opportunity for further investigation or discovery: Each Defendant has known since at least June 30,
6 2009 that Muscle Milk, which they sell, distribute, and /or manufacture, contains cadmium and lead
7 and causes consumers of Muscle Milk to be exposed to cadmium and lead.

8 20. No clear and reasonable warning is provided with Muscle Milk regarding the hazards of
9 cadmium and lead.

10 21. On June 30, 2010, Plaintiff served the requisite Notice and Certification of Merit upon
11 CytoSport, the Attorney General, and all others required to be served with the Notice. A true and
12 correct copy of the Notice, together with the Certificate of Merit, is attached hereto as Exhibit 1.
13 Additionally, Plaintiff has determined, through research, that neither the Attorney General nor any
14 other prosecutor in the state currently is prosecuting an action against the violation.

15
16 **VI. CAUSES OF ACTION**
17 **FIRST CAUSE OF ACTION**
18 **(VIOLATION OF PROPOSITION 65)**

19 22. Plaintiff incorporates by this reference the allegations set forth at paragraphs 1 through
20 24 as if fully set forth herein.

21 23. Each Defendant employs ten or more persons.

22 24. By committing the acts alleged above, each Defendant has, in the course of doing
23 business, knowingly and intentionally exposed individuals to cadmium and lead, chemicals known to
24 the State of California to cause cancer and/or reproductive toxicity, without first giving clear and
25 reasonable warning to such individuals within the meaning of Health and Safety Code Section
26 25249.6.

27 25. Said violations render each Defendant liable to Plaintiff for civil penalties of up to
28 \$2,500 per day for each violation.

1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff requests that the Court enter an order or judgment against Defendants as
3 follows:

- 4 1. Pursuant to the First Cause of Action, grant civil penalties according to proof;
5 2. Pursuant to Health and Safety Code Section 25249.7, enter such preliminary
6 injunctions, permanent injunctions, or other orders prohibiting each Defendant from exposing persons
7 within the State of California to cadmium and lead without providing clear and reasonable warnings,
8 as Plaintiff shall specify in further application to the Court;
9 4. Costs of the proceedings herein; and
10 5. Any and all such other and further relief that this Court may deem just and proper.

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12 Dated: October 27, 2010

NEWPORT TRIAL GROUP
A Professional Corporation
Scott J. Ferrell
Roger E. Borg

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16 By: _____
Scott J. Ferrell

17 Attorneys for Plaintiff
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NOTICE OF VIOLATION

California Safe Drinking Water And Toxic Enforcement Act

Cadmium and Lead in the CytoSport Muscle Milk product

June 28, 2010

This Notice of Violation is provided to you pursuant to and in compliance with California Health and Safety Code Section 25249.7(d).

- For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, see the attached summary provided by the California EPA (copies not provided to public enforcement agencies).
- This Notice of Violation is provided by Zachary Hallstrom, c/o Newport Trial Group, 610 Newport Center Drive, Suite 700 Newport Beach, California 92660. Mr. Hallstrom is a consumer who has purchased and ingested the CytoSport Muscle Milk product that is the subject of this Notice of Violation.

Description of Violation:

- Violator: The name and address of the violator known to Mr. Hallstrom is:
 - CytoSport, Inc., 4795 Industrial Way, Benicia, CA 94510
 - Ralphs Grocery Company, P.O. Box 54143, Los Angeles, CA 90054
 - GNC, 300 6th Ave., Pittsburgh, PA 15222
 - The Vons Companies, Inc., 618 Michillinda Ave., Arcadia, CA 91007-6300
- Time Period of Exposure: The violations have been occurring since at least June 28, 2009, and are ongoing.

- Provision of Proposition 65: This Notice of Violation covers the “warning provision” of Proposition 65, which is found at California Health and Safety Code Section 25249.6.
- Chemicals Involved: The listed chemicals involved in these violations are cadmium and lead.
- Type of Product: The product at issue in this Notice of Violation is the CytoSport Muscle Milk Powder chocolate flavored product manufactured and distributed by the Violator identified above. The product contains average cadmium levels of 5.6 micrograms in three daily servings, which exceeds the USP limit of 5 micrograms per day, and the product contains an average lead level of 13.5 micrograms in three daily servings, which exceeds the USP limit of 10 micrograms per day.
- Description of Exposure: Use of the CytoSport Muscle Milk Powder chocolate flavored product, which is ingested by drinking the product, results in human exposures to cadmium and lead. These exposures occur in homes, workplaces and everywhere else throughout California where the product is ingested or used. No clear and reasonable warning is provided with the product regarding the hazards of cadmium and lead.

Resolution of Noticed Claims:

- Based on the allegations set forth in this Notice, Mr. Hallstrom intends to file a citizen enforcement lawsuit against each of the alleged violators unless such alleged violator enters in to a binding written agreement to remedy the violations alleged herein by: (1) recalling products already sold; (2) reformulating such products to eliminate the cadmium exposure and the lead exposure or taking appropriate measures otherwise to comply with Proposition 65; and (3) paying an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b). If the alleged violator is interested in resolving this dispute without resort to litigation, please contact Mr. Hallstrom through his counsel, Scott J. Ferrell, Newport Trial Group, 610 Newport Center Drive, Suite 700, Newport Beach, CA 92660, (949) 706-6464, sferrell@trialnewport.com. It should be noted that Mr. Hallstrom cannot: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received Mr. Hallstrom’s 60-day Notice. Therefore, while reaching any agreement with Mr. Hallstrom will resolve his claims, such an agreement may not satisfy the public prosecutors.

