

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
 NOTICE OF CASE ASSIGNMENT - UNLIMITED CIVIL CASE BC 450837

Case Number \_\_\_\_\_

**THIS FORM IS TO BE SERVED WITH THE SUMMONS AND COMPLAINT**

Your case is assigned for all purposes to the judicial officer indicated below (Local Rule 7.3(c)). There is additional information on the reverse side of this form

ASSIGNED JUDGE	DEPT	ROOM	ASSIGNED JUDGE	DEPT	ROOM
Hon. Elihu M. Berle	1	534	Hon. Holly E. Kendig	42	416
Hon. J. Stephen Czuleger	3	224	Hon. Mel Red Recana	45	529
Hon. Luis A. Lavin	13	630	Hon. Debre Katz Weintraub	47	507
Hon. Terry A. Green	14	300	Hon. Elizabeth Allen White	48	506
Hon. Richard Fruin	15	307	Hon. Conrad Aragon	49	509
Hon. Rita Miller	16	306	Hon. John Shepard Wiley Jr.	50	508
Hon. Richard E. Rico	17	309	Hon. Abraham Khan	51	511
Hon. Rex Heeseman	19	311	Hon. Susan Bryant-Deason	52	510
Hon. Kevin C. Brazile	20	310	Hon. John P. Shook	53	513
Hon. Zaven V. Sinanian	23	315	Hon. Ernest M. Hiroshige	54	512
Hon. Robert L. Hess	24	314	Hon. Malcolm H. Mackey	55	515
Hon. Mary Ann Murphy	25	317	Hon. <i>Michael Johnson</i>	56	514
Hon. James R. Dunn	26	316	Hon. Ralph W. Dau	57	517
Hon. Yvette M. Palazuelos	28	318	Hon. Rolf M. Treu	58	516
Hon. John A. Kronstadt	30	400	Hon. David L. Minning	61	632
Hon. Alan S. Rosenfield	31	407	Hon. Michael L. Stern	62	600
Hon. Mary H. Strobel	32	406	Hon. Kenneth R. Freeman	64	601
Hon. Charles F. Palmer	33	409	Hon. Mark Mooney	68	617
Hon. Amy D. Hogue	34	408	Hon. Ramona See	69	621
Hon. Daniel Buckley	35	411	Hon. Soussan G. Bruguera	71	729
Hon. Gregory Alarcon	36	410	Hon. Ruth Ann Kwan	72	731
Hon. Joanne O'Donnell	37	413	Hon. Teresa Sanchez-Gordon	74	735
Hon. Maureen Duffy-Lewis	38	412	Hon. William F. Fahey	78	730
Hon. Michael C. Solner	39	415	<b>Hon. Emilie H. Elias*</b>	<b>324</b>	<b>CCW</b>
Hon. Michelle R. Rosenblatt	40	414	Other		
Hon. Ronald M. Sohigian	41	417			

**\*Class Actions**

All class actions are initially assigned to Judge Emilie H. Elias in Department 324 of the Central Civil West Courthouse (600 S. Commonwealth Ave., Los Angeles 90005). This assignment is for the purpose of assessing whether or not the case is complex within the meaning of California Rules of Court, rule 3.400. Depending on the outcome of that assessment, the class action case may be reassigned to one of the judges of the Complex Litigation Program or reassigned randomly to a court in the Central District.

Given to the Plaintiff/Cross-Complainant/Attorney of Record on \_\_\_\_\_ JOHN A. CLARKE, Executive Officer/Clerk  
 By \_\_\_\_\_, Deputy Clerk

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION PACKAGE**

[CRC 3.221 Information about Alternative Dispute Resolution]

For additional ADR information and forms visit the Court ADR web application at [www.lasuperiorcourt.org](http://www.lasuperiorcourt.org) (click on ADR).

The plaintiff shall serve a copy of this Information Package on each defendant along with the complaint (**Civil only**).

**What Is ADR:**

Alternative Dispute Resolution (ADR) is the term used to describe all the other options available for settling a dispute which once had to be settled in court. ADR processes, such as arbitration, mediation, neutral evaluation (NE), and settlement conferences, are less formal than a court process and provide opportunities for parties to reach an agreement using a problem-solving approach.

There are many different kinds of ADR. All of them utilize a "neutral", an impartial person, to decide the case or help the parties reach an agreement.

**Mediation:**

In mediation, a neutral 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 dispute between or among family members, neighbors, or business partners. 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.

**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. *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.

**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.

**SUMMONS  
(CITACION JUDICIAL)**

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

MD DRINKS, INC., a corporation, FUNCTION DRINKS, entity unknown, DOES 1 through 10

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

ENVIRONMENTAL RESEARCH CENTER, a non-profit California corporation

FOR COURT USE ONLY  
SOLO PARA USO DE LA CORTE  
**CONFORMED COPY  
OF ORIGINAL FILED**  
Los Angeles Superior Court

DEC 08 2010

John A. Clarke, Executive Officer/Clerk  
By *[Signature]*, Deputy  
**DOROTHY SWAIN**

**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](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://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](http://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. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://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.

