



Superior Court of California
County of Alameda

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse
1225 Fallon Street
Oakland, CA 94612

Receipt Nbr: 625638
Clerk: lstaley
Date: 11/06/2014

Type	Case Number	Description	Amount
Filing	RG14747245	Complaint - Other	\$435.00

Total Amount Due: \$435.00
Prior Payment:
Current Payment: \$435.00
Balance Due: \$.00
Overage:
Excess Fee:
Change:

Payment Method:
Cash:
Check: \$435.00

**SUMMONS
(CITACION JUDICIAL)**

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

YOR HEALTH PRODUCTS, LLC and DOES 1- 25

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

ENVIRONMENTAL RESEARCH CENTER, INC., a non-profit
California corporation

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

**ENDORSED
FILED
ALAMEDA COUNTY**

NOV 06 2014

CLERK OF THE SUPERIOR COURT
By Louis Staley, Jr.

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 puede 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. Puede encontrar estos grupos 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.

The name and address of the court is:
(El nombre y dirección de la corte es): Rene C. Davidson Courthouse
1225 Fallon Street
Oakland, CA 94612

CASE NUMBER:
(Número del Caso) **RG 1 4 7 4 7 2 4 5**

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):
Matthew C. Maclear, 7425 Fairmount Ave., El Cerrito, CA 94530 (415)568-5200

DATE: November 6, 2014
(Fecha)

Clerk, by
(Secretario)

Louis Staley, Jr., Deputy
(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)).

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):

[SEAL]

1 MATTHEW C. MACLEAR (SBN 209228)
2 AQUA TERRA AERIS LAW GROUP
3 7425 Fairmount Ave.
4 El Cerrito, CA 94530
5 Ph: 415-568-5200
6 Email: mcm@atalawgroup.com

7 Attorney for Plaintiff
8 ENVIRONMENTAL RESEARCH CENTER, INC.

ENDORSED
FILED
ALAMEDA COUNTY

NOV 06 2014

CLERK OF THE SUPERIOR COURT
By Louis Staley, Jr.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 ENVIRONMENTAL RESEARCH CENTER,)
12 INC., a non-profit California corporation,)

13 Plaintiff,

14 v.

15 YOR HEALTH PRODUCTS, LLC, a)
16 California limited liability company, and)
17 DOES 1 - 25,)

18 Defendants.

Case No. **RG 14747245**

**COMPLAINT FOR PERMANENT
INJUNCTION, CIVIL PENALTIES AND
OTHER RELIEF**

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

19 Plaintiff Environmental Research Center, Inc. ("PLAINTIFF" or "ERC") brings this
20 action in the interests of the general public and, on information and belief, hereby alleges:

21 **INTRODUCTION**

22 1. This action seeks to remedy the continuing failure of Defendant YOR HEALTH
23 PRODUCTS, LLC ("YOR HEALTH") and Does 1-25 (hereinafter individually referred to as
24 "DEFENDANT" or collectively as "DEFENDANTS") to warn consumers in California that they
25 are being exposed to lead, a substance known to the State of California to cause cancer, birth
26 defects, and other reproductive harm. According to the Safe Drinking Water and Toxics
27 Enforcement Act of 1986, Health and Safety Code ("H&S Code") section 25249.5 (also known
28 as and referred to hereinafter as "Proposition 65"), businesses must provide persons with a "clear
and reasonable warning" before exposing individuals to chemicals known to the state to cause

COMPLAINT FOR PERMANENT INJUNCTION, CIVIL PENALTIES AND OTHER RELIEF

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address).
Matthew C. Maclear
Aqua Terra Aeris Law Group
7425 Fairmount Ave.
El Cerrito, CA 94530
TELEPHONE NO.: 415.568.5200 FAX NO:
ATTORNEY FOR (Name): Environmental Research Center, Inc. (ERC)

FOR COURT USE ONLY

ENDORSED
FILED
ALAMEDA COUNTY

NOV 06 2014

CLERK OF THE SUPERIOR COURT
By Louis Staley, Jr.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda
STREET ADDRESS: 1225 Fallon St.
MAILING ADDRESS:
CITY AND ZIP CODE: Oakland, CA 94612
BRANCH NAME: Rene C. Davidson

CASE NAME:
Environmental Research Center, Inc. v. Yor Health Products, LLC et al.

