

**SUMMONS
(CITACION JUDICIAL)**

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

ACE HARDWARE CORPORATION, AQUA EZ, INC., AQUA TRI,
POOL WATER PRODUCTS, CHEM LAB PRODUCTS,
INCORPORATED, (Additional Parties Attachment for is attached)

**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)

**ENDORSED
FILED
ALAMEDA COUNTY**

MAR 04 2008

CLERK OF THE SUPERIOR COURT
By P. Bir

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.

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

Superior Court of California for the County of Alameda
René C. Davidson Alameda County Courthouse
1225 Fallon St., CA Oakland, 94612

CASE NUMBER:
(Número del caso) **08374636**

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

DATE: **MAR 04 2008**
(Fecha)

Pat S. Sweeten

Clerk, by
(Secretario)

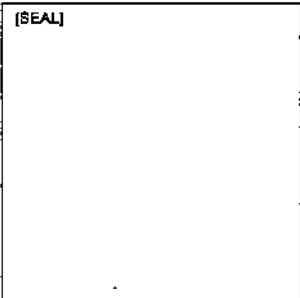
P. Bir

Deputy
(Adjunto)

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

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

NOTICE TO THE PERSON SERVED: You are served



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

- 3. on behalf of (specify):

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

- 4. by personal delivery on (date):

COPY

SHORT TITLE: Consumer Advocacy Group, Inc. v. Ace Hardware Corporation, et al.	CASE NUMBER:
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INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff
 Defendant
 Cross-Complainant
 Cross-Defendant

LESLIE'S POOLMART, INC., OREQ CORPORATION, VALTERRA PRODUCTS, INC., and DOES 1 – 100

F. ADDENDUM TO CIVIL CASE COVER SHEET

Short Title: **CONSUMER ADVOCACY GROUP V. ACE HARDWARE** Case Number: _____

CIVIL CASE COVER SHEET ADDENDUM

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

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

Civil Case Cover Sheet Category	Code	Description	Code	Description	Notes
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)			
	Other non-PI/PD/WD tort (35)	<input type="checkbox"/> 03 Other non-PI/PD/WD tort (G)			
Employment	Wrongful termination (36)	<input type="checkbox"/> 38 Wrongful termination (G)			
	Other employment (15)	<input type="checkbox"/> 85 Other employment (G)			
		<input type="checkbox"/> 53 Labor comm award confirmation			
		<input type="checkbox"/> 54 Notice of appeal - L.C.A.			
Contract	Breach contract / Wmty (06)	<input type="checkbox"/> 04 Breach contract / Wmty (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 checked="" 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 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 REUBEN YEROUSHALMI (SBN 193981)
2 DANIEL D. CHO (SBN 105409)
3 BEN YEROUSHALMI (SBN 232540)
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@yeroushalmi.com
10 Attorneys for Plaintiffs,
11 Consumer Advocacy Group, Inc

ENDORSED
FILED
ALAMEDA COUNTY

MAR 04 2008

CLERK OF THE SUPERIOR COURT
By _____ Deputy

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF ALAMEDA --UNLIMITED

14 CONSUMER ADVOCACY GROUP,
15 INC., in the public interest,

16 Plaintiff,

17 v.

18 ACE HARDWARE CORPORATION,
19 AQUA EZ, INC., AQUA TRI, POOL
20 WATER PRODUCTS, CHEM LAB
21 PRODUCTS, INCORPORATED,
22 LESLIE'S POOLMART, INC., OREQ
23 CORPORATION, VALTERRA
24 PRODUCTS, INC., and DOES 1 - 100,

25 Defendants.

) Case No.

16 08374636

)
) COMPLAINT FOR VIOLATION OF
) PROPOSITION 65, THE SAFE DRINKING
) WATER AND TOXIC ENFORCEMENT ACT
) OF 1986 (HEALTH AND SAFETY CODE
) SECTIONS 25249.5, et al.)

