

**SUMMONS  
(CITACION JUDICIAL)**

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

NAVAJO MANUFACTURING COMPANY, INC., a Colorado corporation; and DOES 1-20

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

CONSUMER ADVOCACY GROUP, INC., in the public interest

FOR COURT USE ONLY  
**CONFIRMED COPY**  
 OF ORIGINAL FILED  
 Superior Court of California  
 County of Los Angeles  
 NOV 05 2009  
 John A. Clarke, Executive Officer/Clerk  
 By RUGENA LOPEZ, Deputy

**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

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](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

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 puede 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.sucorte.ca.gov](http://www.sucorte.ca.gov)), 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](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:  
(El nombre y dirección de la corte es): Stanley Mosk Courthouse  
Superior Court of California for the County of Los Angeles  
111 North Hill Street, Los Angeles, California 90012

CASE NUMBER:  
(Número del Caso): **BC425418**

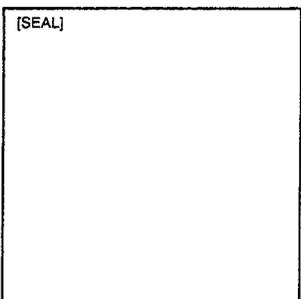
The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:  
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):  
Daniel D. Cho (SBN 105409), 3700 Wilshire Blvd., Los Angeles, CA 90010; Tel: (213) 382-3183

DATE: November 3, 2009 **NOV 05 2009**  
(Fecha) **JOHN A. CLARKE**, Clerk, by **RUGENA LOPEZ**, 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

- 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):



**COPY**

1 Reuben Yeroushalmi (SBN 193981)  
Daniel D. Cho (SBN 105409)  
2 Ben Yeroushalmi (SBN 232540)  
3 **YEROUSHALMI & ASSOCIATES**  
3700 Wilshire Boulevard, Suite 480  
4 Los Angeles, California 90010  
Telephone: 213-382-3183  
5 Facsimile: 213-382-3430

6 Attorneys for Plaintiffs,  
7 Consumer Advocacy Group, Inc.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF LOS ANGELES – UNLIMITED

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

14 Plaintiff,

15 v.

16 NAVAJO MANUFACTURING  
17 COMPANY, INC., a Colorado corporation,  
and DOES 1-20;

18 Defendants.

CASE NO.

**BCA25418**  
COMPLAINT FOR PENALTY,  
INJUNCTION, AND RESTITUTION

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

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

21 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against defendants as  
22 follows:

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**CONFORMED COPY**  
OF ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

NOV 05 2009

John A. Clarke, Executive Officer/Clerk  
By [Signature], Deputy  
RUGENA LOPEZ

**COPY**

**THE PARTIES**

- 1  
2 1. Plaintiff Consumer Advocacy Group, Inc. ("Plaintiff" OR "CAG") is a non-profit  
3 corporation qualified to do business in the State of California. CAG is a person within  
4 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting  
5 as a private attorney general, brings this action in the public interest as defined under  
6 Health and Safety Code section 25249.7, subdivision (d).
- 7 2. Defendant Navajo Manufacturing Company, Inc. is a Colorado corporation, qualified to  
8 do business and doing business in the State of California at all relevant times herein.
- 9 3. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-20,  
10 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
11 Complaint to allege their true names and capacities when ascertained. Plaintiff is  
12 informed, believes, and thereon alleges that each fictitiously named defendant is  
13 responsible in some manner for the occurrences herein alleged and the damages caused  
14 thereby.
- 15 4. At all times mentioned herein, the term "Defendants" includes Navajo Manufacturing  
16 Company, Inc., and Does 1-20.
- 17 5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
18 times mentioned herein has conducted business within the State of California.
- 19 6. At all times relevant to this action, each of the Defendants, including Does 1-20, was an  
20 agent, servant, or employee of each of the other Defendants. In conducting the activities  
21 alleged in this Complaint, each of the Defendants was acting within the course and scope  
22 of this agency, service, or employment, and was acting with the consent, permission, and  
23 authorization of each of the other Defendants. All actions of each of the Defendants  
24 alleged in this Complaint were ratified and approved by every other Defendant or their  
25 officers or managing agents. Alternatively, each of the Defendants aided, conspired with  
26 and/or facilitated the alleged wrongful conduct of each of the other Defendants.
- 27 7. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
28 Defendants was a person doing business within the meaning of Health and Safety Code

1 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
2 employees at all relevant times.