CASE NUMBER: RG14747245

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)

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:
- | | | |
|--|--|---|
| Auto Tort
<input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
<input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PI/PD/WD (23)
Non-PI/PD/WD (Other) Tort
<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)
Employment
<input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | Contract
<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)
Real Property
<input type="checkbox"/> Eminent domain/inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
Judicial Review
<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) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)
<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)
Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20)
Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input checked="" type="checkbox"/> Other complaint (not specified above) (42)
Miscellaneous Civil Petition
<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):
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: November 6, 2014
Matthew C. Maclear
(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.

**SUMMONS
(CITACION JUDICIAL)**

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YOR HEALTH PRODUCTS, LLC and DOES 1- 25

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(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

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(El nombre y dirección de la corte es): **Rene C. Davidson Courthouse**
1225 Fallon Street
Oakland, CA 94612

CASE NUMBER:
(Número del Caso):

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):
Matthew C. Maclear, 7425 Fairmount Ave., El Cerrito, CA 94530 (415)568-5200

DATE: November 6, 2014
(Fecha)

Clerk, by
(Secretario)

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

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- 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):

(SEAL)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Matthew C. Maclear Aqua Terra Aeris Law Group 7425 Fairmount Ave. El Cerrito, CA 94530 TELEPHONE NO.: 415.568.5200 FAX NO.: ATTORNEY FOR (Name): Environmental Research Center, Inc. (ERC)	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon St. MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Rene C. Davidson	
CASE NAME: Environmental Research Center, Inc. v. Yor Health Products, LLC et al.	
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)	Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
	CASE NUMBER: 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:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort <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) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <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) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <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)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <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) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input checked="" type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 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 |
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3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
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Date: November 6, 2014
 Matthew C. Maclear

 (TYPE OR PRINT NAME)



 (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

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Short Title:

ERC v. YOR HEALTH PRODUCTS, LLC

Case Number:

CIVIL CASE COVER SHEET ADDENDUM

THIS FORM IS REQUIRED IN ALL NEW UNLIMITED CIVIL CASE FILINGS IN THE
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Oakland, Rene C. Davidson Alameda County Courthouse (446) Hayward Hall of Justice (447)
 Pleasanton, Gale-Schenone Hall of Justice (448)