**CERTIFICATE OF MERIT
(Health & Safety Code § 25249.7(d))**

**California Safe Drinking Water
And Toxic Enforcement Act**

**Cadmium and Lead in the
CytoSport Muscle Milk product**

June 28, 2010

I, Scott J. Ferrell, declare as follows:

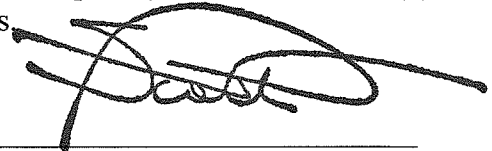
1. This Certificate of Merit accompanies the attached 60-day Notice in which it is alleged that the parties identified in the Notice have violated Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am the principal attorney of Newport Trial Group. Newport Trial Group represents the noticing party, Mr. Zachary Hallstrom.

3. Attorneys with my firm and 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 exposures to the listed chemicals that are the subject of the action.

4. Based on the information obtained through these consultations, 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 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. The copy of the 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 relief upon by the certifier; and (2) the facts, studies or other data reviewed by those persons.



Scott J. Ferrell
Attorney for Zachary Hallstrom

Proposition 65 in Plain Language

Office of Environmental Health Hazard Assessment
California Environmental Protection Agency

What is Proposition 65?

In 1986, California voters approved an initiative to address their growing concerns about exposure to toxic chemicals. That initiative became the Safe Drinking Water and Toxic Enforcement Act of 1986, better known by its original name of Proposition 65. Proposition 65 requires the State to publish a list of chemicals known to cause cancer or birth defects or other reproductive harm. This list, which must be updated at least once a year, has grown to include over 800 chemicals since it was first published in 1987.

Proposition 65 requires businesses to notify Californians about significant amounts of chemicals in the products they purchase, in their homes or workplaces, or that are released into the environment. By providing this information, Proposition 65 enables Californians to make informed decisions about protecting themselves from exposure to these chemicals. Proposition 65 also prohibits California businesses from knowingly discharging significant amounts of listed chemicals into sources of drinking water.

The Office of Environmental Health Hazard Assessment (OEHHA) administers the Proposition 65 program. OEHHA, which is part of the California Environmental Protection Agency (Cal/EPA), also evaluates all currently available scientific information on substances considered for placement on the Proposition 65 list.

What types of chemicals are on the Proposition 65 list?

The list contains a wide range of naturally occurring and synthetic chemicals that are known to cause cancer or birth defects or other reproductive harm. These chemicals include additives or ingredients in pesticides, common household products, food, drugs, dyes, or solvents. Listed chemicals may also be used in manufacturing and construction, or they may be byproducts of chemical processes, such as motor vehicle exhaust.

How is a chemical added to the list?

There are four principal ways for a chemical to be added to the Proposition 65 list. A chemical can be listed if either of two independent committees of scientists and health professionals finds that the chemical has been clearly shown to cause cancer or birth defects or other reproductive harm. These two committees—the Carcinogen Identification Committee (CIC) and the Developmental and Reproductive Toxicant (DART) Identification Committee—are part of OEHHA's Science Advisory Board. The committee members are appointed by the Governor and are designated as the "State's Qualified Experts" for evaluating chemicals under Proposition 65. When determining whether a chemical should be placed on the list, the committees base their decisions on the most current scientific information available. OEHHA staff scientists compile all relevant scientific evidence on various chemicals for the committees to review. The committees also consider comments from the public before making their decisions.

A second way for a chemical to be listed is if an organization designated as an "authoritative body" by the CIC or DART Identification Committee has identified it as causing cancer or birth defects or other reproductive harm. The following

organizations have been designated as authoritative bodies: the U.S. Environmental Protection Agency, U.S. Food and Drug Administration (U.S. FDA), National Institute for Occupational Safety and Health, National Toxicology Program, and International Agency for Research on Cancer.

A third way for a chemical to be listed is if an agency of the state or federal government requires that it be labeled or identified as causing cancer or birth defects or other reproductive harm. Most chemicals listed in this manner are prescription drugs that are required by the U.S. FDA to contain warnings relating to cancer or birth defects or other reproductive harm.

A fourth way requires the listing of chemicals meeting certain scientific criteria and identified in the California Labor Code as causing cancer or birth defects or other reproductive harm. This method established the initial chemical list following voter approval of Proposition 65 in 1986 and continues to be used as a basis for listing as appropriate.

What requirements does Proposition 65 place on companies doing business in California?

Businesses are required to provide a "clear and reasonable" warning before knowingly and intentionally exposing anyone to a listed chemical. This warning can be given by a variety of means, such as by labeling a consumer product, posting signs at the workplace, distributing notices at a rental housing complex, or publishing notices in a newspaper. Once a chemical is listed, businesses have 12 months to comply with warning requirements.

Proposition 65 also prohibits companies that do business within California from knowingly discharging listed chemicals into sources of drinking water. Once a chemical is listed, businesses have 20 months to comply with the discharge prohibition.

Businesses with less than 10 employees and government agencies are exempt from Proposition 65's warning requirements and prohibition on discharges into drinking water sources. Businesses are also exempt from the warning requirement and discharge prohibition if the exposures they cause are so low as to create no significant risk of cancer or birth defects or other reproductive harm. Health risks are explained in more detail below.

What does a warning mean?

If a warning is placed on a product label or posted or distributed at the workplace, a business, or in rental housing, the business issuing the warning is aware or believes that one or more listed chemicals is present. By law, a warning must be given for listed chemicals unless exposure is low enough to pose no significant risk of cancer or is significantly below levels observed to cause birth defects or other reproductive harm.

For chemicals that are listed as causing cancer, the "no significant risk level" is defined as the level of exposure that would result in not more than one excess case of cancer in 100,000 individuals exposed to the chemical over a 70-year lifetime. In other words, a person exposed to the chemical at the "no significant risk level" for 70 years would not have more than a "one in 100,000" chance of developing cancer as a result of that exposure.

