



**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

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Aug-27-2009 4:12 pm

Case Number: CGC-09-491932

Filing Date: Aug-27-2009 3:44

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COMPLAINT

BRAIN RESEARCH LABS, LLC, A DELAWARE LIMITED et al VS. TOM CLARKE et al

001C02599831

Instructions:

Please place this sheet on top of the document to be scanned.

ORIGINAL

SUMMONS (CITACION JUDICIAL)

SUM-100

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

NOTICE TO DEFENDANT: TOM CLARKE, an individual; ROPERS (AVISO AL DEMANDADO): MAJESKI KOHN & BENTLEY, a professional corporation; JOSEPH ROTENBERG, an individual; KTVU, INC., a Delaware corporation; NEWS AMERICA INCORPORATED, which does business in California as FOX MEDIA GROUP, a Delaware corporation; and Does 1 through 50, inclusive.

YOU ARE BEING SUED BY PLAINTIFF: BRAIN RESEARCH LABS, (LO ESTÁ DEMANDANDO EL DEMANDANTE): LLC, a Delaware limited liability company; and MEDHEALTH DIRECT, INC., a 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):

CASE NUMBER
(Número del Caso) 09-491932

Superior Court of California, County Of San Francisco
Civic Center Courthouse
400 McAllister Street
San Francisco, CA 94102

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):

Jan A. Yoss, Esq. (SBN 143978) (310) 478-5722 (310) 478-5650
Younesi & Yoss, LLP
11355 W. Olympic Blvd., Suite 200
Los Angeles CA 90064

D. STEPPE, Deputy
(Adjunto)

DATE:
(Fecha)

AUG 27 2009

GORDON PARK-L

Clerk, by
(Secretario)

(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)).

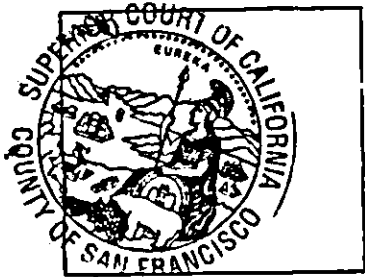
NOTICE TO THE PERSON SERVED: You are served

- as an Individual defendant.
- as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

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

4. by personal delivery on (date):



FOR COURT USE ONLY

FILED
San Francisco County Superior Court

AUG 27 2009

GORDON PARK-LI, Clerk
BY: *[Signature]*
Deputy Clerk

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Jan A. Yoss
Jan A. Yoss, Esq. (SBN 143978)
Younesi & Yoss, LLP
11355 W. Olympic Blvd., Suite 200
Los Angeles CA 90064
TELEPHONE NO.: (310) 478-5722 FAX NO.: (310) 478-5650

ATTORNEY FOR (Name): Plaintiff

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco

STREET ADDRESS: 400 McAllister Street
MAILING ADDRESS: 400 McAllister Street
CITY AND ZIP CODE: San Francisco, CA 94102
BRANCH NAME: Civic Center Courthouse

CASE NAME: BRAIN RESEARCH LABS, LLC, et al. v. TOM CLARKE, et al.

CIVIL CASE COVER SHEET

Unlimited (Amount demanded exceeds \$25,000) Limited (Amount demanded is \$25,000 or less)

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

CASE NUMBER: CGC-09-491932

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:

- | | | |
|---|--|--|
| <input type="checkbox"/> Auto Tort
<input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
<input type="checkbox"/> 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)
<input type="checkbox"/> Non-PI/PD/WD (Other) Tort
<input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input checked="" 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)
<input type="checkbox"/> Employment
<input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | <input type="checkbox"/> 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)
<input type="checkbox"/> Real Property
<input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
<input type="checkbox"/> Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
<input type="checkbox"/> 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) | <input type="checkbox"/> 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)
<input type="checkbox"/> Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20)
<input type="checkbox"/> Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42)
<input type="checkbox"/> 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. Large number of separately represented parties d. Large number of witnesses
- b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- c. Substantial amount of documentary evidence f. 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): 8

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 27, 2009

Jan A. Yoss (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.

