

SUMMONS (CITACION JUDICIAL)

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

ENDORSED
FILED
ALAMEDA COUNTY

AUG 11 2014

CLERK OF THE SUPERIOR COURT
By Alex Moyle

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

TRUESTAR HEALTH, INC., TRUESTAR HEALTH (U.S.)
HOLDINGS, INC., AND Does 1- 25

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

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

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

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. 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): **RG14736271**

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: August 11, 2014
(Fecha)

Clerk, by **Alex Moyle**, 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

Leah T. Wilson

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date):

EXECUTIVE OFFICER/CLERK

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
 AUG 11 2014
 CLERK OF THE SUPERIOR COURT
 By Alex Moyle

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. TrueStar Health, Inc., 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:
RG14736271
 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>Auto Tort</p> <input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46) <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input type="checkbox"/> Other PI/PD/WD (23) <p>Non-PI/PD/WD (Other) Tort</p> <input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PD/WD tort (35) <p>Employment</p> <input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | <p>Contract</p> <input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37) <p>Real Property</p> <input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26) <p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38) <p>Judicial Review</p> <input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | <p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20) <p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27)
<input checked="" type="checkbox"/> Other complaint (not specified above) (42) <p>Miscellaneous Civil Petition</p> <input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|---|---|--|

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input type="checkbox"/> Large number of witnesses |
| b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify):
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: August 11, 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.

F. ADDENDUM TO CIVIL CASE COVER SHEET

Short Title: **ERC v. TRUESTAR HEALTH, Inc., et al.** Case Number: **RG 14736271**

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 (not 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)	
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"/> 90 RICO (G)	
	Partnership / Corp. governance (21)	<input type="checkbox"/> 88 Partnership / Corp. governance (G)	
	Other complaint (42)	<input checked="" type="checkbox"/> 68 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)
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

ENDORSED
FILED
ALAMEDA COUNTY

AUG 11 2014

CLERK OF THE SUPERIOR COURT
By Alex Moyle

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

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

13 Plaintiff,)

14 v.)

15 TRUESTAR HEALTH INC., TRUESTAR)
16 HEALTH (U.S.) HOLDINGS INC. and DOES)
17 1 – 25,)

18 Defendants.)

Case No. **RG14736271**

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

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

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

20 **INTRODUCTION**

21 1. This action seeks to remedy the continuing failure of Defendants TrueStar Health
22 Inc. and TrueStar Health (U.S.) Holdings Inc. to warn consumers in California that they are
23 being exposed to lead, a substance known to the State of California to cause cancer, birth
24 defects, and other reproductive harm. Under the Safe Drinking Water and Toxics Enforcement
25 Act of 1986, Health and Safety Code (“H&S Code”) section 25249.5, (also known as and
26 referred to hereinafter as “Proposition 65”) businesses must provide persons with a “clear and
27 reasonable warning” before exposing individuals to chemicals known to the state to cause
28 cancer or reproductive harm. Defendants manufacture, package, distribute, market, and/or sell

1 in California certain products containing lead (the "PRODUCTS"):

- 2 • TrueStar Health (U.S.) Holdings Inc. TrueTHERMO
- 3 • TrueStar Health (U.S.) Holdings Inc. TrueENERGY
- 4 • TrueStar Health (U.S.) Holdings Inc. TrueDETOX
- 5 • TrueStar Health (U.S.) Holdings Inc. TruePOWER
- 6 • TrueStar Health (U.S.) Holdings Inc. TrueREPAIR

7 2. Lead (hereinafter, the "LISTED CHEMICAL") is a substance known to the
8 State 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 and/or
14 sales of the PRODUCTS without the required health hazard warnings, causes individuals to be
15 involuntarily, unknowingly and unwittingly exposed to levels of the LISTED CHEMICAL that
16 violate Proposition 65.

17 **PARTIES**

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

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

27 7. Defendant TRUESTAR HEALTH INC. is now, and was at all times relevant
28 herein, a corporation organized under the laws of the Providence of Ontario, Canada.
Defendant TRUESTAR HEALTH, INC. may or may not have been properly licensed to do

1 business in the State of California. TRUESTAR HEALTH, INC. owns, administers, directs,
2 controls and/or operates facilities and/or agents, distributors sellers, marketers or other retail
3 operations who places its PRODUCTS into the stream of commerce in California (including but
4 not limited to Alameda County) under the brand name TRUESTARHEALTH and other brand
5 names, which contain the LISTED CHEMICAL without first giving clear and reasonable
6 warnings.