The name and address of the court is:  
(El nombre y dirección de la corte es): Mosk Courthouse  
111 N. Hill St.  
LA, CA 90012

CASE NUMBER:  
(Número del Caso): **BC450837**

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):  
Gideon Kracov, 801 S. Grand Ave., 11th Fl., Los Angeles, CA 90017 (213) 629-2071

DATE: 12/8/10  
(Fecha)

Clerk, by \_\_\_\_\_, Deputy  
(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

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 (authorized person)  
 other (specify):
4.  by personal delivery on (date):

1 GIDEON KRACOV (SBN 179815)  
801 S. Grand Avenue, Ste. 1100  
2 Los Angeles, CA 90017  
213.629.2071  
3 FAX 213.623.7755  
gk@gideonlaw.net

4 Attorneys for Plaintiff  
5 Environmental Research Center

CONFORMED COPY  
OF ORIGINAL FILED  
Los Angeles Superior Court

DEC 08 2010

John A. Clarke, Executive Officer/Clerk  
By Dorothy Swain, Deputy  
DOROTHY SWAIN

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES

10 BC450837

11 ENVIRONMENTAL RESEARCH CENTER, )  
a non-profit California corporation; )  
12 Plaintiff, )  
13 v. )  
14 MD DRINKS, INC., a corporation, )  
15 FUNCTION DRINKS, entity unknown, DOES )  
1 through 10; )  
16 Defendant(s). )

Case No. \_\_\_\_\_

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES**

Health & Safety Code §25249.5, *et seq.*

18 Plaintiff Environmental Research Center brings this action in the interests of the  
19 general public and, on information and belief, hereby alleges:

20 **INTRODUCTION**

21 1. This action seeks to remedy Defendant(s)' continuing failure to warn thousands  
22 of consumers in California that they are being exposed to lead, a substance known to the State  
23 of California to cause cancer, birth defects and other reproductive harm. Defendant(s)  
24 manufactures, packages, distributes, markets, and/or sells in California certain herbal products  
25 including Urban Detox Goji Berry containing lead (the "PRODUCT").

26 2. Lead and lead compounds (hereinafter, the "LISTED CHEMICALS") are

1 substances known to the State<sup>1</sup> of California to cause cancer, birth defects and other  
2 reproductive harm.

3 3. The use and/or handling of the PRODUCT causes exposures to the LISTED  
4 CHEMICALS at levels requiring a “clear and reasonable warning” under California's Safe  
5 Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code (“H&S Code”)  
6 §25249.5, *et seq.* (also known as "Proposition 65"). Defendant(s) has failed to provide the  
7 health hazard warnings required by Proposition 65.

8 4. Defendant(s)' continued manufacturing, packaging, distributing, marketing  
9 and/or sales of the PRODUCT without the required health hazard warnings, causes individuals  
10 to be involuntarily and unwittingly exposed to levels of the LISTED CHEMICALS that violate  
11 Proposition 65.

12 5. Plaintiff seeks injunctive relief enjoining Defendant(s) from the continued  
13 manufacturing, packaging, distributing, marketing and/or sales of the PRODUCT in California  
14 without provision of clear and reasonable warnings regarding the risks of cancer, birth defects  
15 and other reproductive harm posed by exposure to the LISTED CHEMICALS through the use  
16 and/or handling of the PRODUCT. Plaintiff seeks an injunctive order compelling Defendant(s)  
17 to bring its business practices into compliance with Proposition 65 by providing a clear and  
18 reasonable warning to each individual who has been and who in the future may be exposed to  
19 LISTED CHEMICALS from the use of the PRODUCT. Plaintiff also seeks an order  
20 compelling Defendant(s) to identify and locate each individual person who in the past has  
21 purchased the PRODUCT, and to provide to each such purchaser a clear and reasonable  
22 warning that the use of the PRODUCT will cause exposures to the LISTED CHEMICALS.

23 6. In addition to injunctive relief, Plaintiff seeks an assessment of civil penalties to  
24 remedy Defendant(s)' failure to provide clear and reasonable warnings regarding exposures to  
25 the LISTED CHEMICALS.

26 \_\_\_\_\_  
<sup>1</sup> All statutory and regulatory references herein are to California law, unless otherwise specified.

1 JURISDICTION AND VENUE

2 7. This Court has jurisdiction over this action pursuant to California Constitution  
3 Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes  
4 except those given by statute to other trial courts." The statute under which this action is  
5 brought does not specify any other basis for jurisdiction.

6 8. This Court has jurisdiction over Defendant(s) because, based on information  
7 and belief, Defendant(s) is a business having sufficient minimum contacts with California, or  
8 otherwise intentionally availing itself of the California market through the distribution and sale  
9 of the PRODUCT in the State of California to render the exercise of jurisdiction over it by the  
10 California courts consistent with traditional notions of fair play and substantial justice.

11 9. Venue in this action is proper in the Los Angeles Superior Court because the  
12 Defendant has violated California law in the County of Los Angeles.