Civil Case Cover Sheet Category	Civil Case Cover Sheet Case Type	Alameda County Case Type (check only one)	
Auto Tort	Auto Tort (22)	<input type="checkbox"/> 34 Auto tort (G)	
Is this an uninsured motorist case? <input type="checkbox"/> yes <input type="checkbox"/> no			
Other PI /PD / WD Tort	Asbestos (04)	<input type="checkbox"/> 75 Asbestos (D)	
	Product liability (24)	<input type="checkbox"/> 89 Product liability (<u>not</u> asbestos or toxic tort/environmental) (G)	
	Medical malpractice (45)	<input type="checkbox"/> 97 Medical malpractice (G)	
	Other PI/PD/WD tort (23)	<input type="checkbox"/> 33 Other PI/PD/WD tort (G)	
Non - PI /PD / WD Tort	Bus tort / unfair bus. practice (07)	<input type="checkbox"/> 79 Bus tort/ unfair bus. practice (G)	
	Civil rights (08)	<input type="checkbox"/> 80 Civil rights (G)	
	Defamation (13)	<input type="checkbox"/> 84 Defamation (G)	
	Fraud (16)	<input type="checkbox"/> 24 Fraud (G)	
	Intellectual property (19)	<input type="checkbox"/> 87 Intellectual property (G)	
	Professional negligence (25)	<input type="checkbox"/> 59 Professional negligence - non-medical (G)	
	Other non-PI/PD/WD tort (35)	<input checked="" type="checkbox"/> 03 Other non-PI/PD/WD tort (G)	
Employment	Wrongful termination (36)	<input type="checkbox"/> 38 Wrongful termination (G)	
	Other employment (15)	<input type="checkbox"/> 85 Other employment (G)	
		<input type="checkbox"/> 53 Labor comm award confirmation	
		<input type="checkbox"/> 54 Notice of appeal - L.C.A.	
Contract	Breach contract / Wrnty (06)	<input type="checkbox"/> 04 Breach contract / Wrnty (G)	
	Collections (09)	<input type="checkbox"/> 81 Collections (G)	
	Insurance coverage (18)	<input type="checkbox"/> 86 Ins. coverage - non-complex (G)	
	Other contract (37)	<input type="checkbox"/> 98 Other contract (G)	
Real Property	Eminent domain / Inv Cdm (14)	<input type="checkbox"/> 18 Eminent domain / Inv Cdm (G)	
	Wrongful eviction (33)	<input type="checkbox"/> 17 Wrongful eviction (G)	
	Other real property (26)	<input type="checkbox"/> 36 Other real property (G)	
Unlawful Detainer	Commercial (31)	<input type="checkbox"/> 94 Unlawful Detainer - commercial	Is the deft. in possession of the property? <input type="checkbox"/> Yes <input type="checkbox"/> No
	Residential (32)	<input type="checkbox"/> 47 Unlawful Detainer - residential	
	Drugs (38)	<input type="checkbox"/> 21 Unlawful Detainer - drugs	
Judicial Review	Asset forfeiture (05)	<input type="checkbox"/> 41 Asset forfeiture	
	Petition re: arbitration award (11)	<input type="checkbox"/> 62 Pet. re: arbitration award	
	Writ of Mandate (02)	<input type="checkbox"/> 49 Writ of mandate	
	Other judicial review (39)	<input type="checkbox"/> 64 Other judicial review	Is this a CEQA action (Publ.Res.Code section 21000 et seq) <input type="checkbox"/> Yes <input type="checkbox"/> No
Provisionally Complex	Antitrust / Trade regulation (03)	<input type="checkbox"/> 77 Antitrust / Trade regulation	
	Construction defect (10)	<input type="checkbox"/> 82 Construction defect	
	Claims involving mass tort (40)	<input type="checkbox"/> 78 Claims involving mass tort	
	Securities litigation (28)	<input type="checkbox"/> 91 Securities litigation	
	Toxic tort / Environmental (30)	<input type="checkbox"/> 93 Toxic tort / Environmental	
	Ins covrg from cmplx case type (41)	<input type="checkbox"/> 95 Ins covrg from complex case type	
Enforcement of Judgment	Enforcement of judgment (20)	<input type="checkbox"/> 19 Enforcement of judgment	
		<input type="checkbox"/> 08 Confession of judgment	
Misc Complaint	RICO (27)	<input type="checkbox"/> 08 RICO (G)	
	Partnership / Corp. governance (21)	<input type="checkbox"/> 08 Partnership / Corp. governance (G)	
	Other complaint (42)	<input type="checkbox"/> 08 All other complaints (G)	
Misc. Civil Petition	Other petition (43)	<input type="checkbox"/> 06 Change of name	
		<input type="checkbox"/> 69 Other petition	

1 MATTHEW C. MACLEAR (SBN 209228)
AQUA TERRA AERIS LAW GROUP
2 7425 Fairmount Ave.
El Cerrito, CA 94530
3 Ph: 415-568-5200
Email: mcm@atalawgroup.com

4 Attorney for Plaintiff
5 ENVIRONMENTAL RESEARCH CENTER, INC.

6
7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA

10
11 ENVIRONMENTAL RESEARCH CENTER,)
INC., a non-profit California corporation,)

12 Plaintiff,

13 v.

14 YOR HEALTH PRODUCTS, LLC, a)
15 California limited liability company, and)
16 DOES 1 – 25,)

17 Defendants.

Case No. _____

**COMPLAINT FOR PERMANENT
INJUNCTION, CIVIL PENALTIES AND
OTHER RELIEF**

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

18 Plaintiff Environmental Research Center, Inc. (“PLAINTIFF” or “ERC”) brings this
19 action in the interests of the general public and, on information and belief, hereby alleges:

20 **INTRODUCTION**

21 1. This action seeks to remedy the continuing failure of Defendant YOR HEALTH
22 PRODUCTS, LLC (“YOR HEALTH”) and Does 1-25 (hereinafter individually referred to as
23 “DEFENDANT” or collectively as “DEFENDANTS”) to warn consumers in California that they
24 are being exposed to lead, a substance known to the State of California to cause cancer, birth
25 defects, and other reproductive harm. According to the Safe Drinking Water and Toxics
26 Enforcement Act of 1986, Health and Safety Code (“H&S Code”) section 25249.5 (also known
27 as and referred to hereinafter as “Proposition 65”), businesses must provide persons with a “clear
28 and reasonable warning” before exposing individuals to chemicals known to the state to cause