7 8. Defendant TRUESTAR HEALTH (U.S.) HOLDINGS INC. is now, and was at all
8 times relevant herein, a corporation organized under the laws of the State of Delaware.
9 Defendant TRUESTAR HEALTH (U.S.) HOLDINGS INC. may or may not have been properly
10 licensed to do business in the State of California. TRUESTAR HEALTH (U.S.) HOLDINGS
11 INC. owns, administers, directs, controls and/or operates facilities and/or agents, distributors
12 sellers, marketers or other retail operations who places its PRODUCTS into the stream of
13 commerce in California (including but not limited to Alameda County) under the brand name
14 TRUESTARHEALTH and other brand names, that contain the LISTED CHEMICAL without
15 first giving clear and reasonable warnings.

16 9. TRUESTAR HEALTH, INC. and TRUESTAR HEALTH (U.S.) HOLDINGS INC.
17 (“DEFENDANTS”) are each a “person doing business” within the meaning of H&S Code
18 §25249.11.

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

27 11. In this Complaint, when reference is made to any act of a DEFENDANT, such
28 allegation shall mean that the owners, officers, directors, agents, employees, contractors, or

1 representatives of DEFENDANT acted or authorized such actions, and/or negligently failed
2 and omitted to act or adequately and properly supervise, control or direct its employees and
3 agents while engaged in the management, direction, operation or control of the affairs of the
4 business organization. Whenever reference is made to any act of any DEFENDANT, such
5 allegation shall be deemed to mean the act of each DEFENDANT acting individually, jointly
6 and severally as defined by Civil Code Section 1430 *et seq.*

7 12. Plaintiff does not know the true names, capacities and liabilities of Defendants
8 Does Nos. 1-25, inclusive, and therefore sues them under fictitious names. Plaintiff will amend
9 this Complaint to allege the true name and capacities of the DOE Defendants upon being
10 ascertained. Each of these Defendants was in some way legally responsible for the acts,
11 omissions and/or violations alleged herein.

12 **JURISDICTION AND VENUE**

13 13. This Court has jurisdiction over this action pursuant to California Constitution
14 Article VI, Section 10, which grants the Superior Court "original jurisdiction in all causes
15 except those given by statute to other trial courts." The statute under which this action is
16 brought does not specify any other court with jurisdiction.

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

22 15. Venue in this action is proper in the Alameda County Superior Court because
23 the cause, or part thereof, arises in the County of Alameda since Defendants' products are
24 marketed, offered for sale, sold, used, and/or consumed in this county.

25 **STATUTORY BACKGROUND**

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

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

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

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

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

17 **FACTUAL BACKGROUND**

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

23 21. On October 1, 1992, the State of California officially listed the chemicals lead
24 and lead compounds as chemicals known to cause cancer. Lead and lead compounds became
25 subject to the warning requirement one year later and were therefore subject to the "clear and
26 reasonable" warning requirements of Proposition 65 beginning on October 1, 1993. (27 CCR
27 § 25000, *et seq.*; H&S Code §25249.6, *et seq.*). Due to the high toxicity of lead, the maximum

28 ///

1 allowable dose level for lead is 0.5 ug/day (micrograms a day) for reproductive toxicity and the
2 no significant risk level for carcinogens is 15ug/day (oral).

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

12 23. At all times relevant to this action, DEFENDANTS, therefore, have knowingly
13 and intentionally exposed the users, consumers and/or handlers of the PRODUCTS to the
14 LISTED CHEMICAL without first giving a clear and reasonable warning to such individuals.

15 24. The PRODUCTS have allegedly been sold by DEFENDANTS for use in
16 California since at least May 23, 2011. The PRODUCTS continue to be distributed and sold in
17 California without the requisite warning information.

18 25. On May 23, 2014, ERC served DEFENDANTS and each of the appropriate
19 public enforcement agencies with a document entitled "Notice of Violations of California
20 Health & Safety Code Section 25249.5" that provided DEFENDANTS and the public
21 enforcement agencies with notice that DEFENDANTS were in violation of Proposition 65 for
22 failing to warn purchasers and individuals using the PRODUCTS that the use of the
23 PRODUCTS exposes them to lead, a chemical known to the State of California to cause cancer
24 and/or reproductive toxicity ("Prop. 65 Notice"). A true and correct copy of the 60-Day Notice
25 is attached hereto as Exhibit A, is hereby incorporated by reference, and is available on the
26 Attorney General's website located at <http://oag.ca.gov/prop65>.

