

Jad T. Davis (SBN 219947)
Thomas V. Wynsma (SBN 293713)
SHOOK, HARDY & BACON L.L.P.
5 Park Plaza, Suite 1600
Irvine, California 92614
Telephone: 949-475-1500
Facsimile: 949-475-0016
jtdavis@shb.com

Attorneys for Plaintiff
ANDORRA APTS, LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ANDORRA APTS, LLC, a California
limited liability company,

Plaintiff,

v.

FABRICURE COACHELLA VALLEY,
LLC, a California limited liability
company, and DOES 1-10, inclusive

Defendants.

Case No. 5:22-cv-1512

**COMPLAINT FOR DAMAGES AND
OTHER RELIEF:**

- (1) **COST RECOVERY UNDER CERCLA, 42 U.S.C. § 9607(a);**
- (2) **CONTRIBUTION UNDER CERCLA, 42 U.S.C. § 9613(f);**
- (3) **DECLARATORY RELIEF UNDER CERCLA, 42 U.S.C. § 9613(g)(2);**
- (4) **STRICT LIABILITY UNDER RCRA, 42 U.S.C. § 6972;**
- (5) **RESPONSE COSTS UNDER THE HAZARDOUS SUBSTANCE ACCOUNT ACT**
- (6) **EQUITABLE COMPARABLE INDEMNITY**
- (7) **TOTAL EQUITABLE INDEMNITY**
- (8) **PRIVATE NUISANCE**
- (9) **TRESPASS**
- (10) **NEGLIGENCE**
- (11) **DECLARATORY RELIEF**

AND DEMAND FOR JURY TRIAL

Plaintiff ANDORRA APTS, LLC, by and through its undersigned attorneys,
files this Complaint and alleges as follows:

PARTIES AND INTRODUCTORY ALLEGATIONS

1. Plaintiff ANDORRA APTS, LLC (Andorra) is, and was at all relevant

1 times, a California limited liability company that owns the real property located at
2 81720 Avenue 46, Indio, California 92201 (Andorra Property).

3 2. Andorra is informed and believes that Defendant FABRICURE
4 COACHELLA VALLEY, LLC (Defendant Fabricure) is a California limited liability
5 company that owns real property located at 81778 Avenue 46, Indio, California 92201
6 (Fabricure Property).

7 3. Allegations made in this Complaint are based upon information and
8 belief, except those allegations that pertain to Andorra, which are based on personal
9 knowledge. The allegations of this Complaint stated on information and belief are
10 likely to have evidentiary support after a reasonable opportunity for further
11 investigation and/or discovery.

12 4. The true names and capacities, whether individual, corporate, associate or
13 otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Andorra
14 who therefore sues said DOE Defendants by such fictitious names. Each of the
15 Defendants designated herein as a DOE is legally responsible in some manner for the
16 events and happenings herein alleged, and Andorra's damages as alleged herein were
17 proximately caused by such DOE Defendants. Andorra will ask leave of Court to
18 amend this Complaint and insert the true names and capacities of said DOE
19 Defendants when the same have been ascertained.

20 5. Defendant Fabricure and DOE Defendants are collectively referred to as
21 Defendants.

22 6. At all times material herein, each Defendant was the agent, servant and
23 employee of certain remaining Defendants, acting within the purpose, scope and
24 course of said agency, service and employment, with the express and/or implied
25 knowledge, permission and consent of those remaining Defendants, and each of them,
26 and each of said Defendants ratified and approved the acts of the other Defendants.

27

28

1 **JURISDICTION AND VENUE**

2 7. The Court has jurisdiction over this civil action under Title 28 U.S.C.
3 section 1331 and Title 42 U.S.C. sections 9607 and 9613(b). The Court has
4 supplemental jurisdiction over state law claims under Title 28 U.S.C. section 1367
5 because the federal and state claims arise from a common nucleus of operative facts.

6 8. Venue is proper in this District under Title 28 U.S.C. section 1391(b) and
7 Title 42 U.S.C. section 9613(b) because the alleged releases and/or threatened releases
8 occurred in this district.

9 **GENERAL ALLEGATIONS**

10 9. The property at issue in the lawsuit is a 186 unit residential apartment
11 complex located at the Andorra Property, which is owned by Plaintiff Andorra.

12 10. Andorra is informed and believes that Defendants are the owner of the
13 Fabricure Property. The Fabricure Property is located adjacent and to the south of the
14 Andorra Property.