Page 1 of 2

ORIGINAL

EXFAXED

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

- Auto (22)—Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)
 - Asbestos Property Damage
 - Asbestos Personal Injury/Wrongful Death
- Product Liability *(not asbestos or toxic/environmental)* (24)
- Medical Malpractice (45)
 - Medical Malpractice—Physicians & Surgeons
 - Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
 - Premises Liability (e.g., slip and fall)
 - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
 - Intentional Infliction of Emotional Distress
 - Negligent Infliction of Emotional Distress
 - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
 - Legal Malpractice
 - Other Professional Malpractice *(not medical or legal)*
- Other Non-PI/PD/WD Tort (35)
- Employment
 - Wrongful Termination (36)
 - Other Employment (15)

Contract

- Breach of Contract/Warranty (06)
 - Breach of Rental/Lease
 - Contract *(not unlawful detainer or wrongful eviction)*
 - Contract/Warranty Breach—Seller Plaintiff *(not fraud or negligence)*
 - Negligent Breach of Contract/Warranty
- Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
 - Collection Case—Seller Plaintiff
 - Other Promissory Note/Collections Case
- Insurance Coverage *(not provisionally complex)* (18)
 - Auto Subrogation
 - Other Coverage
- Other Contract (37)
 - Contractual Fraud
 - Other Contract Dispute

Real Property

- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
 - Writ of Possession of Real Property
 - Mortgage Foreclosure
 - Quiet Title
 - Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer

- Commercial (31)
- Residential (32)
 - Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review

- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
 - Writ—Administrative Mandamus
 - Writ—Mandamus on Limited Court Case Matter
 - Writ—Other Limited Court Case Review
- Other Judicial Review (39)
 - Review of Health Officer Order
 - Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment

- Enforcement of Judgment (20)
 - Abstract of Judgment (Out of County)
 - Confession of Judgment *(non-domestic relations)*
 - Sister State Judgment
 - Administrative Agency Award *(not unpaid taxes)*
 - Petition/Certification of Entry of Judgment on Unpaid Taxes
 - Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

- RICO (27)
- Other Complaint *(not specified above)* (42)
 - Declaratory Relief Only
 - Injunctive Relief Only *(non-harassment)*
 - Mechanics Lien
 - Other Commercial Complaint Case *(non-tort/non-complex)*
 - Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition

- Partnership and Corporate Governance (21)
- Other Petition *(not specified above)* (43)
 - Civil Harassment
 - Workplace Violence
 - Elder/Dependent Adult Abuse
 - Election Contest
 - Petition for Name Change
 - Petition for Relief from Late Claim
 - Other Civil Petition

ORIGINAL

FAXED

FILED
San Francisco County Superior Court

AUG 27 2009

GORDON PARK-LI, Clerk
BY: *Richard Steves*
Deputy Clerk

SUMMONS ISSUED
CASE MANAGEMENT CONFERENCE SET

JAN 29 2010 - 9:00 AM

DEPARTMENT 212

CGC-09-491932

1 John D. Younesi, Esq. (Bar No. 120339)
2 Jan A. Yoss, Esq. (Bar No. 143978)
3 YOUNESI & YOSS, L.L.P.
4 11355 W. Olympic Blvd., Suite 200
5 Los Angeles, California 90064
6 Telephone: (310) 478-5722 + Facsimile: (310) 478-5650

7 Attorneys for Plaintiffs BRAIN RESEARCH LABS, LLC
8 and MEDHEALTH DIRECT, INC.

9 SUPERIOR COURT OF CALIFORNIA
10 FOR THE COUNTY OF SAN FRANCISCO

11 BRAIN RESEARCH LABS, LLC, a)
12 Delaware limited liability company; and)
13 MEDHEALTH DIRECT, INC., a)
14 California corporation;)

15 Plaintiffs,)

16 v.)

17 TOM CLARKE, an individual; ROPERS)
18 MAJESKI KOHN & BENTLEY, a)
19 professional corporation; JOSEPH)
20 ROTENBERG, an individual; KTVU,)
21 INC., a Delaware corporation; NEWS)
22 AMERICA INCORPORATED, which)
23 does business in California as FOX)
24 MEDIA GROUP, a Delaware corporation;)
25 and Does 1 through 50, inclusive.)