For chemicals that are listed as causing birth defects or reproductive harm, the "no observable effect level" is determined by identifying the level of exposure that has been shown to not pose any harm to humans or laboratory animals. Proposition 65

then requires this “no observable effect level” to be divided by 1,000 in order to provide an ample margin of safety. Businesses subject to Proposition 65 are required to provide a warning if they cause exposures to chemicals listed as causing birth defects or reproductive harm that exceed 1/1000th of the “no observable effect level.”

To further assist businesses, OEHHA develops numerical guidance levels, known as “safe harbor numbers” (described below) for determining whether a warning is necessary or whether discharges of a chemical into drinking water sources are prohibited. However, a business may choose to provide a warning simply based on its knowledge, or assumption, about the presence of a listed chemical without attempting to evaluate the levels of exposure. Because businesses do not file reports with OEHHA regarding what warnings they have issued and why, OEHHA is not able to provide further information about any particular warning. The business issuing the warning should be contacted for specific information, such as what chemicals are present, and at what levels, as well as how exposure to them may occur.

What are safe harbor numbers?

As stated above, to guide businesses in determining whether a warning is necessary or whether discharges of a chemical into drinking water sources are prohibited, OEHHA has developed safe harbor numbers. A business has “safe harbor” from Proposition 65 warning requirements or discharge prohibitions if exposure to a chemical occurs at or below these levels. These safe harbor numbers consist of no significant risk levels for chemicals listed as causing cancer and maximum allowable dose levels for chemicals listed as causing birth defects or other reproductive harm. OEHHA has established safe harbor numbers for nearly 300 chemicals to date and continues to develop safe harbor numbers for listed chemicals.

Who enforces Proposition 65?

The California Attorney General’s Office enforces Proposition 65. Any district attorney or city attorney (for cities whose population exceeds 750,000) may also enforce Proposition 65. In addition, any individual acting in the public interest may enforce Proposition 65 by filing a lawsuit against a business alleged to be in violation of this law. Lawsuits have been filed by the Attorney General’s Office, district attorneys, consumer advocacy groups, and private citizens and law firms. Penalties for violating Proposition 65 by failing to provide notices can be as high as \$2,500 per violation per day.

How is Proposition 65 meeting its goal of reducing exposure to hazardous chemicals in California?

Since it was passed in 1986, Proposition 65 has provided Californians with information they can use to reduce their exposures to listed chemicals that may not have been adequately controlled under other State or federal laws. This law has also increased public awareness about the adverse effects of exposures to listed chemicals. For example, Proposition 65 has resulted in greater awareness of the dangers of alcoholic beverage consumption during pregnancy. Alcohol consumption warnings are perhaps the most visible health warnings issued as a result of Proposition 65.

Proposition 65’s warning requirement has provided an incentive for manufacturers to remove listed chemicals from their products. For example, trichloroethylene, which

causes cancer, is no longer used in most correction fluids; reformulated paint strippers do not contain the carcinogen methylene chloride; and toluene, which causes birth defects or other reproductive harm, has been removed from many nail care products. In addition, a Proposition 65 enforcement action prompted manufacturers to decrease the lead content in ceramic tableware and wineries to eliminate the use of lead-containing foil caps on wine bottles. Proposition 65 has also succeeded in spurring significant reductions in California of air emissions of listed chemicals, such as ethylene oxide, hexavalent chromium, and chloroform.

Although Proposition 65 has benefited Californians, it has come at a cost for companies doing business in the state. They have incurred expenses to test products, develop alternatives to listed chemicals, reduce discharges, provide warnings, and otherwise comply with this law. Recognizing that compliance with Proposition 65 comes at a price, OEHHA is working to make the law's regulatory requirements as clear as possible and ensure that chemicals are listed in accordance with rigorous science in an open public process.

Where can I get more information on Proposition 65?

For general information on the Proposition 65 list of chemicals, you may contact OEHHA's Proposition 65 program at (916) 445-6900, or visit <http://www.oehha.ca.gov/prop65.html> . For enforcement information, contact the California Attorney General's Office at (510) 622-2160, or visit <http://ag.ca.gov/prop65/>

Updated February 2010

**FACTUAL STATEMENT
(Health & Safety Code § 25249.7(h)(2))**

**California Safe Drinking Water
And Toxic Enforcement Act**

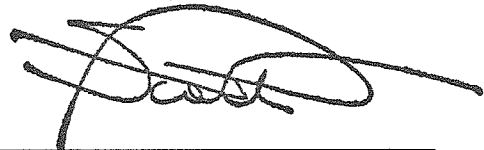
**Cadmium and Lead in the
CytoSport Muscle Milk product**

June 28, 2010

I, Scott J. Ferrell, declare as follows:

1. In the course of investigating this matter and determining if it was a reasonable and meritorious case for private action, I consulted with a qualified expert.

2. These persons and I also read and relied upon the article, released by Consumer Reports on June 1, 2010, entitled "Investigation: Test Reveal Contaminants in Many Protein Drinks," which states, in part, as follows: "The Samples of **Muscle Milk** Chocolate powder contained all four heavy metals, and levels of three metals in the product were among the highest of all products tested by Consumer Reports. Average cadmium levels of 5.6 [micrograms] in three daily servings exceeded the USP limit of 5 [micrograms] per day, and the average lead level of 13.5 [micrograms] also topped the USP limit of 10 [micrograms] per day. The average arsenic level of 12.2 [micrograms] was approaching the USP limit of 15 [micrograms] per day." The article states further: "The Consumer Reports investigation notes that cadmium raises special concern because it accumulates in and can damage the kidneys, the same organs that can be damaged by excessive protein consumption. And it can take 20 years for the body to eliminate even half the cadmium absorbed today."



Scott J. Ferrell
Attorney for Zachary Hallstrom

PROOF OF SERVICE BY MAIL

I declare that:

I am employed in Orange County, California; my business address is 610 Newport Center Drive, Suite 700, Newport Beach, CA 92660. I am over the age of 18 years and not a party to the within cause.