1 cancer or reproductive harm. DEFENDANTS manufacture, package, distribute, market, and/or
2 sell in California certain products containing lead (the "PRODUCTS"):

- 3 • YOR Health YOR Complete Burn
- 4 • YOR Health YOR Essential Vitamin
- 5 • YOR Health YOR SuperGreens Concentrated Formula
- 6 • YOR Health YOR MRP Meal Replacement Chocolate

7 2. Lead (hereinafter, the "LISTED CHEMICAL") is a substance known to the State
8 of California to cause cancer, birth defects, and other reproductive harm.

9 3. The use and/or handling of the PRODUCTS causes exposures to the LISTED
10 CHEMICAL at levels requiring a "clear and reasonable warning" under Proposition 65.
11 DEFENDANTS exposed consumers, users and handlers to the LISTED CHEMICAL and have
12 failed to provide the health hazard warnings required by Proposition 65.

13 4. DEFENDANTS' continued manufacturing, packaging, distributing, marketing
14 and/or sales of the PRODUCTS without the required health hazard warnings, causes individuals
15 to be involuntarily, unknowingly and unwittingly exposed to levels of the LISTED CHEMICAL
16 that violate Proposition 65.

17 **PARTIES**

18 5. PLAINTIFF is a non-profit corporation organized under California Law. ERC is
19 dedicated to, among other causes, reducing the use and misuse of hazardous and toxic
20 substances, consumer protection, worker safety, and corporate responsibility.

21 6. ERC is a person within the meaning of H&S Code §25249.11 and brings this
22 enforcement action in the public interest pursuant to H&S Code §25249.7(d). H&S Code §
23 25249.7 (d) specifies that actions to enforce Proposition 65 may be brought by a person in the
24 public interest, provided certain notice requirements and no other public prosecutor is diligently
25 prosecuting an action for the same violation(s).

26 7. YOR HEALTH is now, and was at all times relevant herein, a limited liability
27 company organized under the laws of California and is doing business within the meaning of
28 H&S Code §25249.11.

1 8. DEFENDANTS own, administer, direct, control and/or operate facilities and/or
2 agents, distributors sellers, marketers or other retail operations who place its PRODUCTS into
3 the stream of commerce in California (including but not limited to Alameda County) under the
4 brand name YOR Health® and other brand names, which contain the LISTED CHEMICAL
5 without first giving clear and reasonable warnings.

6 9. DEFENDANTS, separately and each of them, are or were, at all times relevant to
7 the claims in this Complaint and continuing through the present, legally responsible for
8 compliance with the provisions of Proposition 65. Whenever an allegation regarding any act of
9 a DEFENDANT is made herein, such allegation shall be deemed to mean that DEFENDANT, or
10 its agent, officer, director, manager, supervisor or employee did or so authorized such acts while
11 engaged in the affairs of DEFENDANT's business operations and/or while acting within the
12 course and scope of their employment or while conducting business for DEFENDANT(S) for a
13 commercial purpose.

14 10. In this Complaint, when reference is made to any act of a DEFENDANT, such
15 allegation shall mean that the owners, officers, directors, agents, employees, contractors, or
16 representatives of DEFENDANT acted or authorized such actions, and/or negligently failed and
17 omitted to act or adequately and properly supervise, control or direct its employees and agents
18 while engaged in the management, direction, operation or control of the affairs of the business
19 organization. Whenever reference is made to any act of any DEFENDANT, such allegation shall
20 be deemed to mean the act of each DEFENDANT acting individually, jointly and severally as
21 defined by Civil Code Section 1430 *et seq.*

22 11. PLAINTIFF does not know the true names, capacities and liabilities of
23 Defendants DOES Nos. 1-25, inclusive, and therefore sues them under fictitious names.
24 PLAINTIFF will amend this Complaint to allege the true name and capacities of the DOE
25 Defendants upon being ascertained. Each of these Defendants was in some way legally
26 responsible for the acts, omissions and/or violations alleged herein.