)
) UNLIMITED CIVIL CASE (more than
) \$25,000)

26 **THE PARTIES**

- 27 1. Plaintiff, Consumer Advocacy Group, Inc. ("CAG" or "Plaintiff"), is a non-profit
28 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, Ace Hardware Corporation is a Delaware corporation.

COPY

- 1 3. Defendant, Aqua EZ, Inc. is a Georgia corporation.
- 2 4. Aqua Tri and Pool Water Products are California corporations.
- 3 5. Chem Lab Products, Incorporated is a California corporation.
- 4 6. Leslie's Poolmart, Inc. is a Delaware corporation.
- 5 7. Oreq Corporation is a California corporation.
- 6 8. Valterra Products, Inc. is a California corporation.
- 7 9. At all times mentioned here, "Defendants" include Ace Hardware Corporation, Aqua EZ,
- 8 Inc., Aqua Tri, Pool Water Products, Chem Lab Products, Incorporated, Leslie's
- 9 Poolmart, Inc., Oreq Corporation, Valterra Products, Inc., as well as Does 1-100.
- 10 10. At all times mentioned here, Defendants have conducted business in California.
- 11 11. Plaintiff is ignorant of the true names and capacities of defendants Does 1-100, and
- 12 therefore sues these defendants by such fictitious names. Plaintiff will amend this
- 13 complaint to allege their true names and capacities when ascertained. Plaintiff is
- 14 informed, believes, and thereon alleges that each fictitiously named defendant is
- 15 responsible in some manner for the occurrences herein alleged and the damages caused
- 16 thereby.
- 17 12. At all times mentioned each defendant was a "[p]erson in the course of doing business"
- 18 within the meaning of Health and Safety Code section 25249.11, subdivision (b).
- 19 Plaintiff is informed, believes, and thereon alleges that at all times mentioned herein each
- 20 defendant had ten or more employees.
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JURISDICTION AND VENUE

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

FIRST CAUSE OF ACTION

(BY Consumer Advocacy Group, Inc. and against Ace Hardware Corporation, Aqua EZ, Inc., Aqua Tri, Pool Water Products, Chem Lab Products, Incorporated, Leslie's Poolmart, Inc., Oreq Corporation, Valterra Products, Inc., and DOES 1 – 100 For Violation Of Proposition 65, The Safe Drinking Water And Toxic Enforcement Act Of 1986 (Health & Saf. Code, §§ 25249.5, et seq.)

14. Plaintiff, Consumer Advocacy Group, Inc. repeats and incorporates by reference the previous paragraphs of this complaint as though fully set forth herein.

15. Each Defendant is and at all times mentioned here was a manufacturer or distributor of a consumer product designed for testing the concentration of chlorine—and in some instances, also bromine—in swimming pool, spa, and potable water, as well as plumbing, agricultural, and waste water applications., as follows:

Manufacturer / Distributor	Product
Ace Hardware Corporation	Ace Two-Way Test Kit Refill, Item no: 8006827; Ace 4 Way Pool Test Kit Refill, Item no: 8006835; and Ace Two-Way Pool Test Kit, Item no: 8006942
Aqua EZ, Inc.	Aqua EZ® Chlorine & PH Test Kit, Model #TK02, Item #102931 and Aqua EZ® Refill Test Kit, Item #102934, Model #TK02R
Aqua Tri and Pool Water Products	All Clear™ 2-Way Test Kit

1 2 3	Chem Lab Products, Incorporated	KEM-TEK Pool & Spa Accessory Reagent Refill, Product # 485 and KEM-TEK Pool Care System Pool & Spa Accessory 3-Way Test Kit, Product # 439
4 5	Leslie's Poolmart, Inc.	Leslie's Pool Test Kit, Indicator Solutions, replacement for dual type test kit, product #18-682
6	Oreq Corporation	poolpals water maintenance dual test kit, product # TK405C
7 8 9	Valterra Products, Inc.	blue devil™ OTO (Orthotoldine), packaged in a ½ ounce clear plastic dropper container with a yellow cap and blue devil Test Kit Refill Solutions OTO & Phenol Red, 1/2 Oz. Bottles (for 3-Way), Carded, product #B7212C

10
11 At all times mentioned here, "Pool Products" mean the above-mentioned products.

