

SUMMONS (CITACION JUDICIAL)

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

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

SHARK INDUSTRIES, LTD., a Minnesota Corporation, 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 San Francisco
Civic Center Courthouse
400 McAllister Street, San Francisco, CA 94102

CASE NUMBER
(Número del caso)

CCC - 09 - 484 588

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

Gordon Park-Li

Clerk, by _____
(Secretario)

FLIAS BUTI Deputy
(Adjunto)

DATE:
(Fecha)

FEB - 2 2009

(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

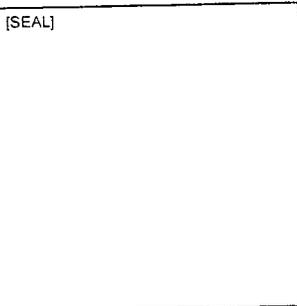
- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):

- 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



2009 FEB -2 AM 12: 58

GORDON PARK - LI. CLERK

BY: ~~ELIAS BULL~~
CLERK

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

CASE MANAGEMENT CONFERENCE SET

9 Attorneys for Plaintiffs,
10 Consumer Advocacy Group, Inc

JUL - 2 2009 - 9⁰⁰ AM

11 ~~DEPARTMENT 212~~
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO - UNLIMITED

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

16 Plaintiff,

17 v.

18 SHARK INDUSTRIES, LTD., a Minnesota)
19 Corporation, and DOES 1-50;)

20 Defendants.)

CASE NO. **CGC - 09 - 484 588**

) 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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25 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against defendants as

26 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 Shark Industries, Ltd. is a Minnesota 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. At all times mentioned herein, the term "Defendants" includes Shark Industries, Ltd. and Does 1-50.
 5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all times mentioned herein have conducted business within the State of California.
 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 at all relevant times.

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JURISDICTION

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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.

25

BACKGROUND AND PRELIMINARY FACTS

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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.*

1 (“Proposition 65”), helps to protect California’s drinking water sources from
2 contamination, to allow consumers to make informed choices about the products they
3 buy, and to enable persons to protect themselves from toxic chemicals as they see fit.

4 9. Proposition 65 requires the Governor of California to publish a list of chemicals known to
5 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
6 § 25249.8. The list, which the Governor updates at least once a year, contains over 735
7 chemicals. Proposition 65 imposes warning requirements and other controls that apply to
8 Proposition 65-listed chemicals.

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

15 11. Plaintiff conducted research, from which it identified a widespread practice of
16 manufacturers and distributors of lead-bearing automotive products, including brake lathe
17 silencer bands, of exposing, knowingly and intentionally, persons in California to the
18 Proposition 65-listed chemicals of such products without first providing clear and
19 reasonable warnings of such to the exposed persons prior to exposure. Plaintiff later
20 discerned that Defendants engaged in such practice.

21 FIRST CAUSE OF ACTION

22
23 **(By Consumer Advocacy Group, Inc. and against Shark Industries, Ltd. and Does 1-50 for**
24 **Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986**
25 **(*Health & Safety Code*, §§ 25249.5, *et seq.*))**

26 **Shark Industries, Ltd.’s Silencer Bands, No. 69-Natural Rubber containing lead**

27 12. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
28 paragraphs 1 through 11 of this complaint as though fully set forth herein.

1 13. Each of the Defendants is, and at all times mentioned herein was, a manufacturer or
2 distributor of Shark Industries, Ltd.'s Silencer Bands, No. 69-Natural Rubber containing
3 lead (hereinafter "Silencer Bands"), a consumer product designed for use in servicing
4 automobile disc brakes.

5 14. Plaintiff is informed, believes, and thereon alleges that Silencer Bands contain Lead.

6 15. On October 1, 1992, the Governor of California added Lead and lead compounds to the
7 list of chemicals known to the State to cause cancer (*Cal. Code Regs. 27 § 27001(b)*).
8 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
9 after addition of Lead and lead compounds to the list of chemicals known to the State to
10 cause cancer, Lead and lead compounds became fully subject to Proposition 65 warning
11 requirements and discharge prohibitions.

12 16. On February 27, 1987, the Governor of California added Lead to the list of chemicals
13 known to the State to cause reproductive toxicity (*Cal. Code Regs. 27 § 27001(c)*). Lead
14 is known to the State to cause developmental, female, and male reproductive toxicity.
15 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
16 after addition of Lead to the list of chemicals known to the State to cause reproductive
17 toxicity, Lead became fully subject to Proposition 65 warning requirements and discharge
18 prohibitions.

19 17. Plaintiff's allegations concern "consumer product exposures," which are exposures that
20 results from a person's acquisition, purchase, storage, consumption, or other reasonably
21 foreseeable use of a consumer good or any that results from receiving a consumer
22 service. *Cal. Code Regs. 27 § 25602(b)*. Silencer Bands are consumer products, and as
23 mentioned in herein, exposures to Lead took place as a result of such consumption and
24 foreseeable use as well as the receipt of consumer services.

25 18. Plaintiff is informed, believes, and thereon alleges that between February 8, 2005 and the
26 present, each of the Defendants knowingly and intentionally exposed California
27 consumers and users of Silencer Bands, which Defendants manufactured or distributed as
28 mentioned above, to Lead, without first providing any type of clear and reasonable

1 warning of such to the exposed persons before the time of exposure. Defendants have
2 distributed Silencer Bands in California. Defendants thereby violated Proposition 65.