13 PARTIES

14 10. PLAINTIFF Environmental Research Center ("PLAINTIFF") is a corporation  
15 organized under California's Corporation Law. ERC is dedicated to, among other causes,  
16 reducing the use and misuse of hazardous and toxic substances, consumer protection, worker  
17 safety and corporate responsibility.

18 11. ERC is a person within the meaning of H&S Code §25118 and brings this  
19 enforcement action in the public interest pursuant to H&S Code §25249.7(d).

20 12. Defendant MD DRINKS, INC., is a corporation organized under the laws of the  
21 State of California and a person doing business within the meaning of H&S Code §25249.11  
22 with an office at 2639-A Manhattan Beach Bl., Redondo Beach, CA 90278.

23 13. Defendant FUNCTION DRINKS is an unknown entity and a person doing  
24 business within the meaning of H&S Code §25249.11 with an office at 2639-A Manhattan  
25 Beach Bl., Redondo Beach, CA 90278.

26 14. Upon information and belief, and upon that basis, PLAINTIFF alleges that the  
true names, or capacities of DOES 1 through 10, inclusive (the "DOES"), whether individual,

1 corporate, associate or otherwise, are presently unknown to PLAINTIFF, who therefore sue  
2 said Defendants by such fictitious names. PLAINTIFF will amend this Complaint to show  
3 their true names and capacities when the same have been ascertained.

4 15. DEFENDANT(S) manufactures, packages, distributes, markets and/or sells the  
5 PRODUCT for sale or use in California and in Los Angeles County.

6 **STATUTORY BACKGROUND**

7 16. The People of the State of California have declared in Proposition 65 their right  
8 "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other  
9 reproductive harm." (Section 1(b) of Initiative Measure, Proposition 65).

10 17. To effect this goal, Proposition 65 requires that individuals be provided with a  
11 "clear and reasonable warning" before being exposed to substances listed by the State of  
12 California as causing cancer or reproductive toxicity. H&S Code §25249.6 states, in pertinent  
13 part:

14 No person in the course of doing business shall knowingly and intentionally  
15 expose any individual to a chemical known to the state to cause cancer or  
16 reproductive toxicity without first giving clear and reasonable warning to such  
17 individual....

18 18. Proposition 65 provides that any person "violating or threatening to violate" the  
19 statute may be enjoined in a court of competent jurisdiction. (H&S Code §25249.7.) The phrase  
20 "threatening to violate" is defined to mean creating "a condition in which there is a substantial  
21 likelihood that a violation will occur." (H&S Code §25249.11(e).) Violators are liable for civil  
22 penalties of up to \$2,500 per day for each violation of the Act. (H&S Code §25249.7.)

23 **FACTUAL BACKGROUND**

24 19. On February 27, 1987, the State of California officially listed the chemical lead  
25 as a chemical known to cause reproductive toxicity. Lead became subject to the warning  
26 requirement one year later and was therefore subject to the "clear and reasonable" warning  
requirements of Proposition 65 beginning on February 27, 1988. (27 California Code of  
Regulations ("CCR") §25000, *et seq.*; H&S Code §25249.5, *et seq.*)

1           20.     On October 1, 1992, the State of California officially listed the chemicals lead  
2 and lead compounds as chemicals known to cause cancer. Lead and lead compounds became  
3 subject to the warning requirement one year later and were therefore subject to the "clear and  
4 reasonable" warning requirements of Proposition 65 beginning on October 1, 1993. (27 CCR §  
5 25000, *et seq.*; H&S Code §25249.6, *et seq.*)

6           21.     PLAINTIFF is informed and believes, and based on such information and belief  
7 alleges the PRODUCT has been distributed and/or sold to individuals in California without  
8 clear and reasonable warning since at least September 24, 2007. The PRODUCT continues to  
9 be distributed and sold in California without the requisite warning information.

10          22.     As a proximate result of acts by DEFENDANT(S), as a person in the course of  
11 doing business within the meaning of Health & Safety Code §25249.11, individuals throughout  
12 the State of California, including in the County of Los Angeles, have been exposed to the  
13 LISTED CHEMICALS without clear and reasonable warning. The individuals subject to the  
14 violative exposures include normal and foreseeable users of the PRODUCT, as well as all other  
15 persons exposed to the PRODUCT.

16          23.     At all times relevant to this action, DEFENDANT(S) has knowingly and  
17 intentionally exposed the users and/or handlers of the PRODUCT to LISTED CHEMICALS  
18 without first giving a clear and reasonable warning to such individuals.

19          24.     Individuals using or handling the PRODUCT are exposed to the LISTED  
20 CHEMICALS in excess of the "maximum allowable daily" and "no significant risk" levels  
21 determined by the State of California, as applicable, within the meaning of H&S Code  
22 §25249.10(c).

23          25.     At all times relevant to this action, DEFENDANT(S) has, in the course of doing  
24 business, failed to provide individuals using and/or handling the PRODUCT with a clear and  
25 reasonable warning that the PRODUCT exposes individuals to the LISTED CHEMICALS.

26          26.     The PRODUCT continues to be distributed and sold in California without the  
requisite clear and reasonable warning.

