

**SUMMONS
(CITACION JUDICIAL)**

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

**CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court**

DEC 18 2008

John A. Clarke, Executive Officer/Clerk
[Signature]
BY MARY GARCIA, Deputy

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**
INTERNATIONAL COFFEE & TEA, LLC, a Delaware Limited Liability Company, and DOES 1-50

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
CONSUMER ADVOCACY GROUP, INC., in the public interest

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 Los Angeles
Stanley Mosk Courthouse
111 North Hill Street, Los Angeles, CA 90012

CASE NUMBER:
(Número del Caso): **BC404051**

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

M. GARCIA, Deputy
(Adjunto)

DATE: **DEC 18 2008**
(Fecha) **JOHN A. CLARKE, CLERK**
(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):
- 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):
- by personal delivery on (date):

[SEAL]

COPY

1 REUBEN YEROUSHALMI (SBN 193981)
2 DANIEL D. CHO (SBN 105409)
3 BEN YEROUSHALMI (SBN 232540)
4 **YEROUSHALMI & ASSOCIATES**
5 3700 Wilshire Boulevard, Suite 480
6 Los Angeles, California 90010
7 Telephone: 213-382-3183
8 Facsimile: 213-382-3430

9 Attorneys for Plaintiffs,
10 Consumer Advocacy Group, Inc

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OF ORIGINAL FILED
Los Angeles Superior Court

DEC 18 2008

John A. Clarke, Executive Officer/Clerk

M Garcia
BY MARY GARCIA, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

BC404051

13 CONSUMER ADVOCACY GROUP, INC.,) CASE NO.
14 in the public interest,)
15 Plaintiff,) COMPLAINT FOR PENALTY,
16) INJUNCTION, AND RESTITUTION
17 v.)
18) Violation of Proposition 65, the Safe
19) Drinking Water and Toxic Enforcement
20 INTERNATIONAL COFFEE & TEA, LLC,) Act of 1986 (Cal. Health & Safety Code.,
21 a Delaware limited liability company, and) § 25249.5, *et seq.*)
22 DOES 1-50;)
23 Defendants.) ACTION IS AN UNLIMITED CIVIL
24) CASE (exceeds \$25,000)
25)
26)
27)
28)
29)
30)
31)
32)

33 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against defendants
34 International Coffee and Tea, LLC and Does 1-50 as follows:

35 ///
36 ///

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1 contamination, to allow consumers to make informed choices about the products they
2 buy, and to enable persons to protect themselves from toxic chemicals as they see fit.

3 9. Proposition 65 requires the Governor of California to publish a list of chemicals known to
4 the state to cause cancer, birth defects, or other reproductive harm. *Cal. Health & Safety*
5 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over
6 550 chemicals. *See Cal. Code Regs. 22* § 12000. Proposition 65 imposes warning
7 requirements and other controls that apply to Proposition 65-listed chemicals.

8 10. All businesses with ten or more employees that operate or sell products in California
9 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
10 from knowingly discharging Proposition 65-listed chemicals into sources of drinking
11 water (*Cal. Health & Safety Code* § 25249.5), and (2) required to provide “clear and
12 reasonable” warnings before exposing a person, knowingly and intentionally, to a
13 Proposition 65-listed chemical (*Cal. Health & Safety Code* § 25249.6).

14 11. Plaintiff conducted research, from which it identified a widespread practice of owners,
15 operators, and managers of coffee houses with adjacent areas where smoking of tobacco
16 or tobacco products is permitted, of exposing, knowingly and intentionally, persons in
17 California to the Proposition 65-listed chemicals contained in second-hand tobacco
18 smoke or environmental tobacco smoke without first providing clear and reasonable
19 warnings of such to the exposed persons prior to exposure. Plaintiff later discerned that
20 Defendants engaged in such practice, thereby violating Proposition 65.

