

**SUMMONS
(CITACION JUDICIAL)**

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

ANAWALT LUMBER CO., INC., BIG A DRUG STORES, INC.,
WILLERT HOME PRODUCTS, INC., and DOES 1 – 100

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

CONSUMER ADVOCACY GROUP, INC., in the public interest

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

FEB 05 2008

John A. Clarke, Executive Officer/Clerk
M. Garcia
BY MARY GARCIA, Deputy

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.

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.courtinfo.ca.gov/selfhelp/espanol/), 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.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

COPY

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court of California for the County of Los Angeles
Stanley Mosk Courthouse
111 N. Hill St., Los Angeles, CA 90012

CASE NUMBER
(Número del Caso) **BC 384995**

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):
Reuben Yeroushalmi, Yeroushalmi & Associates, 3700 Wilshire Blvd., Suite 480
Los Angeles, CA 90010, 213-382-3183

M. GARCIA

DATE:
(Fecha)

FEB 05 2008

JOHN A. CLARKE, CLERK
(Secretario)

Deputy
(Adjunto)

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

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

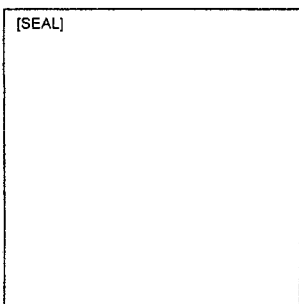
NOTICE TO THE PERSON SERVED: You are served

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

- 3. on behalf of (specify):

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

- 4. by personal delivery on (date):



1 Reuben Yeroushalmi (SBN 193981)
2 Daniel D. Cho (SBN 105409)
3 Brian Keith Andrews (SBN 234306)
4 YEROUSHALMI & ASSOCIATES
5 3700 Wilshire Blvd., Suite 480
6 Los Angeles, CA 90010
7 Telephone: 213-382-3183
8 Facsimile: 213-382-3430
9 Email: lawfirm@yeroshalmi.com
10 Attorney for Plaintiff,
11 Consumer Advocacy Group, Inc.

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

FEB 05 2008

John A. Clarke, Executive Officer/Clerk
M Garcia
BY MARY GARCIA, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

12 CONSUMER ADVOCACY)
13 GROUP, INC., in the public interest,)

14 Plaintiff,)

15 v.)

16 ANAWALT LUMBER CO., INC.,)
17 BIG A DRUG STORES, INC.,)
18 WILLERT HOME PRODUCTS,)
19 INC., and DOES 1 – 100,)

20 Defendants.)

Case No.

BC384995

COMPLAINT FOR VIOLATIONS OF
PROPOSITION 65, THE SAFE DRINKING
WATER AND TOXIC ENFORCEMENT ACT OF
1986 (Health & Saf. Code, §§ 25249.5 et seq.)

ACTION IS AN UNLIMITED CIVIL CASE
(exceeds \$25,000)

21
22 Plaintiff, Consumer Advocacy Group, Inc. alleges a cause of action against defendants,
23 Anawalt Lumber Co., Inc., Big A Drug Stores, Inc., Willert Home Products, Inc., and Does 1 –
24 100.

THE PARTIES

1. Plaintiff, Consumer Advocacy Group, Inc. (“Plaintiff”) is a non-profit corporation qualified to do business in the State of California. It brings this action in the public interest as defined under Health and Safety Code section 25249.7, subdivision (d).
2. Defendant, Anawalt Lumber Co., Inc. is a California corporation qualified to do business in California.
3. Defendant, Big A Drug Stores, Inc. is a California corporation qualified to do business in California.
4. Defendant, Willert Home Products, Inc. is a Missouri Corporation.
5. Plaintiff is ignorant of the true names and capacities of defendants Does 1-100, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences and the damages alleged.
6. The term “Defendants” includes Anawalt Lumber Co., Inc., Big A Drug Stores, Inc., Willert Home Products, Inc., and Does 1 – 100.
7. At all times mentioned each defendant was a “[p]erson in the course of doing business” within the meaning of Health and Safety Code section 25249.11, subdivision (b). Plaintiff is informed, believes, and thereon alleges that at all times mentioned each defendant had ten or more employees.

1 **JURISDICTION AND VENUE**

2 8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
3 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
4 those given by statute to other trial courts.
5

6 **FIRST CAUSE OF ACTION**

7 **(By Consumer Advocacy Group, Inc. and against Anawalt Lumber Co., Inc., Big A**
8 **Drug Stores, Inc., Willert Home Products, Inc., and Does 1 – 100 for Violations of**
9 **Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (Health &**
10 **Saf. Code, §§ 25249.5 et seq.)**

11
12 9. Plaintiff repeats and incorporates by reference the previous paragraphs of this complaint
13 as though fully set forth herein.

14
15 10. At all times mentioned here, defendant, Anawalt Lumber Co., Inc. is and has been a
16 distributor or retailer of a consumer product used to kill clothes moths, eggs, and larvae
17 in household containers and areas: Enoz® Old Fashioned Moth Flakes.

18
19 11. At all times mentioned here, defendant, Big A Drug Stores, Inc. is and has been a
20 distributor or retailer of a consumer product used to kill clothes moths, eggs, and larvae
21 in household containers and areas: Enoz® Old Fashioned Moth Flakes.