26 Defendants.)

- Case No.)
COMPLAINT FOR DAMAGES AND)
INJUNCTIVE RELIEF)
1. DEFAMATION PER SE)
2. DEFAMATION PER QUOD)
3. DEFAMATION PER SE)
4. INTENTIONAL INTERFERENCE)
WITH CONTRACTUAL RELATIONS;)
5. INTENTIONAL INTERFERENCE)
WITH PROSPECTIVE ECONOMIC)
ADVANTAGE)
6. VIOLATION OF BUSINESS AND)
PROFESSIONS CODE §§17200 ET SEQ.)
7. VIOLATION OF BUSINESS AND)
PROFESSIONS CODE §§17500 ET SEQ.)
8. INJUNCTIVE RELIEF TO)
PRECLUDE BROADCAST OF)
DEFAMATORY STATEMENTS)

DEMAND FOR JURY TRIAL

27 Plaintiffs Brain Research Labs, LLC ("BRL") and MedHealth Direct, Inc.
28 ("MedHealth") (collectively, "Plaintiffs") allege the following:

I.

NATURE OF THE CASE

1
2
3
4 This case involves an attorney, Thomas Clarke ("Clarke"), who is attempting to try a civil
5 case in the press and through the international medium of the internet. Clarke and his firm Ropers
6 Majeski Kohn and Bentley ("RMKB") have filed a class action against Plaintiffs herein seeking
7 damages from the sale of BRL's product, Procera. The plaintiff in the class action is Joe Rotenberg
8 ("Rotenberg"). MedHealth, as an independent contractor to BRL, advises BRL on the marketing and
9 advertising of Procera AVH ("Procera"). On or about July 16, 2009, Clarke made several false and
10 defamatory statements in a taped interview for KTVU television, maligning Procera, and by
11 association, BRL and MedHealth. Rotenberg made false and defamatory statements to the journalist,
12 John Fowler ("Fowler"), which statements were repeated by Fowler on air. Clarke and RMKB have
13 made and continue to make additional defamatory statements in a 9-minute advertisement soliciting
14 plaintiffs in their Procera class action through a YouTube video on the international internet
15 platform.
16
17

18
19 II.

20 PARTIES

21 1. Plaintiff BRL is, and at all times relevant herein was, a limited liability company
22 organized under the laws of the State of Delaware and licensed to do business in the State of
23 California.

24 2. Plaintiff MedHealth is, and at all times relevant herein was, a corporation organized
25 under the laws of the State of California, with its principal place of business in the County of Orange,
26 California.
27
28

1 3. Defendant Clarke is, and at all times relevant herein was, a lawyer licensed to
2 practice law in the State of California and a resident of California.

3 4. Defendant RMKB is, and at all times relevant herein was, a professional corporation
4 licensed by the State of California with offices in, among other places, the County of Los Angeles,
5 California.

6 5. Defendant Rotenberg is, and at all times relevant herein was, an individual residing
7 in the State of California.

8 6. Defendant KTVU, Inc. ("KTVU") is a corporation duly licensed to conduct business
9 in the State of California with a television news station that broadcasts in the San Francisco Bay area,
10 as well as other territories and states. KTVU produced a story for broadcast that contains several
11 defamatory statements concerning Plaintiffs and is not a fair and accurate report of a judicial
12 proceeding.
13

14 7. News America Incorporated is a corporation that is licensed to do business and does
15 business in California as Fox Media Group ("Fox News"). Fox News has affiliated stations
16 nationally and has distributed the subject KTVU story to its affiliates across the country for re-
17 broadcast in other states.
18

19 8. Plaintiffs are ignorant of the true names and capacities of defendants sued herein as
20 Does 1-50, inclusive, and therefore sue these defendants by such fictitious names. Plaintiffs will
21 amend this Complaint to allege their true names and capacities when ascertained. Plaintiffs are
22 informed and believe and thereon allege that each of the fictitiously named defendants is an agent,
23 employee, affiliate or co-conspirator of one or more of the Defendants and may be served with
24 process within the state of California and is responsible in some manner for the unlawful conduct
25 herein alleged.
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III.
JURISDICTION

9. The court has jurisdiction over this action pursuant to Civil Code §§43, 44 and 45. The California Superior Court has jurisdiction over this action pursuant to Article VI, Section 10, of the California Constitution.

10. This court has jurisdiction over the Defendants because, based on information and belief, each is a corporation, business entity, or individual that has sufficient minimum contacts in California, is a citizen of California, or otherwise intentionally avails itself of the laws and protections of California so as to render the exercise of jurisdiction over each defendant in California courts consistent with traditional notions of fair play and substantial justice. Venue is proper in the San Francisco Superior Court because at least one of the defendants, Clarke, resides in San Francisco County.

