

**SUMMONS
(CITACION JUDICIAL)**

SUM-100

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

LIL' DRUG STORE PRODUCTS, INC., an Iowa 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
(SOLO PARA USO DE LA CORTE)

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

NOV 05 2009

John A. Clarke, Executive Officer/Clerk
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), 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. **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 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.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), en el Centro de Ayuda de las Cortes de California, (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):

BC425417

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
(Fecha)

Clerk, by

JOHN A. CLARKE

(Secretario)

RUGENA LOPEZ

Deputy
(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)).

(SEAL)

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

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OF ORIGINAL FILED
Superior Court of California
County of Los Angeles

NOV 05 2009

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

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.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF LOS ANGELES – UNLIMITED

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

15 Plaintiff,

16 v.

17 LIL' DRUG STORE PRODUCTS, INC., an
18 Iowa corporation, and DOES 1-20;

19 Defendants.

CASE NO.

BC425417

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)

20
21 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against defendants as
22 follows:

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

THE PARTIES

1. Plaintiff Consumer Advocacy Group, Inc. ("Plaintiff" OR "CAG") is a non-profit corporation qualified to do business in the State of California. CAG is a person within the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private attorney general, brings this action in the public interest as defined under Health and Safety Code section 25249.7, subdivision (d).
2. Defendant Lil' Drug Store Products, Inc. is an Iowa corporation, qualified to do business and doing business in the State of California at all relevant times herein. Plaintiff is informed and believes that Lil' Drug Store Products, Inc. does business in California under the name Lil Auto Store.
3. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-20, 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 Lil' Drug Store Products, Inc., and Does 1-20.
5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all times mentioned herein has conducted business within the State of California.
6. At all times relevant to this action, each of the Defendants, including Does 1-20, was an agent, servant, or employee of each of the other Defendants. In conducting the activities alleged in this Complaint, each of the Defendants was acting within the course and scope of this agency, service, or employment, and was acting with the consent, permission, and authorization of each of the other Defendants. All actions of each of the Defendants alleged in this Complaint were ratified and approved by every other Defendant or their officers or managing agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged wrongful conduct of each of the other Defendants.

1 7. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
2 Defendants was a person doing business within the meaning of Health and Safety Code
3 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
4 employees at all relevant times.

5
6 **JURISDICTION**

7 8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
8 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
9 those given by statute to other trial courts. This Court has jurisdiction over this action
10 pursuant to Health and Safety Code section 25249.7, which allows enforcement of
11 violations of Proposition 65 in any Court of competent jurisdiction.

12 9. This Court has jurisdiction over Defendants named herein because Defendants either
13 reside or are located in this State or are foreign corporations authorized to do business in
14 California, are registered with the California Secretary of State, or who do sufficient
15 business in California, have sufficient minimum contacts with California, or otherwise
16 intentionally avail themselves of the markets within California through their manufacture,
17 distribution, promotion, marketing, or sale of their products within California to render
18 the exercise of jurisdiction by the California courts permissible under traditional notions
19 of fair play and substantial justice.

20 10. Venue is proper in the County of Los Angeles because one or more of the instances of
21 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
22 because Defendants conducted, and continue to conduct, business in the County of Los
23 Angeles with respect to the consumer product that is the subject of this action.

24
25 **BACKGROUND AND PRELIMINARY FACTS**

26 11. In 1986, California voters approved an initiative to address growing concerns about
27 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to
28 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,

1 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
2 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
3 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
4 from contamination, to allow consumers to make informed choices about the products
5 they buy, and to enable persons to protect themselves from toxic chemicals as they see
6 fit.