3  
4 **JURISDICTION**

- 5 8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
6 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
7 those given by statute to other trial courts. This Court has jurisdiction over this action  
8 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
9 violations of Proposition 65 in any Court of competent jurisdiction.
- 10 9. This Court has jurisdiction over Defendants named herein because Defendants either  
11 reside or are located in this State or are foreign corporations authorized to do business in  
12 California, are registered with the California Secretary of State, or who do sufficient  
13 business in California, have sufficient minimum contacts with California, or otherwise  
14 intentionally avail themselves of the markets within California through their manufacture,  
15 distribution, promotion, marketing, or sale of their products within California to render  
16 the exercise of jurisdiction by the California courts permissible under traditional notions  
17 of fair play and substantial justice.
- 18 10. Venue is proper in the County of Los Angeles because one or more of the instances of  
19 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
20 because Defendants conducted, and continue to conduct, business in the County of Los  
21 Angeles with respect to the consumer product that is the subject of this action.

22  
23 **BACKGROUND AND PRELIMINARY FACTS**

- 24 11. In 1986, California voters approved an initiative to address growing concerns about  
25 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to  
26 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,  
27 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
28 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections

1 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources  
2 from contamination, to allow consumers to make informed choices about the products  
3 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
4 fit.

5 12. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
6 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
7 § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
8 chemicals and chemical families. Proposition 65 imposes warning requirements and  
9 other controls that apply to Proposition 65-listed chemicals.

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

16 14. Proposition 65 provides that any person "violating or threatening to violate" the statute  
17 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
18 "Threaten to violate" means "to create a condition in which there is a substantial  
19 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
20 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
21 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

22 15. Through research and investigation, Plaintiff identified certain practices of Defendants of  
23 exposing, knowingly and intentionally, persons in California to the Proposition 65-listed  
24 chemicals of the consumer products discussed below without first providing clear and  
25 reasonable warnings of such to the exposed persons prior to the time of exposure.  
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SATISFACTION OF PRIOR NOTICE

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2 16. On or about December 7, 2008, Plaintiff gave notice of alleged violations of Health and  
3 Safety Code section 25249.6, concerning consumer products and environmental  
4 exposures, subject to a private action to Navajo Manufacturing Company, Inc., identified  
5 in the notice by its trade name "Navajo Manufacturing Co., Inc." and to the California  
6 Attorney General, County District Attorneys, and City Attorneys for each city containing  
7 a population of at least 750,000 people in whose jurisdictions the violations allegedly  
8 occurred, concerning the consumer product Auto Solutions™ Battery Terminal, (Product  
9 No. 14827).

10 17. Plaintiff's notice of alleged violations included a Certificate of Merit executed by the  
11 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
12 Plaintiff who executed the certificate had consulted with at least one person with relevant  
13 and appropriate expertise who reviewed data regarding the exposures to Lead, which is  
14 the subject Proposition 65-listed chemical of this action. Based on that information, the  
15 attorney for Plaintiff who executed the Certificate of Merit believed there was a  
16 reasonable and meritorious case for this private action. The attorney for Plaintiff attached  
17 to the Certificate of Merit served on the Attorney General the confidential factual  
18 information sufficient to establish the bases of the Certificate of Merit.

19 18. Plaintiff's notice of alleged violation also included a Certificate of Service and a  
20 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
21 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

22 19. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
23 gave notice of the alleged violations to Navajo Manufacturing Company, Inc. and the  
24 public prosecutors referenced in Paragraph 16.

25 20. 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.  
28

**FIRST CAUSE OF ACTION**

**(By Consumer Advocacy Group, Inc. and against Navajo Manufacturing Company, Inc., and Does 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Safety Code, §§ 25249.5, et seq.))**