22
23 12. At all times mentioned here, defendant, Willert Home Products, Inc. is and has been a
24 manufacturer or distributor of a consumer product used to kill clothes moths, eggs, and
25 larvae in household containers and areas: Enoz® Old Fashioned Moth Flakes.

26
27 13. Plaintiff is informed, believes, and thereon alleges that Defendants exposed, knowingly
28 and intentionally, users of Enoz® Old Fashioned Moth Flakes to Naphthalene, a chemical
designated by the State of California to cause cancer, without first giving clear and

1 reasonable warning of such to the persons exposed before exposure. Defendants thereby
2 violated Proposition 65.

3
4 14. On April 19, 2002, the Governor of California added Naphthalene to the list of chemicals
5 known to the State to cause cancer. (Cal. Code Regs., title 22, §12000, subdivision (b)).
6 Pursuant to Health and Safety Code section 25249.9, twenty months after first appearing
7 on the Governor's Proposition 65 list, Naphthalene became subject to Proposition 65
8 warning requirements.

9
10 15. Between June 28, 2004 and the present, persons in California using the Enoz® Old
11 Fashioned Moth Flakes sustained routes of exposure to Naphthalene through inhalation
12 and dermal contact. The principal route of exposure was through inhalation caused when
13 users of Enoz® Old Fashioned Moth Flakes applied product to containers, bags, and
14 closets (e.g. sprinkling or placing the product on the bottom of storage spaces, between
15 and on top of folds and layers of clothes), and they inadvertently inhaled fumes from
16 product. Users also suffered a principal route of exposure of dermal contact when they
17 allowed bare skin to touch product when user applied product to containers, bags, and
18 closets.
19

20
21 **SATISFACTION OF PRIOR NOTICE**

22 16. On June 28, 2007, Plaintiff gave notice of alleged violations of Proposition 65 subject to
23 a private action to defendant, Anawalt Lumber Co., Inc., as to Enoz® Old Fashioned
24 Moth Flakes.

25
26 17. On June 28, 2007, Plaintiff gave notice of alleged violations of Proposition 65 subject to
27 a private action to defendant, Big A Drug Stores, Inc., as to Enoz® Old Fashioned Moth
28 Flakes.

- 1 18. On December 11, 2006, Plaintiff gave notice of alleged violations of Proposition 65
2 subject to a private action to defendant, Willert Home Products, Inc., as to Enoz® Old
3 Fashioned Moth Flakes.
4
- 5 19. Plaintiff caused mailing of copies of the aforementioned notices of alleged violations of
6 Proposition 65 subject to a private action to the Attorney General and applicable district
7 attorneys and city attorneys in whose jurisdictions the violations allegedly occurred.
8
- 9 20. Plaintiff served the aforementioned notices, and filed this action, more than twenty
10 months after Naphthalene first appeared on the Governor's Proposition 65 list, and after
11 Naphthalene became subject to Proposition 65 warning requirements.
- 12 21. Plaintiff's notices of the alleged violations of Proposition 65 subject to a private action
13 included certificates of merit executed by the attorney for the noticing party. The
14 certificates of merit stated that the attorney for Plaintiff who executed the certificate had
15 consulted with at least one person with relevant and appropriate expertise who had
16 reviewed data regarding the exposure to Naphthalene, which is the subject of this action.
17 Based on that information, the attorney for Plaintiff who executed the certificate believed
18 there was a reasonable and meritorious case for this private action. The attorney for
19 Plaintiff attached to the certificates of merit served on the Attorney General information
20 sufficient to establish the basis of the certificate of merit.
21
- 22 22. Plaintiff is commencing this action more than sixty days from the date that Plaintiff gave
23 notices of the alleged violations of Proposition 65 subject to a private action to defendant,
24 to the Attorney General, and to applicable district attorneys and city attorneys in whose
25 jurisdictions the violations allegedly occurred.
26
27
28

1 23. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General nor
2 any applicable district attorney or city attorney has commenced and is diligently
3 prosecuting an action against the violations alleged.
4

5 24. Plaintiff's allegations concern a "consumer product exposure," which is an exposure that
6 results from a person's acquisition, purchase, storage, consumption, or other reasonably
7 foreseeable use of a consumer good. Enoz® Old Fashioned Moth Flakes is a consumer
8 product. Enoz® Old Fashioned Moth Flakes consists of a powder containing
9 Naphthalene that consumers sprinkle onto surfaces. The reasonably foreseeable use of
10 such a product results in exposure to Naphthalene through dermal and inhalation contact.
11


12 **PRAYER FOR RELIEF**

13 Plaintiff demands against each Defendant as follows:

- 14 1. A permanent injunction;
15
16 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b) of \$2,500.00
17 per day per violation;
18
19 3. Costs of suit;
20
21 4. Reasonable attorney fees and costs; and
22
23 5. Any further relief that the court may deem just and equitable.

24 Dated: Monday, February 04, 2008

YEROUSHALMI & ASSOCIATES

25 
26 Brian Keith Andrews
27 Attorney for Plaintiff,
28 Consumer Advocacy Group, Inc.