12 16. Plaintiff is informed, believes, and thereon alleges that each Defendant knowingly and
13 intentionally exposed users of the Pool Product that it manufactured or distributed, as
14 mentioned above, to 3,3'-Dimethylbenzidine (ortho-Tolidine), a chemical designated by
15 the State of California to cause cancer, without first giving clear and reasonable warning
16 of such to the persons exposed. Defendants thereby violated Health and Safety Code
17 sections 25249.5, et seq. ("Proposition 65").
18

19 17. On January 1, 1988, 3,3'-Dimethylbenzidine (ortho-Tolidine) first appeared on the
20 Governor's Proposition 65 list of Chemicals known to cause cancer. (Cal. Code Regs.,
21 title 22, §12000, subdivision (b)). Pursuant to Health and Safety Code section 25249.9,
22 twenty months after first appearing on the Governor's Proposition 65 list, 3,3'-
23 Dimethylbenzidine (ortho-Tolidine) became fully subject to Proposition 65 warning
24 requirements.
25

26 18. Between November 9, 2004, and November 9, 2007, and continuing thereafter, persons
27 using Pool Products sustained exposure by dermal contact to 3,3'-Dimethylbenzidine
28

1 (ortho-Tolidine). The Pool Products contain 3,3'-Dimethylbenzidine (ortho-Tolidine), a
2 Proposition 65 listed chemical. Persons using Pool Products who sustain exposure place
3 a small sample of the water for testing into a cylinder. They then add a few drops of the
4 Pool Product in question to the sample. The sample will then change color depending on
5 the concentration of chlorine—or in some instances, also bromine. To ensure an accurate
6 result, one must thoroughly mix the sample with the Pool Product in question. CAG's
7 investigations show that many users employ a thumb or finger to seal the cylinder before
8 mixing, thereby allowing bare skin to touch the solution. Exposure also occurs by way of
9 spillage. Since 3,3'-Dimethylbenzidine (ortho-Tolidine) absorbs readily through human
10 skin, the foregoing exposure was significant and warranted a Proposition 65 warning.
11

12 **SATISFACTION OF PRIOR NOTICE**

13
14 19. On June 28, 2007, and November 9, 2007, Plaintiff gave notices of alleged violations of
15 Health and Safety Code section 25249.6 subject to a private action, as described in the
16 foregoing paragraphs, to defendant, Ace Hardware Corporation.
17

18 20. On October 2, 2007 (2 distinct notices) , and November 9, 2007 (2 distinct notices),
19 Plaintiff gave notices of alleged violations of Health and Safety Code section 25249.6
20 subject to a private action, as described in the foregoing paragraphs, to defendant, Aqua
21 EZ, Inc.
22

23 21. On December 12, 2006, and November 9, 2007, Plaintiff gave notices of alleged
24 violations of Health and Safety Code section 25249.6 subject to a private action, as
25 described in the foregoing paragraphs, to defendants, Aqua Tri and Pool Water Products.
26

27 22. On June 28, 2007 (2 distinct notices), and November 9, 2007 (2 distinct notices), Plaintiff
28 gave notices of alleged violations of Health and Safety Code section 25249.6 subject to a

1 private action, as described in the foregoing paragraphs, to defendant, Chem Lab
2 Products, Incorporated.

3 23. On June 28, 2007, and November 9, 2007, Plaintiff gave notices of alleged violations of
4 Health and Safety Code section 25249.6 subject to a private action, as described in the
5 foregoing paragraphs, to defendant, Leslie's Poolmart, Inc.

6 24. On October 2, 2007, and November 9, 2007, Plaintiff gave notices of alleged violations
7 of Health and Safety Code section 25249.6 subject to a private action, as described in the
8 foregoing paragraphs, to defendant Oreq Corporation.