1  
2 **FIRST CAUSE OF ACTION**

3 **(Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.* concerning**  
4 **the PRODUCT described in PLAINTIFF's September 24, 2010 60-Day Notice of**  
5 **Violation)**

6 **Against All DEFENDANT(S) and DOES**

7 27. PLAINTIFF realleges and incorporates by reference Paragraphs 1 through 26,  
8 inclusive, as if specifically set forth herein.

9 28. On September 24, 2010, PLAINTIFF sent a 60-Day Notice of Proposition 65  
10 violations to the requisite public enforcement agencies, and to all defendants ("Notice")  
11 attached hereto as Exhibit A. The Notice was issued pursuant to, and in compliance with, the  
12 requirements of H&S Code §25249.7(d) and the statute's implementing regulations regarding  
13 the notice of the violations to be given to certain public enforcement agencies and to the  
14 violator. The notice given included, *inter alia*, the following information: the name, address,  
15 and telephone number of the noticing individual; the name of the alleged violator; the statute  
16 violated; the approximate time period during which violations occurred; and descriptions of the  
17 violations, including the chemicals involved, the routes of toxic exposure, and the specific  
18 product or type of product causing the violations, and was issued as follows:

19 a. DEFENDANT(S) and the California Attorney General were provided  
20 copies of the Notice by Certified Mail.

21 b. DEFENDANT(S) was provided a copy of a document entitled "The Safe  
22 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A  
23 Summary," which is also known as Appendix A to Title 27 of CCR  
24 §25903.

25 c. The California Attorney General was provided with a Certificate of Merit  
26 by the attorney for the noticing party, stating that there is a reasonable  
and meritorious case for this action, and attaching factual information  
sufficient to establish a basis for the certificate, including the identify of  
the persons consulted with and relied on by the certifier, and the facts

1 studies, or other data reviewed by those persons, pursuant to H&S Code  
2 §25249.7(h) (2).

3 29. The appropriate public enforcement agencies have failed to commence and  
4 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against  
5 DEFENDANT(S) based on the allegations herein.

6 30. By committing the acts alleged in this Complaint DEFENDANT(S) at all times  
7 relevant to this action, and continuing through the present, has violated H&S Code §25249.6 by,  
8 in the course of doing business, knowingly and intentionally exposing individuals who use or  
9 handle the PRODUCT set forth in the Notice to the LISTED CHEMICALS, without first  
10 providing a clear and reasonable warning to such individuals pursuant to H&S Code §§ 25249.6  
11 and 25249.11(f).

12 31. By the above-described acts, DEFENDANT(S) has violated H&S Code §  
13 25249.6 and is therefore subject to an injunction ordering DEFENDANT(S) to stop violating  
14 Proposition 65, to provide warnings to all present and future customers and to provide  
15 warnings to DEFENDANT(S)' past customers who purchased or used the PRODUCT without  
16 receiving a clear and reasonable warning.

17 32. An action for injunctive relief under Proposition 65 is specifically authorized by  
18 Health & Safety Code §25249.7(a).

19 33. Continuing commission by DEFENDANT(S), of the acts alleged above will  
20 irreparably harm the citizens of the State of California, for which harm they have no plain,  
21 speedy, or adequate remedy at law.

22 Wherefore, PLAINTIFF prays judgment against DEFENDANT(S), as set forth  
23 hereafter.  
24  
25  
26

1 **SECOND CAUSE OF ACTION**

2 **(Civil Penalties for Violations of Health and Safety Code § 25249.5, et seq. concerning the**  
3 **PRODUCT described in PLAINTIFF's September 24, 2010 60-Day Notice of Violation)**  
4 **Against all DEFENDANT(S) and DOES**

5 34. PLAINTIFF realleges and incorporates by reference Paragraphs 1 through 33,  
6 inclusive, as if specifically set forth herein.

7 35. On September 24, 2010, PLAINTIFF sent a 60-Day Notice of Proposition 65  
8 violations to the requisite public enforcement agencies, and to DEFENDANT(S) attached hereto  
9 as Exhibit A ("Notice"). The Notice was issued pursuant to, and in compliance with, the  
10 requirements of H&S Code §25249.7(d) and the statute's implementing regulations regarding  
11 the notice of the violations to be given to certain public enforcement agencies and to the  
12 violator. The notice given included, *inter alia*, the following information: the name, address,  
13 and telephone number of the noticing individual; the name of the alleged violator; the statute  
14 violated; the approximate time period during which violations occurred; and descriptions of the  
15 violations, including the chemicals involved, the routes of toxic exposure, and the specific  
16 product or type of product causing the violations, and was issued as follows:

- 17 a. DEFENDANT(S) and the California Attorney General were provided  
18 copies of the Notice by Certified Mail.
- 19 b. DEFENDANT(S) was provided a copy of a document entitled "The Safe  
20 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A  
21 Summary," which is also known as Appendix A to Title 27 of CCR  
22 §25903.
- 23 c. The California Attorney General was provided with a Certificate of Merit  
24 by the attorney for the noticing party, stating that there is a reasonable  
25 and meritorious case for this action, and attaching factual information  
26 sufficient to establish a basis for the certificate, including the identify of  
the persons consulted with and relied on by the certifier, and the facts  
studies, or other data reviewed by those persons, pursuant to H&S Code

1 §25249.7(h) (2).