11. On or about July 16, 2009, KTVU broadcast a "story" on Procera, a product manufactured by BRL, whose marketing and advertising campaign is managed by MedHealth. Fowler was the reporter who narrated the piece and at all times was acting as an agent of KTVU. Clarke and Rotenberg provided interviews for the broadcast. At all times, Clarke was acting as a partner and agent of RMKB. In the "story," Rotenberg and Clarke made the following false statements about Procera:

a. Fowler repeated a false statement allegedly made to him by Rotenberg: "Rotenberg says he paid 60 dollars for this bottle, a month's supply, of what's called Procera AVH." The statement is false because the bottle that was held up was not what Fowler purchased, but a different bottle size.

b. Clarke said the following: "Unadulterated theft. You sell a fake product that doesn't do anything, with all kinds of promises, and you get people to give you lots of money for

1 it. It's a nice, profitable scam." Theft has a very specific common meaning. It means to commit
2 the act of stealing. The act of stealing means to take the property of another without right or
3 permission. Calling the sale of Procera an "unadulterated" theft could have no meaning to the
4 general public hearing these statements other than that Clarke was accusing BRL of taking
5 customers' money without their permission. Such statement is false.

6 c. Clarke stated: "They [the FDA and Federal Trade Commission] just don't view
7 this as a high-priority item, even though people are dying from some of these products." By the
8 context of the interview and Clarke's previous comments, it is clear he is intending the listening
9 public to believe that Procera has killed people and this simply is not true.

10 d. Fowler stated: "Bringing us back to claims that Procera sharpens focus, clears
11 brain fog and boosts memory, that brains light up like a Christmas tree when people take the
12 tablets. Sounds terrific."

13 Followed up immediately by Clarke stating: "Absolutely ineffective. Matter of
14 fact, there have actually been trials with humans that have shown that it doesn't work."

15 Clarke's statement is false. There have been no trials of Procera that show it does
16 not work on humans. What is more, BRL has conducted a double blind placebo controlled peer
17 reviewed study that was published in the American Journal of the American Nutraceutical
18 Association that in fact substantiates Procera's claims. .

19 e. Fowler then states, "Joe Rotenberg says they [Plaintiffs] didn't answer him either.
20 and he wants his 60 dollars back." The statement allegedly made by Rotenberg to Fowler was
21 false at the time Rotenberg made it to Fowler. Joe Rotenberg had discussed the product directly
22 with customer services representatives for BRL and had in fact received the money back he
23 requested.

24 12. In a 9-minute YouTube advertisement video which began airing on June 19, 2009,
25 Clarke solicited plaintiffs for his litigation against BRL and MedHealth and made at least the
26 following false and/or misleading statements:
27

1 a. "I do not want you to die or suffer long term injury or disability because you
2 forsake medical treatment for the false promises that are made by so many so called dietary
3 supplements. These scam artists do not care if you live or die. They only want you to live long
4 enough to give them your money. Today I want to talk to you about a so-called dietary supplement
5 known as Procera AVH." The very clear implication is that Procera can kill people and that BRL
6 does not care about the life or death of its customers which is categorically false.
7

8 b. "They ask, 'Are you suffering from a stroke or head injury and want to repair your
9 brain? Have we got a little known miracle and it's just for you!' No, I'm not kidding, they actually
10 make this claim." BRL has never made this claim about Procera.
11

12 c. "They ask, 'Do you want to feel better and rid yourself of . . .depression? Have we
13 got a little known miracle and it is just for you! Even better, it's a bargain!'" BRL has never made
14 this claim or claimed Procera can cure or address depression.
15

16 d. "They ask, 'Do you want to protect your liver . . .from the adverse effects of
17 alcohol? How? By these pills.'" BRL has never made any claim that Procera can protect the liver.
18

19 e. "They ask, 'Suffering from the effects of Alzheimer's Have we got a little known
20 miracle and it's just for you! Pssst . . .we have a little secret and it's just for you!'" BRL has never
21 made this claim or discussed Alzheimer's in any way.
22

23 f. "Our ingredients are considered safe by the Federal Food and Drug
24 Administration, really!" BRL has never made this claim and in fact discloses on each bottle of
25 Procera the following. "These statements have not been evaluated by the Food and Drug
26 Administration. This product is not intended to diagnose, treat, cure or prevent any disease."
27

28 g. "What they do not tell you about Procera AVH is of course it doesn't work. Their
claims are bogus. But they also do not tell you that their product is dangerous." Clarke's statements

1 that Procera AVH does not work, that BRL's claims about Procera are bogus and that the product
2 is dangerous are absolutely false.