21 12. Plaintiff is informed, believes, and thereon alleges that second-hand tobacco smoke and
22 environmental tobacco smoke contain Tobacco Smoke, a chemical known to the State of
23 California to cause Cancer and Reproductive Toxicity.

24 13. Plaintiff is informed, believes, and thereon alleges that second-hand tobacco smoke and
25 environmental tobacco smoke contain the following chemicals known to the State of
26 California to cause Cancer or Reproductive Toxicity (Constituent Chemicals):

27

| | | | |
|-------------------------|---------------------------------------|-----------------------|-----------------------|
| Carbon disulfide | Arsenic (inorganic arsenic compounds) | Dibenz[a,h]anthracene | N-Nitrosodiethylamine |
| 1, 1 -Dimethylhydrazine | Benz[a]anthracene | Dibenz[a,j]acridine | N-Nitrosodi-n- |

28

| | | | |
|------------------------------------|---------------------------------|---------------------------------------|----------------------------|
| (UDMH) | | | butylamine |
| 1,3-Butadiene | Benzene | Dibenzo[a,e]pyrene | N-Nitrosomethylethylamine |
| 1-Naphthylamine | Benzo[a]pyrene | Dibenzo[a,h]pyrene | N-Nitrosomorpholine |
| 2-Naphthylamine | Benzo[b]fluoranthene | Dibenzo[a,i]pyrene | N-Nitrosoaniline |
| 2-Nitropropane | Benzo[j]fluoranthene | Dibenzo[a,l]pyrene | N-Nitrosopiperidine |
| 4-Aminobiphenyl (4-amino-diphenyl) | Benzo[k]fluoranthene | Dichlorodiphenyltrichloroethane (DDT) | N-Nitrosopyrrolidine |
| 7H-Dibenzo[c,g]carbazole | Cadmium | Formaldehyde (gas) | Ortho-Anisidine |
| Acetaldehyde | Captan | Hydrazine | Ortho-Toluidine |
| Acetamide | Chromium (hexavalent compounds) | Lead and lead compounds | Urethane (Ethyl carbamate) |
| Acrylonitrile | Chrysene | Nickel and certain nickel compounds | Carbon monoxide |
| Aniline | Dibenz[a,h]acridine | N-Nitrosodiethanolamine | Nicotine |
| Urethane | Lead | Toluene | |

14. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of Tobacco Smoke and each of the Constituent Chemicals to the list of chemicals known to the State to cause Cancer (*Cal. Code Regs. 22 §12000(b)*) or Reproductive Toxicity (*Cal. Code Regs. 22§ 12000(c)*), Tobacco Smoke and each of the Constituent Chemicals became fully subject to Proposition 65 warning requirements and discharge prohibitions. Tobacco Smoke and each of the Constituent Chemicals are now fully subject to Proposition 65 warning requirements and discharge prohibitions.

FIRST CAUSE OF ACTION

(By Consumer Advocacy Group, Inc. and against International Coffee & Tea, LLC and Does 1-50 For Violation Of Proposition 65, The Safe Drinking Water And Toxic Enforcement Act Of 1986 (*Cal. Health & Safety Code § 25249.5, et seq.*)

Environmental Exposures to Second-Hand Tobacco Smoke And Environmental Tobacco Smoke

15. Plaintiff, Consumer Advocacy Group, Inc. repeats and incorporates by reference paragraphs 1 through 14 of this complaint as though fully set forth herein.

16. "An 'environmental exposure' is an exposure which may foreseeably occur as the result of contact with an environmental medium, including, but not limited to, ambient air,

1 indoor air, drinking water, standing water, running water, soil, vegetation, or manmade or
2 natural substances, either through inhalation, ingestion, skin contact or otherwise.

3 Environmental exposures include all exposures which are not consumer products
4 exposures, or occupational exposure.” *Cal. Code Regs. 22 § 12601(d)*. Defendants failed
5 to provide clear and reasonable Proposition 65-compliant warnings to exposed persons
6 prior to the knowing and intentional exposures described herein, and thereby violated
7 Proposition 65.