On June 30, 2010, I served true copies of the following documents:

NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT;

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY (only sent to those on service list marked with an asterisk).

CERTIFICATE OF MERIT; and

FACTUAL STATEMENT

On this date, I deposited fully prepaid and sealed envelopes containing the above-mentioned documents with the United States Postal Service, addressed to the following individuals:

Please see attached service list.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on June 30, 2010, at Newport Beach, California.



Carla Wise

SERVICE LIST

District Attorney of Alameda County
1225 Fallon Street, Room 900
Oakland, CA 94612

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

District Attorney of Amador County
708 Court Street, Suite 202
Jackson, CA 95642

District Attorney of Butte County
Administration Building
25 County Center Drive
Oroville, CA 95965

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

District Attorney of Colusa County
547 Market Street, Suite 102
Colusa, CA 95932

District Attorney of Contra Costa
County
900 Ward Street
Martinez, CA 94553

District Attorney of Del Norte County
450 H Street, Suite 171
Crescent City, CA 95531

District Attorney of El Dorado County
515 Main Street
Placerville, CA 95667

District Attorney of Fresno County
2220 Tulare Street, Suite 1000
Fresno, CA 93721

District Attorney of Glenn County
P.O. Box 430
Willows, CA 95988

District Attorney of Humboldt County
825 5th Street
Eureka, CA 95501

District Attorney of Imperial County
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El Centro, CA 92243

District Attorney of Inyo County
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Independence, CA 93526

District Attorney of Kern County
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Bakersfield, CA 93301

District Attorney of Kings County
1400 West Lacey Boulevard
Hanford, CA 93230

District Attorney of Lake County
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Lakeport, CA 95453

District Attorney of Lassen County
220 S. Lassen Street, Suite 8
Susanville, CA 96130

District Attorney of Los Angeles
County
210 W. Temple Street, Suite 1800
Los Angeles, CA 90012-3210

District Attorney of Madera County
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Madera, CA 93637

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Merced, CA 95340

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204 S. Court Street, Room 202
Alturas, CA 96101-4020

District Attorney of Mono County
P.O. Box 617
Bridgeport, CA 93546

District Attorney of Monterey County
230 Church Street, Building 2
Salinas, CA 93901

District Attorney of Napa County
931 Parkway Mall
Napa, CA 94559

District Attorney of Nevada County
110 Union Street
Nevada City, CA 95959

District Attorney of Orange County
401 Civic Center Drive West
Santa Ana, CA 92701

District Attorney of Placer County
10810 Justice Center Drive, Suite 240
Roseville, CA 95678

District Attorney of Plumas County
520 Main Street, Room 404
Quincy, CA 95971

District Attorney of Riverside County
4075 Main Street
Riverside, CA 92501

District Attorney of Sacramento
County
901 "G" Street
Sacramento, CA 95814

District Attorney of San Benito County
419 Fourth Street, 2nd Floor
Hollister, CA 95023

District Attorney of San Bernardino
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San Bernardino, CA 92415

District Attorney of San Diego County
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San Diego, CA 92101

District Attorney of San Francisco
County
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San Francisco, CA 94103

District Attorney of San Joaquin
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Stockton, CA 95202

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

District Attorney of San Mateo County
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Redwood City, CA 94063

SERVICE LIST

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70 West Hedding Street, West Wing
San Jose, CA 95110

District Attorney of Santa Cruz County
701 Ocean Street, Room 200
Santa Cruz, CA 95060

District Attorney of Santa Barbara
County
Attn: Jerry Lule-Jian
312-D E. Cook Street
Santa Maria, CA 93454

District Attorney of Shasta County
1525 Court Street, 3rd Floor
Redding, CA 96001-1632

District Attorney of Sierra County
Courthouse
100 Courthouse Square, 2nd Floor
Downieville, CA 95936

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

District Attorney of Solano County
675 Texas Street, Suite 4500
Fairfield, CA 94533

District Attorney of Sonoma County
600 Administration Drive, Room 212J
Santa Rosa, CA 95403

District Attorney of Stanislaus County
832 12th Street, Suite 300
Modesto, CA 95354

District Attorney of Sutter County
446 Second Street
Yuba City, CA 95991

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

District Attorney of Trinity County
P.O. Box 310
11 Court Street
Weaverville, CA 96093

District Attorney of Tulare County
221 S. Mooney Avenue, Room 224
Visalia, CA 93291

District Attorney of Tuolumne County
423 N. Washington Street
Sonora, CA 95370

District Attorney of Ventura County
800 South Victoria Avenue
Ventura, CA 93009

District Attorney of Yolo County
301 Second Street
Woodland, CA 95695

District Attorney of Yuba County
215 Fifth Street
Marysville, CA 95901

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

San Diego City Attorney's Office
1200 Third Avenue, Suite 1620
San Diego, CA 92101

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

San Jose City Attorney's Office
200 East Santa Clara Street
San Jose, CA 95113

California Attorney General's Office
Attention: Proposition 65 Coordinator
and Robert Thomas
1515 Clay Street, Suite 2000
P.O. Box 70550
Oakland, CA 94612-0550

