

**SUMMONS
(CITACION JUDICIAL)**

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

CALLAHAN WHOLESALE HARDWARE CO., a California Corporation; JENNINGS & AGNEW HARDWARE, an Unknown Business Entity; 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)

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

JUN 25 2009

John A. Clarke, Executive Officer/Clerk
By Dorothy Bwain, Deputy
DOROTHY BWAIN

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):

BC416535

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: **JUN 25 2009**
(Fecha)

John A. Clarke

Clerk, by _____, 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):

[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

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

JUN 25 2009

John A. Clarke, Executive Officer/Clerk
By Dorothy Swain, Deputy
DOROTHY SWAIN

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

BC 416535

13 CONSUMER ADVOCACY GROUP, INC.,) CASE NO.
14 in the public interest,)
15 Plaintiff,)
16 v.) COMPLAINT FOR PENALTY,
17) INJUNCTION, AND RESTITUTION
18) Violation of Proposition 65, the Safe
19 CALLAHAN WHOLESALE HARDWARE) Drinking Water and Toxic Enforcement
20 CO., a California Corporation; JENNINGS &) Act of 1986 (*Health & Safety Code*, §
21 AGNEW HARDWARE, an Unknown) 25249.5, *et seq.*)
22 Business Entity, and DOES 1-50;)
23 Defendants.) ACTION IS AN UNLIMITED CIVIL
24) CASE (exceeds \$25,000)
25)
26)
27)
28)

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

1 **The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§**
2 **25249.5, *et seq.*)**

3 **Lead Battery Terminals, Part No. BT - 10**

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

6 14. Each of the Defendants is, and at all times mentioned herein was, a manufacturer or
7 distributor of Lead Battery Terminals, including Part No. BT - 10 (hereinafter "Lead
8 Terminal"), a consumer product designed for use on automotive batteries.

9 15. Plaintiff is informed, believes, and thereon alleges that Lead Terminal contains Lead.

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

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

23 18. Plaintiff's allegations regarding Lead Terminal concern a "[c]onsumer products
24 exposure," which "is an exposure that results from a person's acquisition, purchase,
25 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
26 exposure that results from receiving a consumer service." *Cal. Code Regs. 27 §*
27 *25602(b)*. Lead Terminal is a consumer product, and exposures to Lead took place as a
28 result of such consumption and foreseeable use as is described herein.

1 19. Plaintiff's allegations regarding Lead Terminal also concern an "[o]ccupational
2 exposure," which are exposures "to any employees in his or her employer's workplace."
3 *Cal. Code Reg. 27 § 25602(f)*. As mentioned in herein, employees were exposed to Lead
4 in their employer's workplace as a result of handling Lead Terminal, among other
5 activities, without having first been given clear and reasonable warnings that such
6 handling would cause exposures to Lead.

7 20. Plaintiff's allegations also concern an "[e]nvironmental exposure," which are exposures
8 "that may foreseeably occur as a result of contact with an environmental medium,
9 including, but not limited to, ambient air, indoor air, drinking water, standing water,
10 running water, soil, vegetation, or manmade or natural substances, either through
11 inhalation, ingestion, skin contact, or otherwise. Environmental exposures include all
12 exposures that are not consumer products exposures, or occupational exposures." *Cal.*
13 *Code Reg. 27 § 25602(c)*. As mentioned in herein, Defendants caused environmental
14 exposures by not providing clear and reasonable warnings at its facilities, and other
15 locations where such exposures would foreseeably occur to persons who could
16 foreseeably come into contact with Lead Terminal.

17 21. Plaintiff is informed, believes, and thereon alleges that between March 6, 2006 and the
18 present, each of the Defendants knowingly and intentionally exposed California
19 consumers and users of Lead Terminal, which Defendants manufactured or distributed as
20 mentioned above, to Lead, without first providing any type of clear and reasonable
21 warning of such to the exposed persons before the time of exposure. Defendants have
22 distributed Lead Terminal in California. Defendants thereby violated Proposition 65.

23 22. The principal routes of exposure are through dermal contact, ingestion and inhalation.
24 Persons sustain exposure by handling Lead Terminal without wearing gloves or by
25 touching bare skin with gloves after handling Lead Terminal. Persons handling Lead
26 Terminal also suffer exposures by breathing in particulate matter emanating from Lead
27 Terminal as part of the process of installing Lead Terminal on or removing Lead
28 Terminal from an automobile battery.

1 23. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
2 Proposition 65 as to Lead Terminal 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 person was exposed to Lead by Lead Terminal as
5 mentioned herein.

6 24. 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 25. On or about March 6, 2009, Plaintiff gave notice of alleged violations of Health and
11 Safety Code section 25249.6, concerning consumer products exposures, subject to a
12 private action to Callahan Wholesale Hardware Company and Jennings & Agnew
13 Hardware, identified in the notice as "Callahan Wholesale Hardware Company" and
14 "Jennings & Agnew Hardware," and to the California Attorney General, County District
15 Attorneys, and City Attorneys for each city containing a population of at least 750,000
16 people in whose jurisdictions the violations allegedly occurred, concerning Lead Battery
17 Terminals, including Part No. BT - 10.

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

22 27. Plaintiff's notice of alleged violation included a certificate of merit executed by the
23 attorney for the noticing party, Plaintiff. The certificate of merit stated that the attorney
24 for Plaintiff who executed the certificate had consulted with at least one person with
25 relevant and appropriate expertise who had reviewed data regarding the exposure to
26 Lead, respectively, which are the subject Proposition 65-listed chemicals of this action.
27 Based on that information, the attorney for Plaintiff who executed the certificates
28 believed there was a reasonable and meritorious case for this private action. The attorney

1 for Plaintiff attached to the certificate of merit served on the Attorney General
2 information sufficient to establish the basis of the certificate of merit.

3 28. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
4 gave notice of the alleged violations to Callahan Wholesale Hardware Company,
5 Jennings & Agnew Hardware, and to the public prosecutors referenced in Paragraph 25.

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

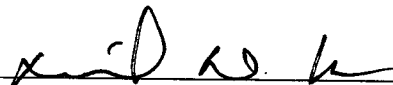
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10 **PRAYER FOR RELIEF**

11 Plaintiff demands against each of the Defendants as follows:

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

17
18
19
20 Dated: June 24, 2009

YEROUSHALMI & ASSOCIATES

21
22
23 BY: 
24 Daniel D. Cho
25 Attorneys for Plaintiff,
26 Consumer Advocacy Group, Inc.
27
28