1 **JURISDICTION AND VENUE**

2 12. 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 except
4 those given by statute to other trial courts." The statute under which this action is brought does
5 not specify any other court with jurisdiction.

6 13. This Court has jurisdiction over DEFENDANTS because they are business
7 entities that do sufficient business, have sufficient minimum contacts in California or otherwise
8 intentionally avail themselves of the California market, through the sale, marketing and use of
9 its PRODUCTS in California, to render the exercise of jurisdiction over them by the California
10 courts consistent with traditional notions of fair play and substantial justice.

11 14. Venue in this action is proper in the Alameda County Superior Court because the
12 cause, or part thereof, arises in the County of Alameda since DEFENDANTS' products are
13 marketed, offered for sale, sold, used, and/or consumed in this county.

14 **STATUTORY BACKGROUND**

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

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

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

25 17. An exposure to a chemical in a consumer product is one "which results from a
26 person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a
27 consumer good, or any exposure that results from receiving a consumer service." (Cal. Code
28 Regs., tit. 22, § 12601, subd. (b).)

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

6 **FACTUAL BACKGROUND**

7 19. On February 27, 1987, the State of California officially listed lead as a chemical
8 known to cause reproductive toxicity. Lead became subject to the warning requirement one year
9 later and was therefore subject to the "clear and reasonable" warning requirements of Proposition
10 65 beginning on February 27, 1988. (27 California Code of Regulations ("CCR") §25000, *et*
11 *seq.*; H&S Code §25249.5, *et seq.*).

12 20. On October 1, 1992, the State of California officially listed lead and lead
13 compounds as chemicals known to cause cancer. Lead and lead compounds became subject to
14 the warning requirement one year later and were therefore subject to the "clear and reasonable"
15 warning requirements of Proposition 65 beginning on October 1, 1993. (27 CCR § 25000, *et*
16 *seq.*; H&S Code §25249.6, *et seq.*). Due to the high toxicity of lead, the maximum allowable
17 dose level for lead is 0.5 ug/day (micrograms a day) for reproductive toxicity and the no
18 significant risk level for carcinogens is 15ug/day (oral).

19 21. To test DEFENDANTS' PRODUCTS for lead, PLAINTIFF hired a well-
20 respected and accredited testing laboratory that designed the testing protocol used and approved
21 by the California Attorney General years ago for testing heavy metals. The results of testing
22 undertaken by PLAINTIFF of DEFENDANTS' PRODUCTS show that the PRODUCTS tested
23 were in violation of the 0.5 ug/day and/or 15 ug/day "safe harbor" daily dose limits set forth in
24 Proposition 65's regulations. Very significant is the fact that people are being exposed to lead
25 through ingestion as opposed to other not as harmful methods of exposure such as dermal
26 exposure. Ingestion of lead produces much higher exposure levels and health risks than does
27 dermal exposure to this chemical.

28 22. At all times relevant to this action, DEFENDANTS, therefore, have knowingly

1 and intentionally exposed the users, consumers and/or handlers of the PRODUCTS to the
2 LISTED CHEMICAL without first giving a clear and reasonable warning to such individuals.

3 23. The PRODUCTS have allegedly been sold by DEFENDANTS for use in
4 California since at least August 29, 2011. The PRODUCTS continue to be distributed and sold
5 in California without the requisite warning information.

6 24. On August 29, 2014, ERC served DEFENDANTS and each of the appropriate
7 public enforcement agencies with a document entitled "Notice of Violations of California Health
8 & Safety Code Section 25249.5" that provided DEFENDANTS and the public enforcement
9 agencies with notice that DEFENDANTS were in violation of Proposition 65 for failing to warn
10 purchasers and individuals using the PRODUCTS that the use of the PRODUCTS exposes them
11 to lead, a chemical known to the State of California to cause cancer and/or reproductive toxicity
12 ("Prop. 65 Notice"). A true and correct copy of the **60-Day Notice is attached hereto as Exhibit**
13 **A**, is hereby incorporated by reference, and is available on the Attorney General's website
14 located at <http://oag.ca.gov/prop65>.