CytoSport, Inc. *
4795 Industrial Way
Benicia, CA 94510

Ralphs Grocery Company *
P.O. Box 54143
Los Angeles, CA 90054

GNC *
300 6th Avenue
Pittsburgh, PA 15222

The Vons Companies, Inc. *
618 Michillinda Avenue
Arcadia, CA 91007-6300

SUPERIOR COURT OF CALIFORNIA
ORANGE COUNTY – CENTRAL JUSTICE CENTER
CIVIL DEPARTMENT CALENDAR SCHEDULING CHART

Ex Parte applications must comply with California Rules of Court, rules 3:1200 – 3:1207
 Court Local Rules are located at www.occourts.org

| Dept. | Judicial Officer | Motion Days and Time | Ex Parte Days and Time | Telephonic Notice to Courtroom the day before the hearing but no later than: | Ex Parte Application and Proposed Order presented to the court the day before the hearing but no later than: | Rulings posted on Internet? | Other Call for available dates. |
|-------|--------------------------|------------------------|--------------------------|--|--|-----------------------------|---|
| C19 | MARGINES 657-622-5219 | Wednesday 1:30 p.m. | Daily 1:30 p.m. | 10:00 a.m. | 10:30 a.m. | No | Notice must be given to opposing party by 10:00 a.m. day before ex parte hearing. |
| C7 | MARKS 657-622-5207 | Friday 10:30 a.m. | M,T,W,TH 1:30 p.m. | Reservation must be made with courtroom day before the hearing by noon | 10:30 a.m. | | Motions for Summary Judgment must be reserved with C-7 prior to filing by calling (657)622-5207 |
| C21 | MCEACHEN 657-622-5221 | Tuesday 1:30 p.m. | M, T, W, TH 9:00 a.m. | 12:00 p.m. | 3:00 p.m. | yes | |
| C14 | MILLER 657-622-5214 | Tuesday 1:30 p.m. | T, W, TH, F 8:30 a.m. | 9:00 a.m. | 4:00 p.m. if day prior to the Ex Parte hearing is Monday-Thursday; 3:00 P.M. if day prior to the Ex Parte hearing is Friday. | Yes noon day of hearing | If Monday is a holiday, law and motion is heard on Thursday at 1:30 p.m. NOTE: for L&M, Dept. C14 requires parties call the dept. to check availability of a motion date prior to filing their motion by calling (657) 622-5214. To schedule an ex parte matter the moving party/attorney shall contact the courtroom clerk (657) 622-5214 to reserve a date no later than noon, the day prior to the hearing. Teleconference appearances are voluntary and do not require consent by court or other parties. However, the court reserves the right to reject any request. Teleconference appearances are conducted in conformity with the guidelines, which are available by calling CourtCall, LLC at (310)914-7884 or (888) 88-COURT |

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

FILED
 FOR COURT USE ONLY
 SUPERIOR COURT (SOLO PARA USO DE LA CORTE)
 COUNTY OF ORANGE
 CENTRAL JUSTICE CENTER
 OCT 27 2010
 ALAN CARLSON, Clerk of the Court
 BY: J. TRAN, DEPUTY

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

CYTOSPORT, INC., a California corporation; and DOES 1-100, Inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

ZACHARY HALLSTROM, an individual,

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, 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 want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.**

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil, tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

30-2010

The name and address of the court is:
(El nombre y dirección de la corte es): Orange County Superior Court
700 Civic Center Drive West, Santa Ana, CA 92701

CASE NUMBER:
(Número del Caso) 00420087

JUDGE GREGORY MUNOZ

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):
Newport Trial Group, 610 Newport Center Dr., #700, Newport Beach, CA 92660 (949) 706-6464

DEPT. C13

DATE: OCT 27 2010 ALAN CARLSON Clerk, by JOSEPH TRAN Deputy
(Fecha) (Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- 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 (authorized person)
 other (specify):
- by personal delivery on (date):

BY FAX

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
 Scott J. Ferrell, 202091
 NEWPORT TRIAL GROUP
 610 Newport Center Drive, Suite 700
 Newport Beach, CA 92660
 TELEPHONE NO.: (949) 706-6464 FAX NO.: (949) 706-6469
 ATTORNEY FOR (Name): Plaintiff, ZACHARY HALLSTROM

FILED
 FOR COURT USE ONLY
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF ORANGE
 CENTRAL JUSTICE CENTER
 OCT 27 2010
 ALAN CARLSON, Clerk of the Court.
 BY: J. TRAN, DEPUTY
 30-2010

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
 STREET ADDRESS: 700 Civic Center Drive West
 MAILING ADDRESS:
 CITY AND ZIP CODE: Santa Ana, CA 92701
 BRANCH NAME: Central Justice Center

CASE NAME:
 HALLSTROM v. CYTOSPORT, INC.

CIVIL CASE COVER SHEET
 Unlimited
 (Amount demanded exceeds \$25,000)
 Limited
 (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter **Joinder**
 Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: **00420087**
 JUDGE: **JUDGE GREGORY MUNOZ**
 DEPT: **DEPT. C13**

Items 1-6 below must be completed (see instructions on page 2).

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

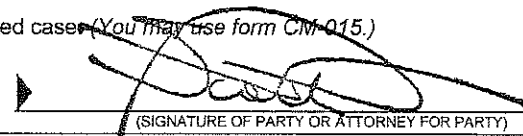
| | | |
|--|---|---|
| <p>Auto Tort</p> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input checked="" type="checkbox"/> Other PI/PD/WD (23) <p>Non-PI/PD/WD (Other) Tort</p> <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <p>Employment</p> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15) | <p>Contract</p> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <p>Real Property</p> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <p>Judicial Review</p> <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) | <p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20) <p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <p>Miscellaneous Civil Petition</p> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43) |
|--|---|---|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the 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 with 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 postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): One
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related cases (You may use form CM-015.)

Date: October 27, 2010

Scott J. Ferrell

(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 Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 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 collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE

**ALTERNATIVE DISPUTE RESOLUTION (ADR)
INFORMATION PACKAGE**

NOTICE TO PLAINTIFF(S) AND/OR CROSS-COMPLAINANT(S):

Rule 3.221(c) of the California Rules of Court requires you to serve a copy of the ADR Information Package along with the complaint and/or cross-complaint.

California Rules of Court – Rule 3.221
Information about Alternative Dispute Resolution (ADR)

(a) Each court shall make available to the plaintiff, at the time of filing of the complaint, an ADR Information Package that includes, at a minimum, all of the following:

(1) General information about the potential advantages and disadvantages of ADR and descriptions of the principal ADR processes.