3 h. "Procera claims it can help Alzheimer's disease." BRL has never made the claim
4 that Procera helps with Alzheimer's.

5 i. "As you can tell, Procera contains dangerous drugs with the potential to cause
6 extensive harm or even death" Procera contains no drugs at all. Moreover, there is no showing that
7 it has the potential to cause extensive harm and/or death. Quite the contrary is true, a double blind
8 placebo controlled peer reviewed study establishes the efficacy of the claims Procera makes and
9 there was no showing of any harmful effects. .
10

11 j. "Besides making extravagant claims, does it warn you about all these potential side
12 effects and interactions with prescription drugs? Not at all." First, Clarke has not pointed to any
13 accurate side effects of Procera. Even more important, however, BRL very clearly states on the
14 Procera label: "Do not use this product if you are pregnant or lactating. . . . Consult your healthcare
15 professional prior to use if you have or suspect a medical condition, are taking prescription
16 medication or over the counter drugs. . . .If you experience any adverse reaction to this product,
17 immediately discontinue use and consult your physician." Additionally, BRL customer service
18 agents are trained to instruct customers to consult their physician if they are taking any prescription
19 medications prior to using Procera.
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22 k. "As you can tell Procera is . . .lots of danger." This is untrue.

23 l. "This product is not an alternative to proper medical attention for your illness disease.
24 Do not fool yourself. If you're not getting proper medical treatment, you may die or suffer
25 serious permanent injury or disability." BRL has never claimed Procera is a substitute for
26 medical treatment or should be used in any circumstance where someone needs medical
27 treatment, especially of the sort that may cause a person to die or suffer serious permanent injury
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1 or disability. This is sensationalism at BRL's expense for Clarke to advertise himself and his
2 firm RKMB.

3 m. "It's also important for you to be aware that all these claims are illegal. Let me
4 say that again so that you understand the fundamentals of these bogus claims. They are illegal!
5 No exceptions. No ifs, buts or maybes. So if a dietary supplement like Procera AVH claims that
6 it can cure an illness or disease or the symptoms of an illness or disease then it is making an
7 illegal claim. So all these claims made by Procera are illegal." Clarke is attempting to try his
8 case in the public media and is making statements that are untrue to do it. BRL has not made the
9 claims about Procera that Clarke attributes to BRL and thus the implication that BRL has made
10 illegal claims is absolutely false.

11 n. "What type of illnesses, diseases or symptoms is Procera claiming it can address?
12 Well [laughing]. I though you'd never ask. I will mention just a few. Depression and other
13 forms of mental illness, mini-strokes in the brain, the early stages of dementia, the plaques
14 associated with Alzheimer's disease. . . . genetic diseases such as Parkinson's or Lou Gehrig's
15 disease also known as ALH (sic). Such symptoms may also be the result of the hardening of the
16 arteries in your brain, which can interfere with blood flow." BRL has not ever made any of
17 these claims about Procera.

18 o. "So what Procera claims is that if you are suffering from symptoms of these types,
19 the solution is, what a surprise – this product. Just send money and all your problems will
20 disappear like so much snow on a sunny day." Again, BRL never makes any of these claims or
21 that Procera is the solution to any of the medical issues identified in subparagraph n above.

22 p. "It [a pamphlet published by Clarke] also tells you how to protect yourself from these
23 crooks and cheats." Since Clarke's entire advertisement is about Procera, the only logical conclusion
24 is that the persons who heard Clarke's reference to crooks and cheats understood it to be a reference
25 to the manufacturers of Procera. BRL.
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1 q. "If, after considering your options, you want an attorney to help you recover your
2 money and to put out of business those that have cheated you, call me, so that we can discuss the
3 matter." Because the entirety of the claims Clarke asserts about Procera are wrong, then his appeal
4 to viewers to call him to hire him to sue people who have allegedly "cheated" them are based upon
5 a completely false premise.