15 25. As a proximate result of acts by DEFENDANTS, as persons in the course of doing
16 business within the meaning of Health & Safety Code §25249.11, individuals throughout the
17 State of California, including in the County of Alameda have been exposed to the LISTED
18 CHEMICAL without a clear and reasonable warning on the PRODUCTS. The individuals
19 subject to the violative exposures include normal and foreseeable users of the PRODUCTS, as
20 well as all other persons exposed to the PRODUCTS.

21 26. On August 29, 2014, Plaintiff sent a 60-Day Notice of Proposition 65 violations
22 ("NOTICE") to the requisite public enforcement agencies, and to YOR HEALTH. The NOTICE
23 was issued pursuant to, and in compliance with, the requirements of H&S Code §25249.7(d) and
24 the statute's implementing regulations regarding the notice of the violations to be given to certain
25 public enforcement agencies and to the violator. The NOTICE included, *inter alia*, the following
26 information: the name, address, and telephone number of the noticing individual; the name of
27 the alleged violator; the statute violated; the approximate time period during which violations
28 occurred; and descriptions of the violations including the chemicals involved, the routes of toxic

1 exposure, and the specific product or type of product causing the violations.

2 27. YOR HEALTH was provided copies of the NOTICE and the document entitled
3 "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,"
4 which is also known as Appendix A to Title 27 of CCR §25903, via Certified Mail.

5 28. The California Attorney General was provided a copy of the NOTICE and a
6 Certificate of Merit by the attorney for the noticing party, stating that there is a reasonable and
7 meritorious case for this action, and attaching factual information sufficient to establish a basis
8 for the certificate, including the identity of the persons consulted with and relied on by the
9 certifier, and the facts, studies, or other data reviewed by those persons, pursuant to H&S Code
10 §25249.7(h) (2) via online submission.

11 29. After expiration of the sixty (60) day notice period, The appropriate public
12 enforcement agencies have failed to commence and diligently prosecute a cause of action under
13 H&S Code §25249.5, *et seq.* against DEFENDANTS based on the allegations herein.

14
15 **FIRST CAUSE OF ACTION**
16 **(Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.* concerning**
17 **the PRODUCTS described in the August 29, 2014, Prop. 65 Notice of Violation)**
18 **Against DEFENDANTS**

19 30. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 29,
20 inclusive, as if specifically set forth herein.

21 31. By committing the acts alleged in this Complaint, DEFENDANTS at all times
22 relevant to this action, and continuing through the present, have violated H&S Code §25249.6 by,
23 in the course of doing business, knowingly and intentionally exposing individuals in California
24 to chemicals known to the State of California to cause cancer or reproductive toxicity without
25 first giving clear and reasonable warnings to such persons who use, consume or handle the
26 PRODUCTS containing the LISTED CHEMICAL, pursuant to H&S Code §§ 25249.6 and
27 25249.11(f).

28 32. By the above-described acts, DEFENDANTS have violated H&S Code § 25249.6
and are therefore subject to preliminary and permanent injunctions ordering DEFENDANTS to

1 stop violating Proposition 65, to provide warnings to all present and future customers, and to
2 provide warnings to DEFENDANTS' past customers who purchased or used the PRODUCTS
3 without receiving a clear and reasonable warning.

4 33. An action for injunctive relief under Proposition 65 is specifically authorized by
5 H&S Code §25249.7(a).

6 34. Continuing commission by DEFENDANTS of the acts alleged above will
7 irreparably harm the citizens of the State of California, for which harm they have no plain, speedy,
8 or adequate remedy at law.

9 35. In the absence of preliminary and then permanent injunctive relief,
10 DEFENDANTS will continue to create a substantial risk of irreparable injury by continuing to
11 cause consumers to be involuntarily, unknowingly and unwittingly exposed to the LISTED
12 CHEMICAL through the use, consumption and/or handling of the PRODUCTS.

13 **SECOND CAUSE OF ACTION**

14 **(Civil Penalties for Violations of Health and Safety Code § 25249.5, *et seq.* concerning the**
15 **PRODUCTS described in the August 29, 2014, Prop. 65 Notice of Violation)**
16 **Against DEFENDANTS**

17 36. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 35,
18 inclusive, as if specifically set forth herein.