9 25. On June 28, 2007, and November 9, 2007, Plaintiff gave notices of alleged violations of
10 Health and Safety Code section 25249.6 subject to a private action, as described in the
11 foregoing paragraphs, to defendant, Valterra Products, Inc.

12 26. On each respective date mentioned in paragraphs 19 through 25 of this Complaint,
13 Plaintiff caused mailing of a copy of each respective Notice of Intent to Sue to the
14 Attorney General and the applicable district attorneys and city attorneys in whose
15 jurisdictions the violations allegedly occurred.

16 27. Plaintiff gave this notice, and filed this action, more than twenty months after 3,3'-
17 Dimethylbenzidine (ortho-Tolidine) first appeared on the Governor's Proposition 65 list,
18 and after 3,3'-Dimethylbenzidine (ortho-Tolidine) became fully subject to Proposition 65
19 warning requirements and discharge prohibitions.

20 28. Plaintiff's notices of the alleged violation included a certificate of merit executed by the
21 attorney for the noticing party, Plaintiff. The certificate of merit stated that the attorney
22 for Plaintiff who executed the certificate had consulted with at least one person with
23 relevant and appropriate expertise who had reviewed data regarding the exposure to 3,3'-
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1 Dimethylbenzidine (ortho-Tolidine), which is the subject of this action. Based on that
2 information, the attorney for Plaintiff who executed the certificate believed there was a
3 reasonable and meritorious case for this private action. The attorney for Plaintiff attached
4 to the certificate of merit served on the Attorney General information sufficient to
5 establish the basis of the certificate of merit.
6

7 29. Plaintiff is commencing this action more than sixty days from the date that Plaintiff gave
8 notice of the alleged violations to each respective defendant, to the Attorney General, and
9 to applicable district attorneys and city attorneys in whose jurisdictions the violations
10 allegedly occurred.
11

12 30. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
13 any applicable district attorney or city attorney has commenced and is diligently
14 prosecuting an action against the violation.
15

16 31. At all times relevant to this action, Defendants knowingly and intentionally exposed users
17 of the Pool Products to 3,3'-Dimethylbenzidine (ortho-Tolidine), a chemical designated
18 by the State of California to cause cancer, without first giving clear and reasonable
19 warning of such to the persons exposed.
20

21 32. Plaintiff's allegations concern a "consumer product exposure," which is an exposure that
22 results from a person's acquisition, purchase, storage, consumption, or other reasonably
23 foreseeable use of a consumer good. The Pool Products are consumer products. Since
24 the Pool Products contain 3,3'-Dimethylbenzidine (ortho-Tolidine), the reasonably
25 foreseeable use of the Pool Products results in exposure through dermal contact to 3,3'-
26 Dimethylbenzidine (ortho-Tolidine) as described in paragraph 18.
27
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1 33. The route of exposure for 3,3'-Dimethylbenzidine (ortho-Tolidine) has been dermal
2 contact.

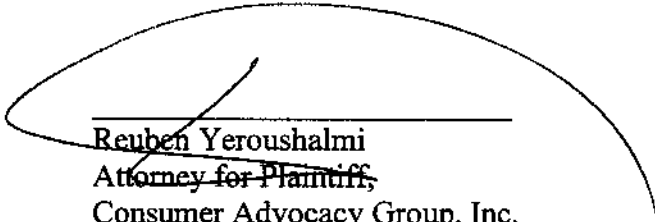
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4 **PRAYER FOR RELIEF**

5 Plaintiff demands against each Defendant as follows:

- 6 1. A permanent injunction;
7 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b) of
8 \$2,500.00 per day per violation;
9 3. Costs of suit;
10 4. Reasonable attorney fees and costs; and
11 5. Reasonable attorney fees and costs; and
12 6. Any further relief that the court may deem just and equitable.

13
14 Dated: 2/21/08

YEROUSHALMI & ASSOCIATES

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20 Reuben Yeroushalmi
21 Attorney for Plaintiff,
22 Consumer Advocacy Group, Inc.
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