27 26. As a proximate result of acts by DEFENDANTS, as persons in the course of
28 doing business within the meaning of Health & Safety Code §25249.11, individuals throughout

1 the State of California, including in the County of Alameda have been exposed to the LISTED
2 CHEMICAL without a clear and reasonable warning. The individuals subject to the violative
3 exposures include normal and foreseeable users of the PRODUCTS, as well as all other
4 persons exposed to the PRODUCTS.

5 27. On May 23, 2014, Plaintiff sent a 60-Day Notice of Proposition 65 violations to
6 the requisite public enforcement agencies, and to Defendants. The Notice was issued pursuant
7 to, and in compliance with, the requirements of H&S Code §25249.7(d) and the statute's
8 implementing regulations regarding the notice of the violations to be given to certain public
9 enforcement agencies and to the violator. The Notice included, *inter alia*, the following
10 information: the name, address, and telephone number of the noticing individual; the name of
11 the alleged violator; the statute violated; the approximate time period during which violations
12 occurred; and descriptions of the violations, including the chemicals involved, the routes of
13 toxic exposure, and the specific product or type of product causing the violations, and was
14 issued as follows:

15 28. DEFENDANTS were provided copies of the Notice and the document entitled
16 "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,"
17 which is also known as Appendix A to Title 27 of CCR §25903 via Certified Mail.

18 29. The California Attorney General was provided a copy of the Notice and a
19 Certificate of Merit by the attorney for the noticing party, stating that there is a reasonable and
20 meritorious case for this action, and attaching factual information sufficient to establish a basis
21 for the certificate, including the identity of the persons consulted with and relied on by the
22 certifier, and the facts, studies, or other data reviewed by those persons, pursuant to H&S Code
23 §25249.7(h) (2) via online submission.

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

27 ///

28 ///

FIRST CAUSE OF ACTION

**(Injunctive Relief for Violations of Health and Safety Code § 25249.5, *et seq.* concerning
the PRODUCTS described in the May 23, 2014, Prop. 65 Notice)
Against DEFENDANTS**

34. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 30, inclusive, as if specifically set forth herein.

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

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

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

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

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

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1 **SECOND CAUSE OF ACTION**
2 **(Civil Penalties for Violations of Health and Safety Code § 25249.5, *et seq.* concerning the**
3 **PRODUCTS described in PLAINTIFF's NOTICE)**
4 **Against DEFENDANTS**

4 40. PLAINTIFF re-alleges and incorporates by reference Paragraphs 1 through 39,
5 inclusive, as if specifically set forth herein.

6 41. By committing the acts alleged in this Complaint, DEFENDANTS at all times
7 relevant to this action, and continuing through the present, have violated H&S Code §25249.6
8 by, in the course of doing business, knowingly and intentionally exposing individuals in
9 California to chemicals known to the State of California to cause cancer or reproductive toxicity
10 without first giving clear and reasonable warnings to such persons who use, consume or handle
11 the PRODUCTS containing the LISTED CHEMICAL, pursuant to H&S Code §§ 25249.6 and
12 25249.11(f).

13 42. By the above-described acts, DEFENDANTS are liable, pursuant to H&S Code
14 §25249.7(b), for a civil penalty of up to \$2,500 per day per violation for each unlawful exposure
15 to the LISTED CHEMICAL from the PRODUCTS, in an amount in excess of \$1 million.

16 **PRAYER FOR RELIEF**

17 Wherefore, PLAINTIFF prays for the following relief:

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

24 B. An injunctive order, pursuant to H&S Code §25249.7(b), compelling
25 DEFENDANTS to identify and locate each individual who has purchased the PRODUCTS
26 since May 23, 2011, and to provide a warning to such person that the use of the PRODUCTS
27 will expose the user to chemicals known to cause cancer, birth defects, and other reproductive
28 harm;

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

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

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

8
9 DATED: August 11, 2014

AQUA TERRA AERIS LAW GROUP

10
11 

12 Matthew C. Maclear
13 Attorney for Plaintiff
14 Environmental Research Center, Inc.

EXHIBIT A

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Aqua Terra Aeris Law Group
Matthew C. Maclear, Esq.
7425 Fairmount Ave. El Cerrito, CA 94530
(415) 568-5200
mcm@atalawgroup.com

May 23, 2014

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.
(PROPOSITION 65)**

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center ("ERC"), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC's Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

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

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

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

TrueStar Health Inc.
TrueStar Health (U.S.) Holdings Inc.