19 37. By committing the acts alleged in this Complaint, DEFENDANTS at all times
20 relevant to this action, and continuing through the present, have violated H&S Code §25249.6 by,
21 in the course of doing business, knowingly and intentionally exposing individuals in California to
22 chemicals known to the State of California to cause cancer or reproductive toxicity without first
23 giving clear and reasonable warnings to such persons who use, consume or handle the PRODUCTS
24 containing the LISTED CHEMICAL, pursuant to H&S Code §§ 25249.6 and 25249.11(f).

25 38. By the above-described acts, DEFENDANTS are liable, pursuant to H&S Code
26 §25249.7(b), for a civil penalty of up to \$2,500 per day per violation for each unlawful exposure
27 to the LISTED CHEMICAL from the PRODUCTS, in an amount in excess of \$1 million.

28 **PRAYER FOR RELIEF**

Wherefore, PLAINTIFF prays for the following relief:

1 A. A preliminary and permanent injunction, pursuant to H&S Code §25249.7(b),
2 enjoining DEFENDANTS, their agents, employees, assigns and all persons acting in concert or
3 participating with DEFENDANTS, from manufacturing, distributing, marketing or selling the
4 PRODUCTS in California without first providing a clear and reasonable warning, within the
5 meaning of Proposition 65, that the users and/or handlers of the PRODUCTS are exposed to the
6 LISTED CHEMICAL;

7 B. An injunctive order, pursuant to H&S Code §25249.7(b), compelling
8 DEFENDANTS to identify and locate each individual who has purchased the PRODUCTS since
9 August 29, 2011, and to provide a warning to such person that the use of the PRODUCTS will
10 expose the user to chemicals known to cause cancer, birth defects, and other reproductive harm;

11 C. An assessment of civil penalties pursuant to Health & Safety Code §25249.7(b),
12 against DEFENDANTS in the amount of \$2,500 per day for each violation of Proposition 65, in
13 an amount in excess of \$1 million, according to proof;

14 D. An award to PLAINTIFF of its reasonable attorney's fees and costs of suit
15 pursuant to California Code of Civil Procedure §§ 1032 *et. seq* and 1021.5, as PLAINTIFF shall
16 specify in further applications to the Court; and,

17 E. Such other and further relief as may be just and proper.

18
19 DATED: November 6, 2014

AQUA TERRA AERIS LAW GROUP

20
21 

22 Matthew C. Maclear
23 Attorney for Plaintiff
24 Environmental Research Center, Inc.



Superior Court of California, County of Alameda Alternative Dispute Resolution (ADR) Information Packet

The person who files a civil lawsuit (plaintiff) must include the ADR Information Packet with the complaint when serving the defendant. Cross complainants must serve the ADR Information Packet on any new parties named to the action.

The Court *strongly encourages* the parties to use some form of ADR before proceeding to trial. You may choose ADR by:

- Indicating your preference on Case Management Form CM-110;
- Filing the Stipulation to ADR and Delay Initial Case Management Conference for 90 Days (a local form included with the information packet); or
- Agree to ADR at your Initial Case Management Conference.

QUESTIONS? Call (510) 891-6055. Email adrprogram@alameda.courts.ca.gov
Or visit the court's website at <http://www.alameda.courts.ca.gov/adr>

What Are The Advantages Of Using ADR?

- **Faster** – Litigation can take years to complete but ADR usually takes weeks or months.
- **Cheaper** – Parties can save on attorneys' fees and litigation costs.
- **More control and flexibility** – Parties choose the ADR process appropriate for their case.
- **Cooperative and less stressful** – In mediation, parties cooperate to find a mutually agreeable resolution.
- **Preserve Relationships** – A mediator can help you effectively communicate your interests and point of view to the other side. This is an important benefit when you want to preserve a relationship.

What Is The Disadvantage Of Using ADR?

- **You may go to court anyway** – If you cannot resolve your dispute using ADR, you may still have to spend time and money resolving your lawsuit through the courts.

What ADR Options Are Available?

- **Mediation** – A neutral person (mediator) helps the parties communicate, clarify facts, identify legal issues, explore settlement options, and agree on a solution that is acceptable to all sides.
 - **Court Mediation Program:** Mediators do not charge fees for the first two hours of mediation. If parties need more time, they must pay the mediator's regular fees.

Some mediators ask for a deposit before mediation starts which is subject to a refund for unused time.