7 r. "Remember, the life you save may not only be your own, but those of your friends,
8 family, neighbours and fellow residents and citizens of this great country." Because the totality
9 of the advertisement is for prospective clients to engage Clarke to represent them against
10 Procera's manufacturer, there can be no conclusion by the persons hearing Clarke's statements,
11 other than that Clarke is saying that Procera will kill them and their family and other members of
12 the public. This statement is categorically untrue. Clarke is making the false claim that if the
13 prospective client hires him, the lawsuit itself will be an impetus to prevent these alleged deaths.
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17 **FIRST CAUSE OF ACTION**

18 **DEFAMATION PER SE**

19 **(BY PLAINTIFFS AGAINST CLARKE, RMKB AND DOES 1 THROUGH 25)**

20 13. Plaintiffs incorporate by reference paragraphs 1 through 12 above as though set forth
21 in full herein.

22 14. Clarke, as an agent of RMKB, and as part of his efforts to obtain clients in
23 litigation against Plaintiffs herein to further the financial gain of RMKB and himself made the
24 defamatory statements attributed to him in paragraphs 9 and 10 above. At the time he made the
25 statements to Fowler and agents of KTVU, Clarke was aware that the statements would be
26 broadcast as part of a television news story to a large audience of people. Plaintiffs are informed
27 and believe and on that basis allege that Clarke was aware, or has come to be aware, that the
28

1 news story was put on the internet and thus disseminated nationally and internationally by KTVU
2 on the internet and that it will be viewed by potentially hundreds of thousands of people, if not
3 more. At the time that Clarke recorded his video and published it on YouTube, he intended for a
4 large number of people to view the video across the country and internationally. As of the date
5 of this Complaint, YouTube reported that there had been hundreds of views of the video.

6 15. The persons hearing Clarke's statements reasonably understood the statements to
7 mean that:

- 8 a. Procera, through its manufacturer and distributor BRL, is committing the
9 crime of theft by stealing from customers:
10 b. Procera, through its manufacturer, is engaged in illegal acts by, among
11 other things, claiming that Procera
12 cures certain diseases and symptoms of diseases:
13 c. Procera has killed people:
14 d. Procera could kill people and contains dangerous ingredients;
15 e. Procera, in general, cannot do what BRL advertises Procera can do:
16 f. Procera is required to be approved by the FDA and BRL claims Procera
17 has been approved by the FDA, when in fact BRL does not make such a
18 claim and is not required to be approved by the FDA:
19 g. The ingredients in Procera would cause the harm that Clarke identified:
20 h. There have been tests that have proven Procera does not work:
21 i. BRL has not conducted tests on Procera and cannot support the claims it
22 makes: and
23 j. Some of the ingredients in Procera are drugs.

24 16. Each of the identified statements was false.

25 17. Clarke and RMKB failed to use reasonable care to determine the truth or falsity of
26 the statements and in some instances knew absolutely the statements were false.
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1 18. Clarke and RMKB's actions have caused BRL harm as the manufacturer
2 of Procera and have caused MedHealth harm as the entity responsible for the advertisements that
3 are being discussed.

4 19. BRL has suffered actual damages in each of the following ways:

- 5 a. Cancellations of orders from customers:
6 b. Cancellation of the continuity program by customers:
7 c. Decreased orders from at least the San Francisco Bay Area, including
8 Oakland and San Jose, Denver and as yet other undetermined areas and states;
9 d. Refunding money for customer purchases; and
10 e. Harm to its business reputation.

11 20. MedHealth has suffered actual damages by harm to its business reputation.

12 21. In addition to the actual damages suffered by Plaintiffs, the law assumes that
13 Plaintiffs' business reputations have been harmed and that they have suffered shame. Plaintiffs are
14 entitled to compensation for this assumed harm in a sum to be determined at the time of trial.

15 22. Clarke and RMKB's actions were malicious and oppressive in that they engaged
16 in them intentionally in order to "prove their case in the press" and on the internet and to cause
17 financial harm to Plaintiffs. Indeed, Clarke states in the video that he wants to put companies such
18 as Plaintiffs out-of-business. He says specifically, "If, after considering your options, you want an
19 attorney to help you recover your money and to put out of business those that have cheated you, call
20 me, so that we can discuss the matter." Clarke follows this statement up by saying that if they call
21 him, "the life you [the prospective client] save may not only be your own, but those of your friends,
22 family, neighbors and fellow residents and citizens of this great country." Clarke's malicious and
23 oppressive intent is clear. He wants to be hired, based upon the false and misleading information
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1 he has provided, to destroy BRL and Med Health's businesses. As a result, Plaintiffs are entitled to
2 an award of punitive damages in an amount to be proven at the time of trial.
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5 **SECOND CAUSE OF ACTION**

6 **DEFAMATION PER QUOD**

7 **(BY BRL AGAINST CLARKE, RMKB AND DOES 1 THROUGH 25)**

8 23. Plaintiffs incorporate by reference paragraphs 1 through 12 above as though set
9 forth in full herein.