8 17. The sources of exposure are numerous. The locations of exposure were at each The
9 Coffee Bean and Tea Leaf® store located throughout California that has an outdoor
10 seating area adjacent to the store, and wherein the smoking of tobacco and tobacco
11 products is not expressly prohibited and which does not contain conspicuously posted “no
12 smoking” signs (hereinafter “Locations”).

13 18. Each of the Defendants, including International, allowed, and allows, individuals to
14 smoke cigarettes, and other tobacco products at each of the Locations, thereby exposing
15 customers, members of the public, visitors, and vendors to Tobacco Smoke and the
16 Constituent Chemicals found in second-hand tobacco smoke or environmental tobacco
17 smoke. Each of the Defendants, including International, maintains exclusive control over
18 at least one of the relevant outdoor seating areas, as these areas constitute a portion of the
19 property each of the Defendants owns or leases for use as a store. The amount of control
20 over the relevant outdoor seating areas possessed by each of the Defendants, including
21 International, is sufficient to prohibit or allow smoking or to post Proposition 65-
22 compliant warnings and to control the quality of ambient air entering and circulating the
23 relevant outdoor seating areas and adjacent stores. Furthermore, Plaintiff believes that
24 International maintains and possesses sufficient control over each of the relevant
25 Locations to prohibit or allow smoking or to require posting of Proposition 65-compliant
26 warnings and to control the quality of the ambient air entering and circulating the relevant
27 outdoor seating areas and adjacent stores, despite the operation or control of any Location
28 by another entity.

1 19. Each of the Defendants, including International, permits persons to smoke tobacco in
2 these outdoor seating areas and often facilitates the smoking of tobacco by providing
3 ashtrays for the convenience of those persons who smoke at the Locations. When
4 persons, including customers and employees of each of the Defendants loiter in, walk
5 through, or traverse zones in and adjacent to the relevant outdoor seating areas, they are
6 exposed to Tobacco Smoke and the Constituent Chemicals present in the ambient air.
7 Plaintiff's investigations show that infants and pregnant women are often among the
8 exposed persons. Persons are also exposed when entrance doors to the Locations are
9 open and Tobacco Smoke and the Constituent Chemicals enter the stores, the premises of
10 which are otherwise non-smoking areas.

11 20. The route of exposure to Tobacco Smoke and the Constituent Chemicals is inhalation
12 contact caused when exposed persons breathe in the ambient air containing second-hand
13 tobacco smoke or environmental tobacco smoke, causing exposure of Tobacco Smoke
14 and the Constituent Chemicals to the mouth, throat, bronchi, esophagi, and lungs.
15 Exposure of Tobacco Smoke and the Constituent Chemicals generates risks of Cancer
16 and Reproductive Toxicity to the exposed persons.

17 21. Plaintiff is informed, believes, and thereon alleges that on each day between August 8,
18 2005 and the present, each of the Defendants knowingly and intentionally exposed
19 persons in California to Tobacco Smoke and its Constituent Chemicals, without first
20 giving clear and reasonable warning of such to the exposed persons before the time of
21 exposure, as described above. These exposures occurred on, but not beyond, the property
22 owned or controlled by Defendants. Defendants thereby violated Proposition 65.

23 22. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
24 Proposition 65 as to second-hand tobacco smoke and environmental tobacco smoke have
25 been ongoing and continuous to the date of the signing of this complaint, so that a
26 separate and distinct violation of Proposition 65 occurred each and every time a person
27 was exposed to Tobacco Smoke and the Constituent Chemicals as described herein.
28

1 23. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
2 mentioned herein is ever continuing.