2 36. The appropriate public enforcement agencies have failed to commence and  
3 diligently prosecute a cause of action under H&S Code §25249.5, *et seq.* against  
4 DEFENDANT(S) based on the allegations herein.

5 37. By committing the acts alleged in this Complaint, DEFENDANT(S) at all times  
6 relevant to this action, and continuing through the present, has violated H&S Code §25249.6 by,  
7 in the course of doing business, knowingly and intentionally exposing individuals who use or  
8 handle the PRODUCT set forth in the Notice to the LISTED CHEMICALS, without first  
9 providing a clear and reasonable warning to such individuals pursuant to H&S Code §§ 25249.6  
10 and 25249.11(f).

11 38. By the above-described acts, DEFENDANT(S) is liable, pursuant to H&S Code  
12 §25249.7(b), for a civil penalty of \$2,500 per day per violation for each unlawful exposure to a  
13 LISTED CHEMICAL from the PRODUCT.

14 Wherefore, PLAINTIFF prays judgment against DEFENDANT(S), as set forth  
15 hereafter.

16 **THE NEED FOR INJUNCTIVE RELIEF**

17 39. PLAINTIFF realleges and incorporates by this reference Paragraphs 1 through  
18 38, as if set forth below.

19 40. By committing the acts alleged in this Complaint, DEFENDANT(S) has caused  
20 irreparable harm for which there is no plain, speedy or adequate remedy at law. In the absence  
21 of equitable relief, DEFENDANT(S) will continue to create a substantial risk of irreparable  
22 injury by continuing to cause consumers to be involuntarily and unwittingly exposed to the  
23 LISTED CHEMICALS through the use and/or handling of the PRODUCT.

24 **PRAYER FOR RELIEF**

25 Wherefore, PLAINTIFF accordingly prays for the following relief:

26 A. a preliminary and permanent injunction, pursuant to H&S Code §25249.7(b),  
enjoining DEFENDANT(S), its agents, employees, assigns and all persons acting in concert or

1 participating with DEFENDANT(S), from distributing or selling the PRODUCT in California  
2 without first providing a clear and reasonable warning, within the meaning of Proposition 65,  
3 that the users and/or handlers of the PRODUCT are exposed to the LISTED CHEMICALS.

4 B. an injunctive order, pursuant to H&S Code §25249.7(b), compelling  
5 DEFENDANT(S) to identify and locate each individual who has purchased the PRODUCT  
6 since September 24, 2007, and to provide a warning to such person that the use of the  
7 PRODUCT will expose the user to chemicals known to cause cancer, birth defects, and other  
8 reproductive harm.

9 C. an assessment of civil penalties pursuant to Health & Safety Code §25249.7(b),  
10 against Defendant in the amount of \$2,500 per day for each violation of Proposition 65;

11 D. an award to PLAINTIFF of its reasonable attorneys fees and costs of suit  
12 pursuant to California Code of Civil Procedure §1021.5, as PLAINTIFF shall specify in further  
13 application to the Court; and,

14 E. such other and further relief as may be just and proper.

15  
16 DATED: 12/8, 2010

LAW OFFICE OF GIDEON KRACOV

  
\_\_\_\_\_  
Gideon Kracov  
Attorneys for Plaintiff  
Environmental Research Center

**EXHIBIT A**



## Environmental Research Center

5694 Mission Center Road #199  
San Diego, CA 92108  
619.309.4194

September 24, 2010

### ***VIA CERTIFIED MAIL***

Current CEO or President  
MD Drinks, Inc.  
2639-A Manhattan Beach Blvd.  
Redondo Beach, CA 90278

Dayton Miller  
(Registered Agent for Service of  
MD Drinks, Inc.)  
138 N Hamilton Drive Apt 8  
Beverly Hills, CA 90211

Current CEO or President  
Function Drinks  
2639-A Manhattan Beach Blvd.  
Redondo Beach, CA 90278

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
P.O. Box 70550  
Oakland, CA 94612-0550

Re: Notice of Violation against MD Drinks, Inc., and Function Drinks for Violation of California Health & Safety Code Section 25249.6

Dear Prosecutors:

The Environmental Research Center ("ERC"), the noticing entity is a California corporation whose mission is to safeguard the public from health hazards that impact families, workers and the environment. ERC is dedicated to reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees and encouraging corporate responsibility. ERC is located at 5694 Mission Center Road, # 199, San Diego, CA 92108. Tel. (619) 309-4194, Executive Director: Chris Heptinstall. Through this Notice of Violation, ERC seeks to reduce exposure to the public from lead that is contained in the named products manufactured and distributed by MD Drinks, Inc., and Function Drinks, Inc.

This letter constitutes notification that MD Drinks, Inc., and Function Drinks, Inc, located at 2639-A Manhattan Beach Blvd, Redondo Beach, CA 90278 have violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code).