(2) Information about the ADR programs available in that court, including citations to any applicable local court rules and directions for contacting any court staff responsible for providing parties with assistance regarding ADR.

(3) Information about the availability of local dispute resolution programs funded under the Dispute Resolutions Program Act (DRPA), in counties that are participating in the DRPA. This information may take the form of a list of the applicable programs or directions for contacting the county's DRPA coordinator.

(4) An ADR stipulation form that parties may use to stipulate to the use of an ADR process.

(b) A court may make the ADR Information Package available on its Web site as long as paper copies are also made available in the clerk's office.

(c) The plaintiff must serve a copy of the ADR Information Package on each defendant along with the complaint. Cross-complainants must serve a copy of the ADR Information Package on any new parties to the action along with the cross-complaint.

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE**

ADR Information

Introduction.

Most civil disputes are resolved without filing a lawsuit, and most civil lawsuits are resolved without a trial. The courts and others offer a variety of Alternative Dispute Resolution (ADR) processes to help people resolve disputes without a trial. ADR is usually less formal, less expensive, and less time-consuming than a trial. ADR can also give people more opportunity to determine when and how their dispute will be resolved.

BENEFITS OF ADR.

Using ADR may have a variety of benefits, depending on the type of ADR process used and the circumstances of the particular case. Some potential benefits of ADR are summarized below.

Save Time. A dispute often can be settled or decided much sooner with ADR; often in a matter of months, even weeks, while bringing a lawsuit to trial can take a year or more.

Save Money. When cases are resolved earlier through ADR, the parties may save some of the money they would have spent on attorney fees, court costs, experts' fees, and other litigation expenses.

Increase Control Over the Process and the Outcome. In ADR, parties typically play a greater role in shaping both the process and its outcome. In most ADR processes, parties have more opportunity to tell their side of the story than they do at trial. Some ADR processes, such as mediation, allow the parties to fashion creative resolutions that are not available in a trial. Other ADR processes, such as arbitration, allow the parties to choose an expert in a particular field to decide the dispute.

Preserve Relationships. ADR can be a less adversarial and hostile way to resolve a dispute. For example, an experienced mediator can help the parties effectively communicate their needs and point of view to the other side. This can be an important advantage where the parties have a relationship to preserve.

Increase Satisfaction. In a trial, there is typically a winner and a loser. The loser is not likely to be happy, and even the winner may not be completely satisfied with the outcome. ADR can help the parties find win-win solutions and achieve their real goals. This, along with all of ADR's other potential advantages, may increase the parties' overall satisfaction with both the dispute resolution process and the outcome.

Improve Attorney-Client Relationships. Attorneys may also benefit from ADR by being seen as problem-solvers rather than combatants. Quick, cost-effective, and satisfying resolutions are likely to produce happier clients and thus generate repeat business from clients and referrals of their friends and associates.

DISADVANTAGES OF ADR.

ADR may not be suitable for every dispute.

Loss of protections. If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court.

Less discovery. There generally is less opportunity to find out about the other side's case with ADR than with litigation. ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute.

Additional costs. The neutral may charge a fee for his or her services. If a dispute is not resolved through ADR, the parties may have to put time and money into both ADR and a lawsuit.

Effect of delays if the dispute is not resolved. Lawsuits must be brought within specified periods of time, known as statutes of limitation. Parties must be careful not to let a statute of limitations run out while a dispute is in an ADR process.

TYPES OF ADR IN CIVIL CASES.

The most commonly used ADR processes are arbitration, mediation, neutral evaluation and settlement conferences.

Arbitration. In arbitration, a neutral person called an "arbitrator" hears arguments and evidence from each side and then decides the outcome of the dispute. Arbitration is less formal than a trial, and the rules of evidence are often relaxed. Arbitration may be either "binding" or "nonbinding." *Binding arbitration* means that the parties waive their right to a trial and agree to accept the arbitrator's decision as final. Generally, there is no right to appeal an arbitrator's decision. *Nonbinding* arbitration means that the parties are free to request a trial if they do not accept the arbitrator's decision.

Cases for Which Arbitration May Be Appropriate. Arbitration is best for cases where the parties want another person to decide the outcome of their dispute for them but would like to avoid the formality, time, and expense of a trial. It may also be appropriate for complex matters where the parties want a decision-maker who has training or experience in the subject matter of the dispute.

Cases for Which Arbitration May Not Be Appropriate. If parties want to retain control over how their dispute is resolved, arbitration, particularly binding arbitration, is not appropriate. In binding arbitration, the parties generally cannot appeal the arbitrator's award, even if it is not supported by the evidence or the law. Even in nonbinding arbitration, if a party requests a trial and does not receive a more favorable result at trial than in arbitration, there may be penalties.

Mediation. In mediation, an impartial person called a "mediator" helps the parties try to reach a mutually acceptable resolution of the dispute. The mediator does not decide the dispute but helps the parties communicate so they can try to settle the dispute themselves. Mediation leaves control of the outcome with the parties.

Cases for Which Mediation May Be Appropriate. Mediation may be particularly useful when parties have a relationship they want to preserve. So when family members, neighbors, or business partners have a dispute, mediation may be the ADR process to use. Mediation is also effective when emotions are getting in the way of resolution. An effective mediator can hear the parties out and help them communicate with each other in an effective and nondestructive manner.

Cases for Which Mediation May Not Be Appropriate. Mediation may not be effective if one of the parties is unwilling to cooperate or compromise. Mediation also may not be effective if one of the parties has a significant advantage in power over the other. Therefore, it may not be a good choice if the parties have a history of abuse or victimization.