3 **SECOND CAUSE OF ACTION**

4 **(By Consumer Advocacy Group, Inc. and against International Coffee & Tea, LLC and**
5 **Does 1-50 For Violation Of Proposition 65, The Safe Drinking Water And Toxic**
6 **Enforcement Act Of 1986 (Cal. Health & Safety Code § 25249.5, et seq.)**

7 **Occupational Exposures to Second-Hand Tobacco Smoke and Environmental Tobacco**
8 **Smoke**

9 24. Plaintiff, Consumer Advocacy Group, Inc. repeats and incorporates by reference
10 paragraphs 1 through 14 of this complaint as though fully set forth herein.

11 25. "An 'occupational exposure' is an exposure, in the workplace of the employer causing
12 the exposure, to any employee." *Cal. Code Regs. 22 § 12601(c)*. Defendants failed to
13 provide clear and reasonable Proposition 65-compliant warnings to their employees prior
14 to the knowing and intentional exposures described herein, and thereby violated
15 Proposition 65.

16 26. The sources of exposure are numerous. The locations of exposure were at each The
17 Coffee Bean and Tea Leaf® store located throughout California that has an outdoor
18 seating area adjacent to the store, and wherein the smoking of tobacco and tobacco
19 products is not expressly prohibited and which does not contain conspicuously posted "no
20 smoking" signs (hereinafter "Locations"). Each of the Defendants was an employer
21 employing employees at each of the Locations each day between August 8, 2005 and the
22 present.

23 27. Each of the Defendants, including International, allowed, and allows, individuals to
24 smoke cigarettes, and other tobacco products at each of the Locations, thereby exposing
25 its employees to Tobacco Smoke and the Constituent Chemicals found in second-hand
26 tobacco smoke or environmental tobacco smoke. Each of the Defendants, including
27 International, maintains exclusive control over at least one of the relevant outdoor seating
28 areas, as these areas constitute a portion of the property each of the Defendants owns or

1 leases for use as a store. The amount of control over the relevant outdoor seating areas
2 possessed by each of the Defendants, including International, is sufficient to prohibit or
3 allow smoking or to post Proposition 65-compliant warnings and to control the quality of
4 ambient air entering and circulating the relevant outdoor seating areas and adjacent
5 stores. Furthermore, Plaintiff believes that International maintains and possesses
6 sufficient control over each of the relevant Locations to prohibit or allow smoking or to
7 require posting of Proposition 65-compliant warnings and to control the quality of the
8 ambient air entering and circulating the relevant outdoor seating areas and adjacent
9 stores, despite the operation or control of any Location by another entity.

10 28. Each of the Defendants, including International, permits persons to smoke tobacco in
11 these outdoor seating areas and often facilitates the smoking of tobacco by providing
12 ashtrays for the convenience of those persons who smoke at the Locations. When
13 persons, including customers and employees of each of the Defendants loiter in, walk
14 through or traverse zones in and adjacent to the relevant outdoor seating areas, they are
15 exposed to Tobacco Smoke and the Constituent Chemicals present in the ambient air.
16 Plaintiff's investigations show that infants and pregnant women are often among the
17 exposed persons. Persons are also exposed when entrance doors to the Locations are
18 open and Tobacco Smoke and the Constituent Chemicals enter the stores, the premises of
19 which are otherwise non-smoking areas. Employees of each of the Defendants suffered,
20 and suffer, additional exposures when they empty ashtrays or otherwise clean or service
21 the relevant outdoor seating areas. Because of the foregoing, employees of each of the
22 Defendants suffered, and suffer, exposures of significant duration on a regular basis,
23 without receiving warnings.

24 29. The route of exposure to Tobacco Smoke and the Constituent Chemicals is inhalation
25 contact caused when exposed persons, including the employees of each of the
26 Defendants, breathe in the ambient air containing second-hand tobacco smoke or
27 environmental tobacco smoke, causing exposure of Tobacco Smoke and the Constituent
28 Chemicals to the mouth, throat, bronchi, esophagi, and lungs. Exposure of Tobacco

1 Smoke and the Constituent Chemicals generates risks of Cancer and Reproductive
2 Toxicity to the exposed persons.

3 30. Plaintiff is informed, believes, and thereon alleges that on each day between August 8,
4 2005 and the present each of the Defendants knowingly and intentionally exposed
5 persons, including its employees, in California to Tobacco Smoke and its Constituent
6 Chemicals, without first giving clear and reasonable warning of such to the exposed
7 persons before the time of exposure, as described above. Defendants thereby violated
8 Proposition 65.