In particular, these companies have manufactured and distributed products that have exposed and continue to expose numerous individuals within California to lead. Lead was listed pursuant to Proposition 65 as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987. Lead was listed pursuant to Proposition 65 as a carcinogen on October 1, 1992. The time period of these violations commenced one year after the listed dates above, at least since September 24, 2007, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to purchasers and users.

The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products by consumers. Accordingly, the primary route of exposure for consumers has been oral through ingestion, but may also occur through the inhalation and/or dermal contact route of exposure.

MD Drinks, Inc., and Function Drinks, Inc., are exposing people to lead from the following product:

- Function: Urban Detox Goji Berry

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. MD Drinks, Inc., and Function Drinks, Inc., are in violation of Proposition 65 because the companies failed to provide a warning to persons using their products that they are being exposed to lead. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing people to lead without first providing clear and reasonable warning. (Health and Safety Code section 25249.6.) The method of warning should be a warning that appears on the product's label. 22 C.C.R. section 12601 (b)(1) (A).

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, ERC gives notice of the alleged violation to the noticed party and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to ERC from information now available. ERC may continue to investigate other products that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, and referenced as Appendix A, has been provided to the noticed party.

Based on the allegations set forth in this Notice, ERC intends to file a citizen enforcement action against MD Drinks, Inc., and Function Drinks, Inc. unless it agrees in an enforceable written instrument to: instrument to: (1) recall or reformulate the listed products so as to eliminate further unwarned exposures to the identified chemicals; and (2) pay an appropriate civil penalty. Consistent with the public interest goals of Proposition 65, ERC is interested in seeking a constructive resolution to this matter. Such resolution will avoid both further unwarned consumer exposures to the identified chemicals and expensive and time consuming litigation.

Please direct all questions concerning this notice to ERC's attorney, Gideon Kracov, 801 S. Grand Ave., 11<sup>th</sup> Fl., Los Angeles, CA 90017, 213-629-2071, [gk@gideonlaw.net](mailto:gk@gideonlaw.net).

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

September 24, 2010

Page 3

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Heptinstall", written in a cursive style.

Chris Heptinstall  
Executive Director, Environmental Research Center

cc: Karen A. Evans

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to MD Drinks, Inc., its Registered Agent for Service of Process, and Function Drinks, Inc. Only)

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

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center's Notice of Proposition 65 Violations by MD Drinks, Inc., and Function Drinks.**

I, Gideon Kracov, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.
4. Based on the information obtained through those consultants, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.



Dated: September 24, 2010

\_\_\_\_\_  
Gideon Kracov, Attorney At Law

**CERTIFICATE OF SERVICE**

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

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742

On September 24, 2010, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"**

On the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Current CEO or President  
MD Drinks, Inc.  
2639-A Manhattan Beach Blvd.  
Redondo Beach, CA 90278

Current CEO or President  
Function Drinks  
2639-A Manhattan Beach Blvd.  
Redondo Beach, CA 90278

Dayton Miller  
(Registered Agent for Service of  
MD Drinks, Inc.)  
138 N Hamilton Drive Apt 8  
Beverly Hills, CA 90211

On September 24, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a US Postal Service Office for delivery by Certified Mail:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, CA 94612-0550

On September 24, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties **on the Service List attached hereto**, and depositing it with the U.S. Postal Service for delivery by Priority Mail.

Executed on September 24, 2010, in Fort Oglethorpe, Georgia.



---

Chris Heptinstall

Service List

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

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

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

District Attorney, Butte County  
25 County Center Drive  
Oroville, CA 95965

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

District Attorney, Colusa County  
547 Market Street  
Colusa, CA 95932

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

District Attorney, Del Norte County  
450 H Street, Ste. 171  
Crescent City, CA 95531

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

District Attorney, Fresno County  
2220 Tulare Street, #1000  
Fresno, CA 93721

District Attorney, Glenn County  
Post Office Box 430  
Willows, CA 95988

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

District Attorney, Imperial County  
939 West Main Street, Ste 102  
El Centro, CA 92243

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

District Attorney, Kern County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

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

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

District Attorney, Lassen County  
220 South Lassen Street, Ste. 8  
Susanville, CA 96130

District Attorney, Los Angeles County  
210 West Temple Street, Rm 345  
Los Angeles, CA 90012

District Attorney, Madera County  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney, Marin County  
3501 Civic Center, Room 130  
San Rafael, CA 94903

District Attorney, Mariposa County  
Post Office Box 730  
Mariposa, CA 95338

District Attorney, Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney, Merced County  
2222 M Street  
Merced, CA 95340

District Attorney, Modoc County  
204 S Court Street, Room 202  
Alturas, CA 96101-4020

District Attorney, Mono County  
Post Office Box 617  
Bridgeport, CA 93517

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

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

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

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

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

September 24, 2010

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

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

District Attorney, Riverside County  
4075 Main Street, 1st Floor  
Riverside, CA 92501

District Attorney, Sacramento County  
901 "G" Street  
Sacramento, CA 9581

District Attorney, San Benito County  
419 Fourth Street, 2<sup>nd</sup> Floor  
Hollister, CA 95023