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

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

18 14. Proposition 65 provides that any person "violating or threatening to violate" the statute
19 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
20 "Threaten to violate" means "to create a condition in which there is a substantial
21 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

22 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
23 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

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

28 ///

SATISFACTION OF PRIOR NOTICE

- 1
- 2 16. On or about December 4, 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 Lil' Drug Store Products, Inc., identified in the
- 5 notice by its trade name "Lil' Auto Store, Inc." and to the California Attorney General,
- 6 County District Attorneys, and City Attorneys for each city containing a population of at
- 7 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning
- 8 the consumer product Lil' Auto LA-031 Top Battery Terminal.
- 9 17. On or about February 24, 2009, Plaintiff gave notice of alleged violations of Health and
- 10 Safety Code section 25249.6, concerning consumer products and environmental
- 11 exposures, subject to a private action to Lil' Drug Store Products, Inc., identified in the
- 12 notice as "Lil' Drug Store Products, Inc." 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 the
- 15 consumer product Lil' Auto LA-031 Top Battery Terminal.
- 16 18. On or about August 17, 2009, Plaintiff gave notice of alleged violations of Health and
- 17 Safety Code section 25249.6, concerning consumer products exposures, subject to a
- 18 private action to Lil' Drug Store Products, Inc., identified in the notice as "Lil' Drug
- 19 Store Products, Inc." and to the California Attorney General, County District Attorneys,
- 20 and City Attorneys for each city containing a population of at least 750,000 people in
- 21 whose jurisdictions the violations allegedly occurred, concerning the consumer product
- 22 Lil' Auto Store LA-032 Sidepost Battery Terminal.
- 23 19. Before sending the notice of alleged violations, Plaintiff investigated the consumer
- 24 product involved and the likelihood that such product would cause users to suffer
- 25 significant exposures to the relevant Proposition 65-listed chemical at issue.
- 26 20. Plaintiff's notices of alleged violations each included a Certificate of Merit executed by
- 27 the attorney for the noticing party, CAG. The Certificates of Merit stated that the
- 28 attorney for Plaintiff who executed the certificates had consulted with at least one person

1 with relevant and appropriate expertise who reviewed data regarding the exposures to
2 Lead, which is the subject Proposition 65-listed chemical of this action. Based on that
3 information, the attorney for Plaintiff who executed the Certificates of Merit believed
4 there was a reasonable and meritorious case for this private action. The attorney for
5 Plaintiff attached to the Certificates of Merit served on the Attorney General the
6 confidential factual information sufficient to establish the bases of the Certificates of
7 Merit.

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

11 22. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
12 gave notice of the alleged violations to Lil' Drug Store Products, Inc. and the public
13 prosecutors referenced in Paragraphs 16, 17, and 18.

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

17
18 **FIRST CAUSE OF ACTION**

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

22 **Lil Auto LA-031 Top Battery Terminal**

23 24. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
24 paragraphs 1 through 23 of this Complaint as though fully set forth herein.

25 25. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
26 distributor, promoter, or retailer of Lil' Auto LA-031 Top Battery Terminal (hereinafter
27
28

1 "LA-031 Battery Terminal"), a consumer product designed for use on automobile
2 batteries.

3 26. Plaintiff is informed, believes, and thereon alleges that LA-031 Battery Terminal contains
4 Lead.

5 27. 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. tit. 27, § 27001(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 28. On February 27, 1987, the Governor of California added Lead to the list of chemicals
12 known to the State to reproductive toxicity, developmental, female, male (*Cal. Code*
13 *Regs. tit. 27, § 27001(c)*). Pursuant to Health and Safety Code sections 25249.9 and
14 25249.10, twenty (20) months after the addition of Lead to the list of chemicals known to
15 the State to cause reproductive toxicity, Lead became fully subject to Proposition 65
16 warning requirements and discharge prohibitions.

17 29. Defendants knew or should have known that Lead has been identified by the State of
18 California as a chemical known to cause cancer and reproductive toxicity and therefore
19 were subject to Proposition 65 warning requirements. Defendants were also informed of
20 the presence of Lead in the LA-031 Battery Terminal within Plaintiff's notices of alleged
21 violation further discussed above at Paragraphs 16 and 17.

22 30. Plaintiff's allegations regarding LA-031 Battery Terminal concern "[c]onsumer products
23 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
24 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
25 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
26 *25602(b)*. LA-031 Battery Terminal is a consumer product, and, as mentioned in herein,
27 exposures to Lead took place as a result of such normal and foreseeable consumption and
28 use.