9 31. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
10 Proposition 65 as to second-hand tobacco smoke and environmental tobacco smoke have
11 been ongoing and continuous to the date of the signing of this complaint, so that a
12 separate and distinct violation of Proposition 65 occurred each and every time a person
13 was exposed to Tobacco Smoke and the Constituent Chemicals as described herein.

14 32. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
15 mentioned herein is ever continuing.

16 **SATISFACTION OF PRIOR NOTICE**

17 33. Plaintiff, Consumer Advocacy Group, Inc. repeats and incorporates by reference
18 paragraphs 1 through 32 of this complaint as though fully set forth herein.

19 34. On or about August 8, 2005, Plaintiff gave notice of alleged violations of Health and
20 Safety Code section 25249.6 subject to a private action to International, identified in the
21 notice as International Coffee & Tea, LLC, and to the California Attorney General,
22 County District Attorneys, and City Attorneys for each city containing a population of at
23 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning
24 Tobacco Smoke and the Constituent Chemicals.

25 35. Before sending the notice of alleged violation, Plaintiff investigated the Locations
26 involved, second-hand tobacco smoke and environmental tobacco smoke, the likelihood
27 that such products would cause users to suffer significant exposures to Tobacco Smoke
28

1 and the Constituent Chemicals, the corporate structure of each of the Defendants, and
2 other relevant matters.

3 36. Plaintiff's notice of alleged violation included a certificate of merit executed by the
4 attorney for the noticing party, Plaintiff. The certificate of merit stated that the attorney
5 for Plaintiff who executed the certificate had consulted with at least one person with
6 relevant and appropriate expertise who had reviewed data regarding the exposure to
7 Tobacco Smoke and the Constituent Chemicals, respectively, which are the subject
8 Proposition 65-listed chemicals of this action. Based on that information, the attorney for
9 Plaintiff who executed the certificate of merit believed there was a reasonable and
10 meritorious case for this private action. The attorney for Plaintiff attached to the
11 certificates of merit served on the Attorney General information sufficient to establish the
12 basis of the certificates of merit.

13 37. Plaintiff is commencing this action more than sixty (60) days from the date that Plaintiff
14 gave notice of the alleged violations to International and to the public prosecutors
15 referenced in Paragraph 34.

16 38. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
17 any applicable district attorney or city attorney has commenced and is diligently
18 prosecuting an action against the Defendants.

19 39. Plaintiff's allegations concern "environmental exposures," as defined in Paragraph 16,
20 and as mentioned in Paragraphs 15-23, exposure to Tobacco Smoke and the Constituent
21 Chemicals foreseeably took place as a result of such contact with an environmental
22 medium.

23 40. Plaintiff's allegations also concern "occupational exposures," as defined in Paragraph 25,
24 and as mentioned in paragraphs 24-32, exposure of employees to Tobacco Smoke and the
25 Constituent Chemicals occurred in the workplace of the employer.
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1 **PRAYER FOR RELIEF**

2 Plaintiff demands against each of the Defendants as follows:

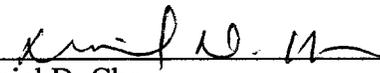
- 3 1. A permanent injunction mandating Proposition 65 compliant warnings;
- 4 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
- 5 3. Costs of suit;
- 6 4. Reasonable attorney fees and costs; and
- 7 5. Any further relief that the court may deem just and equitable.
- 8

9 Dated: December 16, 2008

YEROUSHALMI & ASSOCIATES

10

11

12 BY: 

13 Daniel D. Cho

14 Attorneys for Plaintiff,

15 Consumer Advocacy Group, Inc.

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