District Attorney, San Bernardino County  
316 N. Mountain View Avenue  
San Bernardino, CA 92415-0004

District Attorney, San Diego County  
330 West Broadway, Room 1300  
San Diego, CA 92101

District Attorney, San Francisco County  
850 Bryant Street, Room 325  
San Francisco, CA 94103

District Attorney, San Joaquin County  
Post Office Box 990  
Stockton, CA 95201

District Attorney, San Luis Obispo County  
1050 Monterey Street, Room 450  
San Luis Obispo, CA 93408

District Attorney, San Mateo County  
400 County Cir., 3<sup>rd</sup> Floor  
Redwood City, CA 94063

District Attorney, Santa Barbara County  
1105 Santa Barbara Street  
Santa Barbara, CA 93101

District Attorney, Santa Clara County  
70 West Hedding Street  
San Jose, CA 95110

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

District Attorney, Shasta County  
1525 Court Street, Third Floor  
Redding, CA 96001-1632

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

District Attorney, Siskiyou County  
Post Office Box 986  
Yreka, CA 96097

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

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

District Attorney, Stanislaus County  
832 12<sup>th</sup> Street, Ste 300  
Modesto, CA 95353

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

District Attorney, Tehama County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity County  
Post Office Box 310  
Weaverville, CA 96093

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

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

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

District Attorney, Yolo County  
301 2<sup>nd</sup> Street  
Woodland, CA 95695

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

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

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

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

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

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  
Gideon Kracov (SBN 179815)  
801 S. Grand Ave., 11th Fl., Los Angeles, CA 90017  
TELEPHONE NO.: 213-629-2071 FAX NO.: 213-623-7755  
ATTORNEY FOR (Name): Environmental Research Center

FOR COURT USE ONLY  
**CONFORMED COPY  
OF ORIGINAL FILED**  
Los Angeles Superior Court  
DEC 08 2010  
John A. Blaine, Executive Officer/Clerk  
By *[Signature]* Deputy  
**DOROTHY SWAIN**

SUPERIOR COURT OF CALIFORNIA, COUNTY OF  
STREET ADDRESS: 111 N. Hill St.  
MAILING ADDRESS: 111 N. Hill St.  
CITY AND ZIP CODE: Los Angeles, CA 90012  
BRANCH NAME: Mosk

CASE NAME:  
Environmental Research Center v. MD Drinks, et al.

**CIVIL CASE COVER SHEET**  
 **Unlimited** (Amount demanded exceeds \$25,000)  **Limited** (Amount demanded is \$25,000 or less)  
 **Counter**  **Joinder**  
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: **BC450837**  
JUDGE:  
DEPT:

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><b>Auto Tort</b></p> <input type="checkbox"/> Auto (22)<br><input type="checkbox"/> Uninsured motorist (46) <p><b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b></p> <input type="checkbox"/> Asbestos (04)<br><input type="checkbox"/> Product liability (24)<br><input type="checkbox"/> Medical malpractice (45)<br><input type="checkbox"/> Other PI/PD/WD (23) <p><b>Non-PI/PD/WD (Other) Tort</b></p> <input type="checkbox"/> Business tort/unfair business practice (07)<br><input type="checkbox"/> Civil rights (08)<br><input type="checkbox"/> Defamation (13)<br><input type="checkbox"/> Fraud (16)<br><input type="checkbox"/> Intellectual property (19)<br><input type="checkbox"/> Professional negligence (25)<br><input type="checkbox"/> Other non-PI/PD/WD tort (35) <p><b>Employment</b></p> <input type="checkbox"/> Wrongful termination (36)<br><input type="checkbox"/> Other employment (15) | <p><b>Contract</b></p> <input type="checkbox"/> Breach of contract/warranty (06)<br><input type="checkbox"/> Rule 3.740 collections (09)<br><input type="checkbox"/> Other collections (09)<br><input type="checkbox"/> Insurance coverage (18)<br><input type="checkbox"/> Other contract (37) <p><b>Real Property</b></p> <input type="checkbox"/> Eminent domain/Inverse condemnation (14)<br><input type="checkbox"/> Wrongful eviction (33)<br><input type="checkbox"/> Other real property (26) <p><b>Unlawful Detainer</b></p> <input type="checkbox"/> Commercial (31)<br><input type="checkbox"/> Residential (32)<br><input type="checkbox"/> Drugs (38) <p><b>Judicial Review</b></p> <input type="checkbox"/> Asset forfeiture (05)<br><input type="checkbox"/> Petition re: arbitration award (11)<br><input type="checkbox"/> Writ of mandate (02)<br><input type="checkbox"/> Other judicial review (39) | <p><b>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</b></p> <input type="checkbox"/> Antitrust/Trade regulation (03)<br><input type="checkbox"/> Construction defect (10)<br><input type="checkbox"/> Mass tort (40)<br><input type="checkbox"/> Securities litigation (28)<br><input checked="" type="checkbox"/> Environmental/Toxic tort (30)<br><input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <p><b>Enforcement of Judgment</b></p> <input type="checkbox"/> Enforcement of judgment (20) <p><b>Miscellaneous Civil Complaint</b></p> <input type="checkbox"/> RICO (27)<br><input type="checkbox"/> Other complaint (not specified above) (42) <p><b>Miscellaneous Civil Petition</b></p> <input type="checkbox"/> Partnership and corporate governance (21)<br><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): 2
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 case. (You may use form CM-015.)