- **Private Mediation:** This is mediation where the parties pay the mediator's regular fees and may choose a mediator outside the court's panel.
- **Arbitration** – A neutral person (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 is effective when the parties want someone other than themselves to decide the outcome.
 - **Judicial Arbitration Program (non-binding):** The judge can refer a case or the parties can agree to use judicial arbitration. The parties select an arbitrator from a list provided by the court. If the parties cannot agree on an arbitrator, one will be assigned by the court. There is no fee for the arbitrator. The arbitrator must send the decision (award of the arbitrator) to the court. The parties have the right to reject the award and proceed to trial.
 - **Private Arbitration (binding and non-binding)** occurs when parties involved in a dispute either agree or are contractually obligated. This option takes place outside of the courts and is normally binding meaning the arbitrator's decision is final.

Mediation Service Programs In Alameda County

Low cost mediation services are available through non-profit community organizations. Trained volunteer mediators provide these services. Contact the following organizations for more information:

SEEDS Community Resolution Center

2530 San Pablo Avenue, Suite A, Berkeley, CA 94702-1612

Telephone: (510) 548-2377 Website: www.seedscrc.org

Their mission is to provide mediation, facilitation, training and education programs in our diverse communities – **S**ervices that **E**ncourage **E**ffective **D**ialogue and **S**olution-making.

Center for Community Dispute Settlement

291 McLeod Street, Livermore, CA 94550

Telephone: (925) 373-1035 Website: www.trivalleymediation.com

CCDS provides services in the Tri-Valley area for all of Alameda County.

For Victim/Offender Restorative Justice Services

Catholic Charities of the East Bay: Oakland

433 Jefferson Street, Oakland, CA 94607

Telephone: (510) 768-3100 Website: www.cceb.org

Mediation sessions involve the youth, victim, and family members work toward a mutually agreeable restitution agreement.

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, State Bar number, and address</i>) TELEPHONE NO.: _____ FAX NO. (<i>Optional</i>): _____ E-MAIL ADDRESS (<i>Optional</i>): _____ ATTORNEY FOR (<i>Name</i>): _____	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, ALAMEDA COUNTY STREET ADDRESS: _____ MAILING ADDRESS: _____ CITY AND ZIP CODE: _____ BRANCH NAME: _____	
PLAINTIFF/PETITIONER: _____ DEFENDANT/RESPONDENT: _____	
STIPULATION TO ATTEND ALTERNATIVE DISPUTE RESOLUTION (ADR) AND DELAY INITIAL CASE MANAGEMENT CONFERENCE FOR 90 DAYS	CASE NUMBER: _____

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

This stipulation is effective when:

- All parties have signed and filed this stipulation with the Case Management Conference Statement at least 15 days before the initial case management conference.
- A copy of this stipulation has been received by the ADR Program Administrator, 1225 Fallon Street, Oakland, CA 94612.

1. Date complaint filed: _____ . An **Initial Case Management Conference** is scheduled for:

Date: _____ Time: _____ Department: _____

2. Counsel and all parties certify they have met and conferred and have selected the following ADR process (*check one*):

- | | |
|--|---|
| <input type="checkbox"/> Court mediation | <input type="checkbox"/> Judicial arbitration |
| <input type="checkbox"/> Private mediation | <input type="checkbox"/> Private arbitration |

3. All parties agree to complete ADR within 90 days and certify that:

- a. No party to the case has requested a complex civil litigation determination hearing;
- b. All parties have been served and intend to submit to the jurisdiction of the court;
- c. All parties have agreed to a specific plan for sufficient discovery to make the ADR process meaningful;
- d. Copies of this stipulation and self-addressed stamped envelopes are provided for returning endorsed filed stamped copies to counsel and all parties;
- e. Case management statements are submitted with this stipulation;
- f. All parties will attend ADR conferences; and,
- g. The court will not allow more than 90 days to complete ADR.

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

Date:

_____ (TYPE OR PRINT NAME)	▶	_____ (SIGNATURE OF PLAINTIFF)
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Date:

_____ (TYPE OR PRINT NAME)	▶	_____ (SIGNATURE OF ATTORNEY FOR PLAINTIFF)
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PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER.:
--	---------------

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF DEFENDANT)

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF ATTORNEY FOR DEFENDANT)