1 31. Plaintiff's allegations regarding LA-031 Battery Terminal concern "[e]nvironmental
2 exposure[s]," which "is an exposure that may foreseeably occur as the result of contact
3 with an environmental medium, including, but not limited to, ambient air, indoor air,
4 drinking water, standing water, running water, soil vegetation, or manmade or natural
5 substances, either through inhalation, ingestion, skin contact, or otherwise.

6 Environmental exposures include all exposures that are not consumer products exposures
7 or occupational exposures." *Cal. Code Regs.* tit. 27, § 25602(c). As mentioned in herein,
8 exposures to Lead by way of LA-031 Battery Terminal took place as a result of such
9 contact with an environmental medium.

10 32. Plaintiff is informed, believes, and thereon alleges that between December 4, 2005 and
11 the present, each of the Defendants knowingly and intentionally exposed California
12 consumers and users of LA-031 Battery Terminal, which Defendants manufactured,
13 distributed, or sold as mentioned above, to Lead, without first providing any type of clear
14 and reasonable warning of such to the exposed persons before the time of exposure.

15 Defendants have distributed and sold LA-031 Battery Terminal in California. Defendants
16 know and intend that California consumers will use and consume LA-031 Battery
17 Terminal thereby exposing them to Lead. Defendants thereby violated Proposition 65.

18 33. The principal routes of exposure were and are through dermal contact, ingestion, and
19 inhalation. Persons sustain exposures by Handling LA-031 Battery Terminal without
20 wearing gloves or by touching bare skin with gloves handling LA-031 Battery Terminal,
21 hand-to-mouth contact, or breathing in particulate matter from LA-031 Battery Terminal
22 as part of the process of installing LA-031 Battery Terminal on or removing LA-031
23 Battery Terminal from an automobile battery. The foregoing routes of exposure assume
24 use of the product in accordance with its instructions.

25 34. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
26 Proposition 65 as to LA-031 Battery Terminal have been ongoing and continuous to the
27 date of the signing of this Complaint, as Defendants engaged and continue to engage in
28 conduct which violates Health and Safety Code section 25249.6, including the

1 manufacture, distribution, promotion, and sale of LA-031 Battery Terminal, so that a
2 separate and distinct violation of Proposition 65 occurred each and every time a person
3 was exposed to Lead by LA-031 Battery Terminal as mentioned herein.

4 35. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
5 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
6 violations alleged herein will continue to occur into the future.

7 36. Based on the allegations herein, Defendants are liable for civil penalties of up to
8 \$2,500.00 per day per individual exposure to Lead from LA-031 Battery Terminal,
9 pursuant to Health and Safety Code section 25249.7(b).

10 37. In the absence of equitable relief, California consumers, the general public, and others
11 will continue to be involuntarily exposed to Lead that is contained in LA-031 Battery
12 Terminal, creating a substantial risk of irreparable harm. Thus, by committing the acts
13 alleged herein, Defendants have caused irreparable harm for which there is no plain,
14 speedy, or adequate remedy at law.

15 38. Plaintiff has engaged in good faith efforts to resolve the claim alleged herein prior to
16 filing this Complaint.

17
18 **Lil Auto Store LA-032 Sidepost Battery Terminal**

19 39. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference
20 paragraphs 1 through 23 of this Complaint as though fully set forth herein.

21 40. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
22 distributor, promoter, or retailer of Lil' Auto Store LA-032 Sidepost Battery Terminal
23 (hereinafter "LA-032 Battery Terminal"), a consumer product designed for use on
24 automobile batteries.

25 41. Plaintiff is informed, believes, and thereon alleges that LA-032 Battery Terminal contains
26 Lead.

27 42. On October 1, 1992, the Governor of California added Lead and lead compounds to the
28 list of chemicals known to the State to cause cancer (*Cal. Code Regs. tit. 27, § 27001(b)*).

1 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
2 after addition of Lead and lead compounds to the list of chemicals known to the State to
3 cause cancer, Lead and lead compounds became fully subject to Proposition 65 warning
4 requirements and discharge prohibitions.

