

**SUMMONS
(CITACION JUDICIAL)**

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

RED DEVIL, INC., an Oklahoma Corporation, and DOES 1-50

**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**

DEC 29 2008

CLERK OF THE SUPERIOR COURT
Anita Dhir

By _____ 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.

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
Rene C. Davidson Alameda County Courthouse
1225 Fallon Street, Oakland, California 94612

CASE NUMBER: *R0708427955*
(Número del Caso)

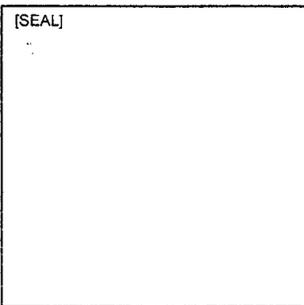
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Daniel D. Cho (SBN 105409), YEROUSHALMI & ASSOCIATES
3700 Wilshire Boulevard, Suite 480, Los Angeles, CA 90010; Tel (213) 382-3183

DATE: **DEC 29 2008**
(Fecha)

Pat S. Sweeten Clerk, by *Anita Dhir*, 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)).



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: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):	
4. by personal delivery on (date):

COPY

ENDORSED
FILED
ALAMEDA COUNTY

DEC 29 2008

CLERK OF THE SUPERIOR COURT

By Anita Dhir Deputy

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 Attorneys for Plaintiffs,
10 Consumer Advocacy Group, Inc

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA – UNLIMITED

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

16 Plaintiff,

17 v.

18 RED DEVIL, INC., an Oklahoma
19 Corporation, and DOES 1-50;

20 Defendants.

CASE NO. *Rly* 08427955

) COMPLAINT FOR PENALTY,
) INJUNCTION, AND RESTITUTION

) Violation of Proposition 65, the Safe
) Drinking Water and Toxic Enforcement
) Act of 1986 (Health & Safety Code., §§
) 25249.5, et seq.)

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

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26 Plaintiff Consumer Advocacy Group, Inc. alleges, based on information and belief, a
27 cause of action against defendants as follows:

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THE PARTIES

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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 Red Devil, Inc. is an Oklahoma corporation.
 3. Plaintiff is ignorant of the true names and capacities of defendants Does 1-50, 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 herein alleged and the damages caused thereby.
 4. Plaintiff is informed, believes, and thereon alleges that Red Devil Inc. at all times mentioned herein has conducted business within the State of California.
 5. At all times mentioned herein, "Defendants" include Red Devil, Inc. and Does 1-50.
 6. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the Defendants was a person doing business within the meaning of Health and Safety Code section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more employees.

JURISDICTION

7. The Court has jurisdiction over this lawsuit pursuant to 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.

BACKGROUND AND PRELIMINARY FACTS

8. In 1986, California voters approved an initiative to address growing concerns about exposure to toxic chemicals. The initiative, The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources from

1 Ounce Container (hereinafter "Red Devil"), a consumer product designed as a protective
2 sealant in kitchen and bathroom applications.

3 14. Plaintiff is informed, believes, and thereon alleges that Red Devil contains Butyl benzyl
4 phthalate (BBP) (hereinafter "BBP").

5 15. On December 2, 2005, the Governor of California added BBP to the list of chemicals
6 known to the State to cause reproductive toxicity, developmental (*Cal. Code Regs. 22 §*
7 *12000(c)*). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty
8 (20) months after addition of BBP to the list of chemicals known to the State to cause
9 reproductive toxicity, BBP became fully subject to Proposition 65 warning requirements
10 and discharge prohibitions.

11 16. Plaintiff is informed, believes, and thereon alleges that between February 7, 2005 and the
12 present, each of the Defendants knowingly and intentionally exposed California
13 consumers and users of Red Devil, which it manufactured or distributed as mentioned
14 above, to BBP without first giving clear and reasonable warning of such to the exposed
15 persons before the time of exposure. Defendants have distributed Red Devil in
16 California. Defendants thereby violated Proposition 65.

17 17. The principal route of exposure is through dermal contact and inhalation when users of
18 Red Devil apply the product using steady, even pressure to completely bridge joints and
19 then use a wet finger or a damp cloth for a neat appearance and user, or others in
20 temporal and physical proximity, inadvertently or intentionally touched the product,
21 thereby allowing bare skin to touch the chemical relevant to this notice. Users and others
22 in temporal and physical proximity of applications of the product also suffered a principal
23 rout of exposure through inhalation by breathing in fumes or other airborne matter from
24 the product. Such exposure assumes use of Red Devil in accordance with its instructions.

25 18. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
26 Proposition 65 as to Red Devil have been ongoing and continuous to the date of the
27 signing of this complaint, so that a separate and distinct violation of Proposition 65
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1 occurred each and every time a consumer was exposed to BBP by using Red Devil as
2 mentioned herein.

3 19. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
4 mentioned herein is ever continuing.

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6 **SATISFACTION OF PRIOR NOTICE**

7 20. On or about February 8, 2008, Plaintiff gave notice of alleged violations of Health and
8 Safety Code section 25249.6 subject to a private action to Red Devil, Inc., identified in
9 the notice as Red Devil, Incorporated, and to the California Attorney General, County
10 District Attorneys, and City Attorneys for each city containing a population of at least
11 750,000 people in whose jurisdictions the violations allegedly occurred, concerning
12 consumer products Red Devil.

13 21. Before sending the notice of alleged violation, Plaintiff investigated the consumer
14 product involved, the likelihood that such product would cause users to suffer significant
15 exposures to BBP, the corporate structure of each of the Defendants, and other relevant
16 matters.

17 22. Plaintiff's notice of alleged violation included a certificate of merit executed by the
18 attorney for the noticing party, Plaintiff. The certificates of merit stated that the attorney
19 for Plaintiff who executed the certificate had consulted with at least one person with
20 relevant and appropriate expertise who had reviewed data regarding the exposure to BBP,
21 respectively, which are the subject Proposition 65-listed chemicals of this action. Based
22 on that information, the attorney for Plaintiff who executed the certificates believed there
23 was a reasonable and meritorious case for this private action. The attorney for Plaintiff
24 attached to the certificates of merit served on the Attorney General information sufficient
25 to establish the basis of the certificates of merit.

26 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
27 gave notice of the alleged violations to Red Devil, Inc. and to the public prosecutors
28 referenced in Paragraph 20.

1 24. 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 Defendants.

4 25. Plaintiff's allegations concern a "consumer product exposure," which is an exposure that
5 results from a person's acquisition, purchase, storage, consumption, or other reasonably
6 foreseeable use of a consumer good. Red Devil is a consumer product, and as mentioned
7 in paragraphs 13-19, exposure to BBP took place as a result of such consumption and
8 foreseeable use.

9 **PRAYER FOR RELIEF**

10 Plaintiff demands against each of the Defendants as follows:

- 11 1. A permanent injunction mandating Proposition 65 compliant warnings;
12 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
13 3. Costs of suit;
14 4. Reasonable attorney fees and costs; and
15 5. Any further relief that the court may deem just and equitable.

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17 Dated: December 22, 2008

YEROUSHALMI & ASSOCIATES

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20 BY: 
21 Daniel D. Cho
22 Attorneys for Plaintiff,
23 Consumer Advocacy Group, Inc.
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