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

TrueStar Health (U.S.) Holdings Inc. TrueTHERMO – Lead
TrueStar Health (U.S.) Holdings Inc. TrueENERGY – Lead
TrueStar Health (U.S.) Holdings Inc. TrueDETOX – Lead
TrueStar Health (U.S.) Holdings Inc. TruePOWER – Lead
TrueStar Health (U.S.) Holdings Inc. TrueREPAIR - Lead

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

May 23, 2014

Page 2

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

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through ingestion, but may have also occurred and may continue to occur through inhalation and/or dermal contact.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least May 23, 2011, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violators violated Proposition 65 because they failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; and (2) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as an expensive and time consuming litigation.

ERC has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Matthew Maclear

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to TrueStar Health Inc. and TrueStar Health (U.S.) Holdings Inc. and its Registered Agent for Service of Process only)

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

May 23, 2014

Page 3

CERTIFICATE OF MERIT

Re: Environmental Research Center's Notice of Proposition 65 Violations by TrueStar Health Inc. and TrueStar Health (U.S.) Holdings Inc.

I, Matthew Maclear, declare:

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

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are 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 Violators will be able to establish any of the affirmative defenses set forth in the statute.

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

Dated: May 23, 2014



Matthew Maclear

May 23, 2014

Page 4

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. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On May 23, 2014, I served the following documents: **NOTICE OF VIOLATION 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO
TrueStar Health Inc.
55 St. Clair Avenue West
Toronto ON M4V 2Y7
Canada

Current President or CEO
TrueStar Health (U.S.) Holdings Inc.
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

Current President or CEO
TrueStar Health Inc.
2 Bloor Street West, Suite 700, 7th Floor
Toronto ON M4W 3R1
Canada

Current President or CEO
TrueStar Health (U.S.) Holdings Inc.
8500 N.W. River Park Drive, Suite 236B
Parkville, MO 64152

The Corporation Trust Company
(TrueStar Health (U.S.) Holdings Inc.'s Registered Agent
for Service of Process)
Corporation Trust Center
1209 Orange Street
Wilmington, DE 19801

On May 23, 2014, I electronically 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 party by uploading a true and correct copy thereof on the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>:

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

On May 23, 2014, 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 at a U.S. Postal Service Office with the postage fully prepaid for delivery by Priority Mail.

Executed on May 23, 2014, in Fort Oglethorpe, Georgia.



Tiffany Capehart

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

May 23, 2014

Page 5

Service List

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

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

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

District Attorney, Butte County
25 County Center Drive, Suite 245
Oroville, CA 95965

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

District Attorney, Colusa County
346 Fifth Street Suite 101
Colusa, CA 95932

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

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

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

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

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

District Attorney, Humboldt County
825 5th Street 4th Floor
Eureka, CA 95501

District Attorney, Imperial County
940 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, Suite 18000
Los Angeles, CA 90012

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

District Attorney, Marin County
3501 Civic Center Drive, 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
550 W. Main 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
Post Office Box 1131
Salinas, CA 93902

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

District Attorney, Nevada County
201 Commercial Street
Nevada City, CA 95959

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

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
3960 Orange Street
Riverside, CA 92501

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

District Attorney, San Benito County
419 Fourth Street, 2nd 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, Suite 1300
San Diego, CA 92101

District Attorney, San Francisco County
850 Bryant Street, Suite 322
San Francisco, CA 94103

District Attorney, San Joaquin County
222 E. Weber Ave. Rm. 202
Stockton, CA 95202

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

District Attorney, San Mateo County
400 County Ctr., 3rd Floor
Redwood City, CA 94063

District Attorney, Santa Barbara County
1112 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
1355 West Street
Redding, CA 96001

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 12th Street, Ste 300
Modesto, CA 95354

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 Blvd., Room 224
Visalia, CA 93291

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

District Attorney, Ventura County
800 South Victoria Ave, Suite 314
Ventura, CA 93009

District Attorney, Yolo County
301 2nd Street
Woodland, CA 95695

District Attorney, Yuba County
215 Fifth Street, Suite 152
Marysville, CA 95901

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

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

San Francisco, City Attorney
City Hall, Room 234
1 Dr Carlton B Goodlett PL
San Francisco, CA 94102

San Jose City Attorney's Office
200 East Santa Clara Street,
16th Floor
San Jose, CA 95113



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.seedsrc.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)

Date: _____

(TYPE OR PRINT NAME)

▶

(SIGNATURE OF ATTORNEY FOR PLAINTIFF)

PLAINTIFF/PETITIONER: DEFENDANT/RESPONDENT:	CASE NUMBER.:
--	---------------

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF DEFENDANT)

Date:

(TYPE OR PRINT NAME)