5 43. On February 27, 1987, the Governor of California added Lead to the list of chemicals
6 known to the State to reproductive toxicity, developmental, female, male (*Cal. Code*
7 *Regs. tit. 27, § 27001(c)*). Pursuant to Health and Safety Code sections 25249.9 and
8 25249.10, twenty (20) months after the addition of Lead to the list of chemicals known to
9 the State to cause reproductive toxicity, Lead became fully subject to Proposition 65
10 warning requirements and discharge prohibitions.

11 44. Defendants knew or should have known that Lead has been identified by the State of
12 California as a chemical known to cause cancer and reproductive toxicity and therefore
13 were subject to Proposition 65 warning requirements. Defendants were also informed of
14 the presence of Lead in the LA-032 Battery Terminal within Plaintiff's notices of alleged
15 violation further discussed above at Paragraph 18.

16 45. Plaintiff's allegations regarding LA-032 Battery Terminal concern "[c]onsumer products
17 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
18 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
19 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
20 *25602(b)*. LA-032 Battery Terminal is a consumer product, and, as mentioned in herein,
21 exposures to Lead took place as a result of such normal and foreseeable consumption and
22 use.

23 46. Plaintiff is informed, believes, and thereon alleges that between August 17, 2006 and the
24 present, each of the Defendants knowingly and intentionally exposed California
25 consumers and users of LA-032 Battery Terminal, which Defendants manufactured,
26 distributed, or sold as mentioned above, to Lead, without first providing any type of clear
27 and reasonable warning of such to the exposed persons before the time of exposure.

28 Defendants have distributed and sold LA-032 Battery Terminal in California. Defendants

1 know and intend that California consumers will use and consume LA-032 Battery
2 Terminal thereby exposing them to Lead. Defendants thereby violated Proposition 65.
3 47. The principal routes of exposure were and are through dermal contact, ingestion, and
4 inhalation. Persons sustain exposures by Handling LA-032 Battery Terminal without
5 wearing gloves or by touching bare skin or mucous membranes with gloves after
6 handling LA-032 Battery Terminal, as well as hand-to-mouth contact, or breathing in
7 particulate matter from LA-032 Battery Terminal as part of the process of installing LA-
8 032 Battery Terminal on or removing LA-032 Battery Terminal from an automobile
9 battery. The foregoing routes of exposure assume use of the product in accordance with
10 its instructions.
11 48. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
12 Proposition 65 as to LA-032 Battery Terminal have been ongoing and continuous to the
13 date of the signing of this Complaint, as Defendants engaged and continue to engage in
14 conduct which violates Health and Safety Code section 25249.6, including the
15 manufacture, distribution, promotion, and sale of LA-032 Battery Terminal, so that a
16 separate and distinct violation of Proposition 65 occurred each and every time a person
17 was exposed to Lead by LA-032 Battery Terminal as mentioned herein.
18 49. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
19 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
20 violations alleged herein will continue to occur into the future.
21 50. Based on the allegations herein, Defendants are liable for civil penalties of up to
22 \$2,500.00 per day per individual exposure to Lead from LA-032 Battery Terminal,
23 pursuant to Health and Safety Code section 25249.7(b).
24 51. In the absence of equitable relief, California consumers, the general public, and others
25 will continue to be involuntarily exposed to Lead that is contained in LA-032 Battery
26 Terminal, creating a substantial risk of irreparable harm. Thus, by committing the acts
27 alleged herein, Defendants have caused irreparable harm for which there is no plain,
28 speedy, or adequate remedy at law.

1 52. Plaintiff has engaged in good faith efforts to resolve the claim alleged herein prior to
2 filing this Complaint.


3
4 **PRAYER FOR RELIEF**

5 Plaintiff demands against each of the Defendants as follows:

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

11
12
13
14 Dated: November 3, 2009

YEROUSHALMI & ASSOCIATES

15
16
17 BY: 
18 Daniel D. Cho
19 Attorneys for Plaintiff,
20 Consumer Advocacy Group, Inc.