**Auto Solutions™ Battery Terminal, (Product No. 14827)**

21. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference paragraphs 1 through 20 of this Complaint as though fully set forth herein.
22. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of Auto Solutions™ Battery Terminal, (Product No. 14827) (hereinafter "Battery Terminal"), a consumer product designed for use on automobile batteries.
23. Plaintiff is informed, believes, and thereon alleges that Battery Terminal contains Lead.
24. On October 1, 1992, the Governor of California added Lead and lead compounds to the list of chemicals known to the State to cause cancer (*Cal. Code Regs. tit. 27, § 27001(b)*). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of Lead and lead compounds to the list of chemicals known to the State to cause cancer, Lead and lead compounds became fully subject to Proposition 65 warning requirements and discharge prohibitions.
25. On February 27, 1987, the Governor of California added Lead to the list of chemicals known to the State to reproductive toxicity, developmental, female, male (*Cal. Code Regs. tit. 27, § 27001(c)*). Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after the addition of Lead to the list of chemicals known to the State to cause reproductive toxicity, Lead became fully subject to Proposition 65 warning requirements and discharge prohibitions.
26. Defendants knew or should have known that Lead has been identified by the State of California as a chemical known to cause cancer and reproductive toxicity and therefore were subject to Proposition 65 warning requirements. Defendants were also informed of the presence of Lead in the Battery Terminal within Plaintiff's notice of alleged violation further discussed above at Paragraph 16.

1 27. Plaintiff's allegations regarding Battery Terminal concern "[c]onsumer products  
2 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
3 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
4 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*  
5 *25602(b)*. Battery Terminal is a consumer product, and, as mentioned in herein,  
6 exposures to Lead took place as a result of such normal and foreseeable consumption and  
7 use.

8 28. Plaintiff's allegations regarding Battery Terminal concern "[e]nvironmental exposure[s],"  
9 which "is an exposure that may foreseeably occur as the result of contact with an  
10 environmental medium, including, but not limited to, ambient air, indoor air, drinking  
11 water, standing water, running water, soil vegetation, or manmade or natural substances,  
12 either through inhalation, ingestion, skin contact, or otherwise. Environmental exposures  
13 include all exposures that are not consumer products exposures or occupational  
14 exposures." *Cal. Code Regs. tit. 27, § 25602(c)*. As mentioned in herein, exposures to  
15 Lead by way of Battery Terminal took place as a result of such contact with an  
16 environmental medium.

17 29. Plaintiff is informed, believes, and thereon alleges that between December 7, 2005 and  
18 the present, each of the Defendants knowingly and intentionally exposed California  
19 consumers and users of Battery Terminal, which Defendants manufactured, distributed,  
20 or sold as mentioned above, to Lead, without first providing any type of clear and  
21 reasonable warning of such to the exposed persons before the time of exposure.  
22 Defendants have distributed and sold Battery Terminal in California. Defendants know  
23 and intend that California consumers will use and consume Battery Terminal thereby  
24 exposing them to Lead. Defendants thereby violated Proposition 65.

25 30. The principal routes of exposure were and are through dermal contact, ingestion, and  
26 inhalation. Persons sustain exposures by Handling Battery Terminal without wearing  
27 gloves or by touching bare skin with gloves handling Battery Terminal, hand-to-mouth  
28 contact, or breathing in particulate matter from Battery Terminal as part of the process of

1 installing Battery Terminal on or removing Battery Terminal from an automobile battery.  
2 The foregoing routes of exposure assume use of the product in accordance with its  
3 instructions.

4 31. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
5 Proposition 65 as to Battery Terminal have been ongoing and continuous to the date of  
6 the signing of this Complaint, as Defendants engaged and continue to engage in conduct  
7 which violates Health and Safety Code section 25249.6, including the manufacture,  
8 distribution, promotion, and sale of Battery Terminal, so that a separate and distinct  
9 violation of Proposition 65 occurred each and every time a person was exposed to Lead  
10 by Battery Terminal as mentioned herein.

11 32. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
12 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
13 violations alleged herein will continue to occur into the future.

14 33. Based on the allegations herein, Defendants are liable for civil penalties of up to  
15 \$2,500.00 per day per individual exposure to Lead from Battery Terminal, pursuant to  
16 Health and Safety Code section 25249.7(b).

17 34. In the absence of equitable relief, California consumers, the general public, and others  
18 will continue to be involuntarily exposed to Lead that is contained in Battery Terminal,  
19 creating a substantial risk of irreparable harm. Thus, by committing the acts alleged  
20 herein, Defendants have caused irreparable harm for which there is no plain, speedy, or  
21 adequate remedy at law.

22 35. Plaintiff has engaged in good faith efforts to resolve the claim alleged herein prior to  
23 filing this Complaint.

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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: November 3, 2009

YEROUSHALMI & ASSOCIATES

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