Neutral Evaluation. In neutral evaluation, each party gets a chance to present the case to a neutral person called an "evaluator." The evaluator then gives an opinion on the strengths and weaknesses of each party's evidence and arguments and about how the dispute could be resolved. The evaluator is

often an expert in the subject matter of the dispute. Although the evaluator's opinion is not binding, the parties typically use it as a basis for trying to negotiate a resolution of the dispute.

Cases for Which Neutral Evaluation May Be Appropriate. Neutral evaluation may be most appropriate in cases in which there are technical issues that require special expertise to resolve or the only significant issue in the case is the amount of damages.

Cases for Which Neutral Evaluation May Not Be Appropriate. Neutral evaluation may not be appropriate when there are significant personal or emotional barriers to resolving the dispute.

Settlement Conferences. Settlement conferences may be either mandatory or voluntary. In both types of settlement conferences, the parties and their attorneys meet with a judge or a neutral person called a "settlement officer" to discuss possible settlement of their dispute. The judge or settlement officer does not make a decision in the case but assists the parties in evaluating the strengths and weaknesses of the case and in negotiating a settlement. Settlement conferences are appropriate in any case where settlement is an option. Mandatory settlement conferences are often held close to the date a case is set for trial.

ADDITIONAL INFORMATION.

In addition to mediation, arbitration, neutral evaluation, and settlement conferences, there are other types of ADR, including conciliation, fact finding, mini-trials, and summary jury trials. Sometimes parties will try a combination of ADR types. The important thing is to try to find the type or types of ADR that are most likely to resolve your dispute.

To locate a dispute resolution program or neutral in your community:

- Contact the California Department of Consumer Affairs, Consumer Information Center, toll free, 1-800-852-5210
- Contact the Orange County Bar Association at (949) 440-6700
- Look in the Yellow Pages under "Arbitrators" or "Mediators"

Free mediation services are provided under the Orange County Dispute Resolution Program Act (DRPA) For information regarding DRPA, contact:

- Community Service Programs, Inc. (949) 851-3168
- Orange County Human Relations (714) 834-7198

For information on the Superior Court of California, County of Orange court ordered arbitration program, refer to Local Rule 360.

The Orange County Superior Court offers programs for Civil Mediation and Early Neutral Evaluation (ENE). For the Civil Mediation program, mediators on the Court's panel have agreed to accept a fee of \$300 for up to the first two hours of a mediation session. For the ENE program, members of the Court's panel have agreed to accept a fee of \$300 for up to three hours of an ENE session. Additional information on the Orange County Superior Court Civil Mediation and Early Neutral Evaluation (ENE) pilot programs is available on the Court's website at www.occourts.org.

| | |
|---|--|
| ATTORNEY OR PARTY WITHOUT ATTORNEY (Name & Address): Telephone No.: _____ Fax No. (Optional): _____ E-Mail Address (Optional): _____ Bar No: _____ ATTORNEY FOR (Name): _____ | FOR COURT USE ONLY CASE NUMBER: _____ |
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE JUSTICE CENTER: <input type="checkbox"/> Central - 700 Civic Center Dr. West, Santa Ana, CA 92701-4045 <input type="checkbox"/> Civil Complex Center - 751 W. Santa Ana Blvd., Santa Ana, CA 92701-4512 <input type="checkbox"/> Harbor-Laguna Hills Facility - 23141 Moulton Pkwy., Laguna Hills, CA 92653-1251 <input type="checkbox"/> Harbor - Newport Beach Facility - 4601 Jamboree Rd., Newport Beach, CA 92660-2595 <input type="checkbox"/> North - 1275 N. Berkeley Ave., P.O. Box 5000, Fullerton, CA 92838-0500 <input type="checkbox"/> West - 8141 13 th Street, Westminster, CA 92683-0500 | |
| PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____ | |
| ALTERNATIVE DISPUTE RESOLUTION (ADR) STIPULATION | |

Plaintiff(s)/Petitioner(s), _____

and defendant(s)/respondent(s), _____

agree to the following dispute resolution process:

- Mediation
- Arbitration (must specify code)
 - Under section 1141.11 of the Code of Civil Procedure
 - Under section 1280 of the Code of Civil Procedure
- Neutral Case Evaluation

The ADR process must be completed no later than 90 days after the date of this Stipulation or the date the case was referred, whichever is sooner.

I have an *Order on Court Fee Waiver* (FW-003) on file, and the selected ADR Neutral(s) are eligible to provide pro bono services.

The ADR Neutral Selection and Party List is attached to this Stipulation.

We understand that there may be a charge for services provided by neutrals. We understand that participating in an ADR process does not extend the time periods specified in California Rules of Court rule 3.720 et seq.

Date: _____ (SIGNATURE OF PLAINTIFF OR ATTORNEY) _____ (SIGNATURE OF PLAINTIFF OR ATTORNEY)

Date: _____ (SIGNATURE OF DEFENDANT OR ATTORNEY) _____ (SIGNATURE OF DEFENDANT OR ATTORNEY)

ALTERNATIVE DISPUTE RESOLUTION (ADR) STIPULATION

| | |
|--|--------------------|
| SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE JUSTICE CENTER: <input checked="" type="checkbox"/> Central - 700 Civic Center Dr. West, Santa Ana, CA 92701-4045 <input type="checkbox"/> Civil Complex Center - 751 W. Santa Ana Blvd., Santa Ana, CA 92701-4512 <input type="checkbox"/> Harbor-Laguna Hills Facility - 23141 Moulton Pkwy., Laguna Hills, CA 92653-1251 <input type="checkbox"/> Harbor - Newport Beach Facility - 4601 Jamboree Rd., Newport Beach, CA 92660-2595 <input type="checkbox"/> North - 1275 N. Berkeley Ave., P.O. Box 5000, Fullerton, CA 92838-0500 <input type="checkbox"/> West - 8141 13 th Street, Westminster, CA 92683-0500 | FOR COURT USE ONLY |
| PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT: | |
| ALTERNATIVE DISPUTE RESOLUTION (ADR) NEUTRAL SELECTION AND PARTY LIST <input type="checkbox"/> Arbitration <input type="checkbox"/> Mediation <input type="checkbox"/> Neutral Evaluation | CASE NUMBER: |

(ATTACH THIS FORM TO FORM L-1270, ALTERNATIVE DISPUTE RESOLUTION (ADR) STIPULATION, AND FILE IT WITH THE COURT.)