(SIGNATURE OF ATTORNEY FOR DEFENDANT)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Matthew C. Maclear Aqua Terra Aeris (ATA) Law Group 7425 Fairmount Ave. El Cerrito, CA 94530 TELEPHONE NO.: 415.568.5200 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Environmental Research Center, Inc.	FOR COURT USE ONLY CASE NUMBER: <div style="font-size: 1.2em; font-family: cursive;">RG 14736271</div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Rene C. Davidson Courthouse	
PETITIONER/PLAINTIFF: ENVIRONMENTAL RESEARCH CENTER, INC. RESPONDENT/DEFENDANT: TRUESTAR HEALTH, INC, et al.	
PROOF OF PERSONAL SERVICE—CIVIL	

(Do not use this Proof of Service to show service of a Summons and Complaint.)

1. I am over 18 years of age and **not a party to this action**.
2. I served the following **documents** (specify):
 Summons, Complaint with Exhibit A, Civil Case Cover Sheet, Addendum to Civil Case Cover Sheet, Alameda County Superior Court ADR Information Packet

 The documents are listed in the *Attachment to Proof of Personal Service—Civil (Documents Served)* (form POS-020(D)).
3. I personally served the following **persons** at the address, date, and time stated:
 - a. Name:
 - b. Address:
 - c. Date:
 - d. Time: The persons are listed in the *Attachment to Proof of Personal Service—Civil (Persons Served)* (form POS-020(P)).
4. I am

a. <input type="checkbox"/> not a registered California process server. b. <input type="checkbox"/> a registered California process server.	c. <input type="checkbox"/> an employee or independent contractor of a registered California process server. d. <input type="checkbox"/> exempt from registration under Business & Professions Code section 22350(b).
--	--
5. My name, address, telephone number, and, if applicable, county of registration and number are (specify):

6. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
7. I am a California sheriff or marshal and certify that the foregoing is true and correct.

Date: August , 2014

(TYPE OR PRINT NAME OF PERSON WHO SERVED THE PAPERS)	(SIGNATURE OF PERSON WHO SERVED THE PAPERS)
--	---

INFORMATION SHEET FOR PROOF OF PERSONAL SERVICE—CIVIL

(This information sheet is not a part of the Proof of Service form and does not need to be copied, served, or filed.)

NOTE: This form should **not** be used for proof of service of a summons and complaint. For that purpose, use *Proof of Service of Summons* (form POS-010).

Use these instructions to complete the *Proof of Personal Service* (form POS-020).

A person at least 18 years of age or older must serve the documents. There are two main ways to serve documents: (1) by personal delivery and (2) by mail. Certain documents must be personally served. You must determine whether personal service is required for a document.

The person who personally served the documents must complete a proof of service form for the documents served. **You cannot serve documents if you are a party to the action.**

INSTRUCTIONS FOR THE PERSON WHO SERVED THE DOCUMENTS

The proof of service should be printed or typed. If you have Internet access, fillable versions of the form are available at www.courtinfo.ca.gov/forms.

Complete the top section of the proof of service form as follows:

First box, left side: In this box print the name, address, and phone number of the person for whom you served the documents.

Second box, left side: Print the name of the county in which the legal action is filed and the court's address in this box. The address for the court should be the same as on the documents that you served.

Third box, left side: Print the names of the Petitioner/Plaintiff and Respondent/Defendant in this box. Use the same names as are listed on the documents that you served.

First box, top of form, right side: Leave this box blank for the court's use.

Second box, right side: Print the case number in this box. The number should be the same as the case number on the documents that you served.

Complete all applicable items on the form:

1. You are stating that you are over the age of 18 and that you are not a party to this action.
2. List the name of each document that you delivered to the person. If you need more space, check the box in item 2, complete the *Attachment to Proof of Personal Service—Civil (Documents Served)* (form POS-020(D)), and attach it to form POS-020.
3. Provide the name of each person served, the address where you served the documents, and the date and time of service. If you served more than one person, check the box in item 3, complete the *Attachment to Proof of Personal Service—Civil (Persons Served)* (form POS-020(P)), and attach it to form POS-020.
4. Check the box that applies to you. If you are a private person serving the documents for a party, check box "a."
5. Print your name, address, and telephone number. If applicable, include the county in which you are registered as a process server and your registration number.
6. You must check this box if you are not a California sheriff or marshal. You are stating under penalty of perjury that the information you have provided is true and correct.
7. Do not check this box unless you are a California sheriff or marshal.

At the bottom, fill in the date on which you signed the form, print your name, and sign the form at the arrow. By signing, you are stating under penalty of perjury that all the information that you have provided on form POS-020 is true and correct.