

SUMMONS
(CITACION JUDICIAL)

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

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

DEC 05 2008

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

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

PRESTOLITE WIRE 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):

BC403276

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:

(Fecha)

DEC 05 2008

Clerk, by

M. GARCIA

, Deputy

(Adjunto)

JOHN A. CLARKE, CLERK

(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 de Prueba de Servicio de Summons, (POS-010)).

[SEAL]

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)*:

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

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

DEC 05 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

BC403276

13 CONSUMER ADVOCACY GROUP, INC.,) CASE NO.
14 in the public interest,)
15 Plaintiff,) COMPLAINT FOR PENALTY,
16 v.) INJUNCTION, AND RESTITUTION
17 PRESTOLITE WIRE LLC, a Delaware) Violation of Proposition 65, the Safe
18 limited liability company, and DOES 1-50;) Drinking Water and Toxic Enforcement
19 Defendants.) Act of 1986 (*Health & Safety Code.*, §
20) 25249.5, *et seq.*)
21) ACTION IS AN UNLIMITED CIVIL
22) CASE (exceeds \$25,000)
23)
24)
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Plaintiff, Consumer Advocacy Group, Inc., alleges a cause of action against defendants as follows:

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THE PARTIES

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 Prestolite Wire LLC is a Delaware limited liability company.
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 Prestolite Wire LLC at all times mentioned herein has conducted business within the State of California.
5. At all times mentioned herein, “Defendants” include Prestolite Wire LLC 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 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 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. *Health & Safety*
5 *Code*, § 25249.8. The list, which the Governor updates at least once a year, contains over
6 550 chemicals. Proposition 65 imposes warning requirements and other controls that
7 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 (*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 (*Health & Safety Code* § 25249.6).

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

21 **FIRST CAUSE OF ACTION**

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

25 **PRO-Connect OE Battery Cable**

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

1 13. Each of the Defendants is, and at all times mentioned herein, was a manufacturer or
2 distributor of PRO-Connect OE Battery Cable (hereinafter "Battery Cable"), a consumer
3 product designed for use on automobile batteries.

4 14. Plaintiff is informed, believes, and thereon alleges that Battery Cable contains Lead.

5 15. On October 1, 1992, the Governor of California added Lead and lead compounds to the
6 list of chemicals known to the State to cause cancer (*Cal. Code Regs. 22 § 12000(b)*).
7 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
8 after addition of Lead and lead compounds to the list of chemicals known to the State to
9 cause cancer, Lead and lead compounds became fully subject to Proposition 65 warning
10 requirements and discharge prohibitions.

11 16. On February 27, 1987, the Governor of California added Lead to the list of chemicals
12 known to the State to cause reproductive toxicity (*Cal. Code Regs. 22 § 12000(c)*). Lead
13 is known to the State to cause developmental, female, and male reproductive toxicity.
14 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
15 after addition of Lead to the list of chemicals known to the State to cause reproductive
16 toxicity, Lead became fully subject to Proposition 65 warning requirements and discharge
17 prohibitions.

18 17. Plaintiff is informed, believes, and thereon alleges that between August 11, 2005 and the
19 present each of the Defendants knowingly and intentionally exposed California
20 consumers and users of Battery Cable, which it manufactured or distributed as mentioned
21 above, to Lead, without first giving clear and reasonable warning of such to the exposed
22 persons before the time of exposure. Defendants have distributed Battery Cable in
23 California. Defendants thereby violated Proposition 65.

24 18. The principal routes of exposure are through dermal contact, ingestion, and inhalation
25 occurring when persons handle Battery Cable without wearing gloves or by touching bare
26 skin with gloves after handling Battery Cable or by breathing in particulate matter
27 emanating from Battery Cable as part of the process of using Battery Cable for
28 recharging automobile batteries.

1 19. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
2 Proposition 65 as to Battery Cable have been ongoing and continuous to the date of the
3 signing of this complaint, so that a separate and distinct violation of Proposition 65
4 occurred each and every time a consumer was exposed to Lead by using Battery Cable as
5 mentioned herein.

6 20. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
7 mentioned herein is ever continuing.

8
9 **SATISFACTION OF PRIOR NOTICE**

10 21. On or about August 11, 2008, Plaintiff gave notice of alleged violations of Health and
11 Safety Code section 25249.6 subject to a private action to Prestolite Wire LLC, identified
12 in the notice as Prestolite Wire LLC, and to the California Attorney General, County
13 District Attorneys, and City Attorneys for each city containing a population of at least
14 750,000 people in whose jurisdictions the violations allegedly occurred, concerning
15 Battery Cable.

16 22. Before sending the notice of alleged violation, Plaintiff investigated the consumer
17 products involved, the likelihood that such products would cause users to suffer
18 significant exposures to Lead, the corporate structure of each of the Defendants, and
19 other relevant matters.

20 23. Plaintiff's notice of alleged violation included a certificate of merit executed by the
21 attorney for the noticing party, Plaintiff. The certificates 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
24 Lead, respectively, which are the subject Proposition 65-listed chemicals of this action.
25 Based on that information, the attorney for Plaintiff who executed the certificates
26 believed there was a reasonable and meritorious case for this private action. The attorney
27 for Plaintiff attached to the certificates of merit served on the Attorney General
28 information sufficient to establish the basis of the certificates of merit.

1 24. Plaintiff is commencing this action more than sixty days from the dates that Plaintiff gave
2 notice of the alleged violations to Prestolite Wire LLC and to the public prosecutors
3 referenced in Paragraph 21.

4 25. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
5 any applicable district attorney or city attorney has commenced and is diligently
6 prosecuting an action against the Defendants.

7 26. Plaintiff's allegations concern a "consumer product exposure," which is an exposure that
8 results from a person's acquisition, purchase, storage, consumption, or other reasonably
9 foreseeable use of a consumer good. Battery Cable is a consumer product, and as
10 mentioned in paragraphs 13-20, exposure to Lead took place as a result of such
11 consumption and foreseeable use.

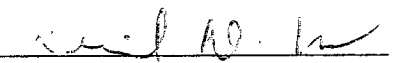
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13 **PRAYER FOR RELIEF**

14 Plaintiff demands against each of the Defendants as follows:

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

20
21 Dated: December 4, 2008

YEROUSHALMI & ASSOCIATES

22
23
24 BY: 
25 Daniel D. Cho
26 Attorneys for Plaintiff,
27 Consumer Advocacy Group, Inc.
28