ADR NEUTRAL SELECTION

For Arbitration, parties may select a Neutral and Alternate or may have a Neutral randomly assigned from the Court's Panel. For Mediation and Neutral Evaluation, parties must select a Neutral and an Alternate below.

For Arbitration, please check this box to have an arbitrator assigned at random.

The parties select the following Neutral and Alternate from the Court ADR Panel:

Neutral: _____

Alternate: _____

The above named Neutral will be notified by a Notice of Assignment of ADR Neutral that he or she has been selected as the neutral in this proceeding. In the event the neutral does not accept the assignment, a new Notice of Assignment of ADR Neutral will be sent to the above named Alternate. The assignment of the Alternate to serve as the Neutral does not extend the time to complete the ADR process.

ALTERNATIVE DISPUTE RESOLUTION (ADR) NEUTRAL SELECTION AND PARTY LIST

| | |
|--------------------|--------------------|
| Short Title: _____ | Case Number: _____ |
|--------------------|--------------------|

**PARTY LIST
(Including Affiliates)**

The parties agree that the ADR Session may be conducted on one of the following dates:

1. _____ 2. _____ 3. _____ 4. _____

Attorney and Firm Name: _____

Mailing Address: _____ City _____ ZIP _____

Area Code and Telephone Number: _____ Fax _____

Attorney for: _____

Attorney and Firm Name: _____

Mailing Address: _____ City _____ ZIP _____

Area Code and Telephone Number: _____ Fax _____

Attorney for: _____

Attorney and Firm Name: _____

Mailing Address: _____ City _____ ZIP _____

Area Code and Telephone Number: _____ Fax _____

Attorney for: _____

Attorney and Firm Name: _____

Mailing Address: _____ City _____ ZIP _____

Area Code and Telephone Number: _____ Fax _____

Attorney for: _____

This Party List must also include the full names, addresses, and phone numbers of corporate parties' parent and subsidiary corporations, and of all insurance carriers. Counsel must immediately notify the neutral upon discovery if any attorney or self-represented party is not listed on this Party List Form.

Attach additional copies of this page if necessary to include additional parties, affiliated entities or insurance carriers.

**ALTERNATIVE DISPUTE RESOLUTION (ADR)
NEUTRAL SELECTION AND PARTY LIST**

SUPERIOR COURT OF CALIFORNIA
ORANGE COUNTY – CENTRAL JUSTICE CENTER
CIVIL DEPARTMENT CALENDAR SCHEDULING CHART

Ex Parte applications must comply with California Rules of Court, rules 3.1200 – 3.1207
 Court Local Rules are located at www.occourts.org

| Dept. | Judicial Officer | Motion Days and Time | Ex Parte Days and Time | Telephonic Notice to Courtroom the day before the hearing but no later than: | Ex Parte Application and Proposed Order presented to the court the day before the hearing but no later than: | Rulings posted on Internet? | Other Call for available dates. |
|-------|--------------------------|--|--|---|--|------------------------------------|--|
| C12 | MOBERLY 657-622-5212 | Friday 1:30 p.m. | M, T, W, TH 1:30 p.m. | Noon | 3:00 p.m. | Yes 4:30 p.m. the day before | If there is no appearance for argument, the court will order the tentative ruling to become effective and final the date of the hearing. To schedule an ex parte matter the moving party/attorney shall contact the courtroom clerk (657) 622-5212 to reserve a date no later than noon, the day prior to the hearing. |
| C16 | MONROE 657-622-5216 | Tuesday 2:00 p.m. | T, W, TH 8:30 a.m. | Noon | 4:00 p.m. if day prior to the Ex Parte hearing is Monday-Thursday; 3:00 P.M. if day prior to the Ex Parte hearing is Friday. | Yes 4:00 p.m. the day before | If Monday is a holiday, law and motion is heard on Thursday at 2:00 p.m. |
| C23 | MOSS 657-622-5223 | Friday 10:00 a.m. | Daily 8:30 a.m. | Not required | 12:00 p.m. | Yes 4:00 p.m. the day before | Teleconference appearances are voluntary and do not require consent by court or other parties. However, the court reserves the right to reject any request. Teleconference appearances are conducted in conformity with the guidelines, which are available by calling CourtCall, LLC at (310)914-7884 or (888) 88-COURT |
| C13 | MUÑOZ 657-622-5213 | Thursday 2:00 pm | M, T, W, TH 8:30 a.m. | 10:00 a.m. | Noon | Yes 4:00 p.m. the day before | |
| C64 | MYERS 657-622-5264 | Thursday Unlimited/ Omni 1:30 p.m. Limited 2:30 p.m. | M, T, W, TH 1:30 p.m. Fri 11:00 a.m. - emergency only | 4:00 p.m. if day prior to the hearing is Monday-Thursday; 3:00 P.M. if day prior to the hearing is Friday. | M, T, W, Th, 10:00 a.m. day of ex parte; Friday 9:00 a.m. day of ex parte | No | |
| C8 | NAKAMURA 657-622-5208 | Thursday 2:00 p.m. | M, T, W, TH 1:30 p.m. | 24 hours, the day before the hearing | M, T, W, Th, 10:00 a.m. day of ex parte | Yes 4:00 p.m. the day before | Counsel must reserve a motion date with the courtroom, prior to setting the motion. |