15 11. Andorra is informed and believes that the Fabricure Property is, and has
16 been, occupied by a dry cleaning and commercial laundry facility, wherein
17 tetrachloroethylene (PCE) was used, from about 1975 to the present.

18 12. On March 27, 2019, a Phase I Environmental Site Assessment Report for
19 the Andorra Property identified a Recognized Environmental Condition (REC) due to
20 the various dry cleaning facilities that have operated at the Fabricure Property from
21 1975 to present. The Phase I Report states that Marshall’s Cleaners and Laundry
22 operated a dry cleaning business at the Fabricure Property from at least 1983 to the
23 present. The Phase I Report also states that South Coast Air Quality Management
24 District (SCAQMD) records indicate that in 1983 Marshall’s Cleaners and Laundry
25 utilized a “synthetic solvent” PERMAC brand dry cleaning system at the Fabricure
26 Property. In 1988, the SCAQMD issued permits for two Lindus brand dry cleaning
27 machines which, on information and belief, Andorra alleges use PCE. The Phase I

1 Report opines that dry cleaning operations typically use chlorinated solvents,
2 particularly PCE, during the dry cleaning process. These solvents, even when
3 properly stored and handled, can readily migrate into the subsurface as a result of
4 small releases associated with on-site operations. The Phase I Report also opines that,
5 based on the number of years of operation (from at last 1975 to the present), time
6 period of operations (which included operation during a time that pre-dates regulatory
7 oversight of hazardous substances and petroleum products), utilization of PCE and the
8 cleaner's proximity to the Andorra Property, the potential exists that, if a release of
9 chlorinated solvents occurred at the Fabricure Property, the subsurface of the Andorra
10 Property may have also been impacted. The Phase I Report recommends further
11 investigation to assess whether a vapor phase migration concern exists at the Andorra
12 Property. The Phase I Report does not state or opine that any hazardous substances
13 were released or disposed of during any operations at the Andorra Property.

14 13. On May 8, 2019, a Phase II Subsurface Investigation Report was
15 prepared following a limited subsurface soil and soil vapor investigation that was
16 performed at the Andorra Property. All three soil vapor samples detected PCE
17 exceeding the laboratory reporting limits and residential soil gas screening levels. PCE
18 was detected in soil gas ranging from 1,390 micrograms per cubic meter (ug/m³) to
19 2,890 ug/m³. The Phase II report concludes that based on the PCE concentrations in
20 soil gas above residential screening levels and the current residential nature of the
21 Andorra Property, the PCE released at Defendants' Fabricure Property has impacted
22 the Andorra Property at concentrations which may represent a vapor intrusion concern
23 for the on-site residential occupants.

24 14. Andorra is informed and believes that PCE was never used, released, or
25 disposed of at the Andorra Property.

26 15. Yet, PCE was detected in sampling work performed at the Andorra
27 Property.

1 16. As a proximate result of Defendants' disposal, releases, and threatened
2 releases of hazardous substances, including PCE, Andorra has suffered damages and
3 will incur response and corrective action costs that are necessary and consistent with
4 the National Oil and Hazardous Substances Pollution Contingency Plan (National
5 Contingency Plan or NCP), including attorneys' fees and expert fees, for which
6 Defendants are strictly liable pursuant to California Health and Safety Code section
7 25363.

8 17. The value of the Andorra Property, and Andorra's ability to lease units,
9 and Andorra's ability to obtain competitive financing for the Andorra Property have
10 diminished as the result of the contamination released on Defendants' Fabricure
11 Property and which have migrated onto the Andorra Property.

12 18. Defendants have done nothing to investigate, remediate or abate the PCE
13 disposed of at the Fabricure Property and allowed the PCE to migrate and damage the
14 Andorra Property. Defendants' failure to timely investigate and remediate the PCE
15 contamination has damaged Andorra.

16 19. Andorra continues to incur costs associated with the PCE contamination
17 from Defendants' Fabricure Property. The full extent of these future costs are
18 currently unknown.

19 **FIRST CAUSE OF ACTION**

20 **(For Response Costs Pursuant to Section 107(a) of CERCLA, 42 U.S.C. §**
21 **9607(a))**

22 20. Andorra re-alleges the allegations set forth in paragraphs 1 through 16
23 above, and hereby incorporates each of them as though they were set forth in full.

24 21. Section 107(a) of CERCLA, Title 42 U.S.C. section 9607(a), provides
25 that the owner and/or operator of a facility, any person who arranged for disposal or
26 treatment of hazardous substances to a facility, or any person who accepted any
27 hazardous substances for transport to disposal or treatment facilities, from which there
28

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