10 24. Clarke, as an agent of RMKB, and as part of his efforts to obtain clients in
11 litigation against Plaintiffs herein to further the financial gain of RMKB and himself and attempt
12 to destroy BRL made the statements attributed to him in paragraphs 12(a, l, p, q, and r) above.
13 At the time that Clarke recorded his video and published it on YouTube, he intended for a large
14 number of people to view the video across the country and internationally. As of the date of this
15 Complaint, YouTube reported that there had been hundreds of views of the video. The persons
16 viewing this video reasonably understand that the statements are about Procera/BRL.
17

18 25. Because the context in which Clarke is making these claims, including giving the
19 appearance that he is quoting directly from Procera advertisements, and because the statements relate
20 to his other accusations about Procera and solicitation of plaintiffs to sue BRL, the statements injure
21 BRL in its industry and profession and expose it to hatred, contempt, ridicule and shame and
22 discourage customers from buying BRL's product.
23

24 26. The statements in this context were false.

25 27. Clarke and RMKB failed to use reasonable care to determine the truth or falsity of
26 the statements and in some instances knew absolutely the statements were false as they related to
27 Procera.
28

1 28. Clarke and RMKB's actions have caused BRL harm its property, business,
2 profession, and reputation, which damage includes money spent as a result of the statements.

3 29. These statements were substantial factor in causing BRL's harm.

4 30. BRL has suffered actual damages in each of the following ways:

- 5
- 6 a. Cancellations of orders from customers:
 - 7 b. Cancellation of the continuity program by customers:
 - 8 c. Decreased orders from at least the San Francisco Bay Area, including
9 Oakland and San Jose, Denver and as yet other undetermined areas and states;
 - 10 d. Refunding money for customer purchases;
 - 11 e. Harm to its business reputation; and
 - 12 f. Expenses BRL has had to pay as a result of the defamatory statements

13 31. Clarke and RMKB's actions were malicious and oppressive in that they engaged
14 in them intentionally in order to "prove their case in the press" and on the internet and to cause
15 financial harm to Plaintiffs. Indeed, Clarke states in the video that he wants to put companies
16 such as Plaintiffs out-of-business. He says specifically, "If, after considering your options, you
17 want an attorney to help you recover your money and to put of business those that have cheated
18 you, call me, so that we can discuss the matter." Clarke follows this statement up by saying that if
19 they call him, "the life you [the prospective client] save may not only be your own, but those of
20 your friends, family, neighbors and fellow residents and citizens of this great country." Clarke's
21 malicious and oppressive intent is clear. As a result, BRL is entitled to an award of punitive
22 damages in an amount to be proven at the time of trial.
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1 as stated in the telephone conversation on May 22, 2009.

2 35. Each of these statements was false and Rotenberg knew they were false when they
3 were made. Rotenberg heard the statements repeated by Fowler and did nothing to correct the falsity
4 of the statements.
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6 36. Rotenberg's actions have caused BRL harm as the manufacturer of Procera and have
7 caused MedHealth harm as the entity responsible for managing BRL's the advertisements..

8 37. BRL has suffered actual damages in each of the following ways:

- 9 a. Cancellations of orders from customers;
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11 b. Cancellation of the continuity program from customers:
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13 c. Decreased orders from at least the San Francisco Bay Area, including
Oakland and San Jose: and
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15 d. Harm to its business reputation.

16 38. MedHealth has suffered actual damages by harm to its business reputation.

17 39. In addition to the actual damages suffered by Plaintiffs, the law assumes that
18 Plaintiffs' reputations have been harmed and that they have suffered shame. Plaintiffs are
19 entitled to compensation for this assumed harm in a sum to be proven at the time of trial.

20 40. Rotenberg's actions were malicious and oppressive in that he engaged in them
21 intentionally in order to "prove his case in the press" and on the internet and to cause financial harm
22 to Plaintiffs. The anticipated outcome would be significant financial gain for Rotenberg. As a result,
23 Plaintiffs are entitled to an award of punitive damages in an amount to be proven at the time of trial.
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