Date: 12/8/10  
Gideon Kracov  
(TYPE OR PRINT NAME)

*[Signature]*  
(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.

SHORT TITLE:  
ERC v. MD Drinks

CASE NUMBER

BC450837

**CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION  
(CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

**This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.**

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL?  YES CLASS ACTION?  YES LIMITED CASE?  YES TIME ESTIMATED FOR TRIAL<sup>5</sup>  HOURS/  DAYS

Item II. Select the correct district and courthouse location (4 steps – If you checked “Limited Case”, skip to Item III, Pg. 4):

**Step 1:** After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column **A**, the Civil Case Cover Sheet case type you selected.

**Step 2:** Check one Superior Court type of action in Column **B** below which best describes the nature of this case.

**Step 3:** In Column **C**, circle the reason for the court location choice that applies to the type of action you have checked. For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

**Applicable Reasons for Choosing Courthouse Location (see Column C below)**

- |   |  |
|---|--|
| 1. Class Actions must be filed in the County Courthouse, Central District.      | 6. Location of property or permanently garaged vehicle.    |
| 2. May be filed in Central (Other county, or no Bodily Injury/Property Damage). | 7. Location where petitioner resides.                      |
| 3. Location where cause of action arose.  | 8. Location wherein defendant/respondent functions wholly. |
| 4. Location where bodily injury, death or damage occurred.                      | 9. Location where one or more of the parties reside.       |
| 5. Location where performance required or defendant resides.                    | 10. Location of Labor Commissioner Office.                 |

**Step 4:** Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	<b>A</b> Civil Case Cover Sheet Category No.	<b>B</b> Type of Action (Check only one)	<b>C</b> Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death – Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage	2.
		<input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons	1., 2., 4.
<input type="checkbox"/> A7240 Other Professional Health Care Malpractice		1., 2., 4.	
Non-Personal Injury/Property Damage/Wrongful Death Tort	Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 2., 4.
		<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 2., 4.
		<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1., 2., 3.
		<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
Business Tort (07)	<input type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	1., 2., 3.	
Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.	
Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.	
Fraud (16)	<input type="checkbox"/> A6013 Fraud (no contract)	1., 2., 3.	

Non-Personal Injury/Property Damage/  
Wrongful Death Tort (Cont'd.)

Employment

Contract

Real Property

Judicial Review Unlawful Detainer

SHORT TITLE: ERC v. MD Drinks	CASE NUMBER
----------------------------------	-------------

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons -See Step 3 Above
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2.,3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 6. 2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation      Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer-Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer-Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

SHORT TITLE: ERC v. MD Drinks	CASE NUMBER
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Judicial Review (Cont'd.)

Provisionally Complex Litigation

Enforcement of Judgment

Miscellaneous Civil Complaints

Miscellaneous Civil Petitions

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus <input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter <input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2., 8. 2. 2.
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ /Judicial Review	2., 8.
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
Construction Defect (10)	<input type="checkbox"/> A6007 Construction defect	1., 2., 3.
Claims Involving Mass Tort (40)	<input type="checkbox"/> A6006 Claims Involving Mass Tort	1., 2., 8.
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
Toxic Tort Environmental (30)	<input checked="" type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment <input type="checkbox"/> A6160 Abstract of Judgment <input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations) <input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes) <input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax <input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 9. 2., 6. 2., 9. 2., 8. 2., 8. 2., 8., 9.
RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only <input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment) <input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex) <input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8. 2., 8. 1., 2., 8. 1., 2., 8.
Partnership Corporation Governance(21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment <input type="checkbox"/> A6123 Workplace Harassment <input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case <input type="checkbox"/> A6190 Election Contest <input type="checkbox"/> A6110 Petition for Change of Name <input type="checkbox"/> A6170 Petition for Relief from Late Claim Law <input type="checkbox"/> A6100 Other Civil Petition	2., 3., 9. 2., 3., 9. 2., 3., 9. 2. 2., 7. 2., 3., 4., 8. 2., 9.

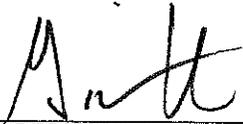
SHORT TITLE: ERC v. MD Drinks	CASE NUMBER
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Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE		ADDRESS: 111 N. Hill St.	
<input type="checkbox"/> 1. <input checked="" type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.			
CITY: LA	STATE: CA	ZIP CODE: 90012	

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the Mosk courthouse in the Central District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subds. (b), (c) and (d)).

Dated: 12/8/10

  
 (SIGNATURE OF ATTORNEY/FILING PARTY)

**PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:**

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LACIV 109 (Rev. 01/07), LASC Approved 03-04.
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form FL-935, if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.