3 19. Plaintiff's allegations concern "environmental exposures." An environmental exposure is
4 an exposure which may foreseeably occur as the result of contact with an environmental
5 medium, including, but not limited to, ambient air, indoor air, drinking water, standing
6 water, running water, soil, vegetation, or manmade or natural substances, either through
7 inhalation, ingestion, skin contact, or otherwise. Environmental exposures include all
8 exposures which are not consumer products exposures or occupational exposures. *Cal.*
9 *Code Regs.* 27 § 25602(c). As mentioned herein, exposures to Lead, related to Silencer
10 Bands, occurred from such foreseeable contact with an environmental medium, including
11 that which occurred beyond the property owned or controlled by Shark Industries, Ltd.

12 20. Plaintiff is informed and believes, and thereon alleges that between March 21, 2005 and
13 the present, each of the Defendants caused environmental exposures to occur in and
14 around mechanics' shops that service automobile disc brakes with a machine that utilizes
15 Silencer Bands. Plaintiff is informed and believes, and thereon alleges that people
16 visiting mechanics' shops are subjected to environmental exposures when they contact an
17 environmental medium in and around mechanics' shops that use Silencer Bands.

18 Furthermore, people in California are exposed to Lead when in proximity to someone
19 using Silencer Bands in a foreseeable manner with machines that service automobile disc
20 brakes. Each of the Defendants, as distributors and manufacturers of Silencer Bands,
21 failed to provide any type of clear and reasonable warnings to those exposed prior to the
22 exposures described above, and therefore violated Proposition 65.

23 21. Plaintiff's allegations concern "occupational exposures." An occupational exposure is an
24 exposure to any employee in his or her employer's workplace. *Cal. Code Regs.* 27 §
25 25602(f). As mentioned herein, exposures to Lead, related to Silencer Bands, occurred in
26 the workplace of Defendants causing the exposure to their employees.

27 22. Plaintiff is informed and believes, and thereon alleges that between March 21, 2005 and
28 the present, each of the Defendants caused occupational exposures to occur in and around

1 mechanics' shops that service automobile disc brakes with a machine that utilizes
2 Silencer Bands. Mechanics in these shops are subjected to occupational exposures. Each
3 of the Defendants, as an employer of employees exposed to Lead in the employer's
4 workplace or a manufacturer or distributor failed to provide any type of clear and
5 reasonable warning to employees prior to the occupational exposures described above
6 and therefore violated Proposition 65.

7 23. The principal routes of exposure are through dermal contact, ingestion, and inhalation.
8 Mechanics and people who they come into contact with, including, but not limited to,
9 those that visit mechanics' shops, suffer exposures to Lead when handling Silencer Bands
10 without gloves or with their bare hands. Persons handling Silencer Bands also suffer
11 exposure to lead even when wearing gloves when they touch their skin or mucous
12 membranes with the portions of gloves that have encountered Silencer Bands, or by way
13 of hand to mouth contact, hand to food to mouth contact, or breathing in particulate
14 matter emanating from Silencer Bands, especially when Silencer Bands are used in
15 machines that service automobile disc brakes.

16 24. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
17 Proposition 65 as to Silencer Bands have been ongoing and continuous to the date of the
18 signing of this complaint, so that a separate and distinct violation of Proposition 65
19 occurred each and every time a person was exposed to Lead by Silencer Bands as
20 mentioned herein.

21 25. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
22 mentioned herein is ever continuing.

23
24 **SATISFACTION OF PRIOR NOTICE**

25 26. On or about February 8, 2008, Plaintiff gave notice of alleged violations of Health and
26 Safety Code section 25249.6, concerning consumer products exposures, subject to a
27 private action to Shark Industries, Ltd., identified in the notice as Shark Industries, Ltd.,
28 and to the California Attorney General, County District Attorneys, and City Attorneys for

1 each city containing a population of at least 750,000 people in whose jurisdictions the
2 violations allegedly occurred, concerning Silencer Bands.

3 27. On or about March 21, 2008, Plaintiff gave notice of alleged violations of Health and
4 Safety Code section 25249.6, concerning environmental and occupational exposures,
5 subject to a private action to Shark Industries, Ltd., identified in the notice as Shark
6 Industries, Ltd., and to the California Attorney General, County District Attorneys, and
7 City Attorneys for each city containing a population of at least 750,000 people in whose
8 jurisdictions the violations allegedly occurred, concerning Silencer Bands.

9 28. Before sending the notices of alleged violation, Plaintiff investigated the consumer
10 products involved, the likelihood that such products would cause users to suffer
11 significant exposures to Lead, the corporate structure of each of the Defendants, and
12 other relevant matters.

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

22 30. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
23 gave notice of the alleged violations to Shark Industries, Ltd. and to the public
24 prosecutors referenced in Paragraphs 26 and 27.

25 31. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
26 any applicable district attorney or city attorney has commenced and is diligently
27 prosecuting an action against the Defendants.
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PRAYER FOR RELIEF

Plaintiff demands against each of the Defendants as follows:

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

Dated: January 20, 2009

YEROUSHALMI & ASSOCIATES

BY: 
Daniel D. Cho
Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.