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9 Attorneys for Plaintiffs,  
10 Consumer Advocacy Group, Inc

CONFORMED COPY  
OF ORIGINAL FILED  
Los Angeles Superior Court

MAR 05 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

13 CONSUMER ADVOCACY GROUP, INC., ) CASE NO. BC409019  
14 in the public interest, )  
15 Plaintiff, ) COMPLAINT FOR PENALTY,  
16 ) INJUNCTION, AND RESTITUTION  
17 v. )  
18 ) Violation of Proposition 65, the Safe  
19 ) Drinking Water and Toxic Enforcement  
20 ) Act of 1986 (*Health & Safety Code*, §  
21 ) 25249.5, *et seq.*)  
22 )  
23 ) ACTION IS AN UNLIMITED CIVIL  
24 ) CASE (exceeds \$25,000)  
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Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against defendants as follows:

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COPY

**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 Bell Automotive Products, Inc. is a Delaware Corporation.
3. Defendant Victor Automotive Products, Inc. is an Illinois Corporation.
4. 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.
5. At all times mentioned herein, the term "Defendants" includes Bell Automotive Products, Inc., Victor Automotive Products, Inc., and Does 1-50.
6. 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.
7. 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.

**JURISDICTION**

8. 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.

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1 **FIRST CAUSE OF ACTION**

2 **(By Consumer Advocacy Group, Inc. and against Bell Automotive Products, Inc., Victor**  
3 **Automotive Products, Inc., and Does 1-50 for Violations of Proposition 65, The Safe**  
4 **Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et***  
5 ***seq.*))**

6 **Victor® Heavy Duty Lead Battery Terminal Side Posts Containing Lead**

- 7 13. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
8 paragraphs 1 through 12 of this complaint as though fully set forth herein.
- 9 14. Each of the Defendants is, and at all times mentioned herein was, a manufacturer or  
10 distributor of Victor® Heavy Duty Lead Battery Terminal Side Posts containing lead  
11 (hereinafter "Battery Terminals"), a consumer product designed for use in automobile  
12 batteries and related automobile equipment.
- 13 15. Plaintiff is informed, believes, and thereon alleges that Battery Terminals contain Lead.
- 14 16. On October 1, 1992, the Governor of California added Lead and lead compounds to the  
15 list of chemicals known to the State to cause cancer (*Cal. Code Regs. 27 § 27001(b)*).  
16 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months  
17 after addition of Lead and lead compounds to the list of chemicals known to the State to  
18 cause cancer, Lead and lead compounds became fully subject to Proposition 65 warning  
19 requirements and discharge prohibitions.
- 20 17. On February 27, 1987, the Governor of California added Lead to the list of chemicals  
21 known to the State to cause reproductive toxicity (*Cal. Code Regs. 27 § 27001(c)*). Lead  
22 is known to the State to cause developmental, female, and male reproductive toxicity.  
23 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months  
24 after addition of Lead to the list of chemicals known to the State to cause reproductive  
25 toxicity, Lead became fully subject to Proposition 65 warning requirements and discharge  
26 prohibitions.
- 27 18. Plaintiff's allegations concern "consumer product exposures," which are exposures that  
28 results from a person's acquisition, purchase, storage, consumption, or other reasonably

1 foreseeable use of a consumer good or any that results from receiving a consumer  
2 service. *Cal. Code Regs. 27 § 25602(b)*. Battery Terminals are consumer products, and  
3 as mentioned in herein, exposures to Lead took place as a result of such consumption and  
4 foreseeable use as well as the receipt of consumer services.

5 19. The principal routes of exposure were through dermal contact, ingestion, and inhalation.  
6 Consumers sustained exposures to Lead by handling Battery Terminal without wearing  
7 gloves or by touching bare skin or mucous members with gloves after handling Battery  
8 terminal, as well as hand to mouth contact, or by breathing in particulate matter  
9 emanating from Battery Terminal as part of the process of installing the product or  
10 removing it from an automobile battery or related automobile equipment.

11 20. Plaintiff is informed, believes, and thereon alleges that between August 11, 2005 and the  
12 present, each of the Defendants knowingly and intentionally exposed California  
13 consumers and users of Battery Terminals, which Defendants manufactured or distributed  
14 as mentioned above, to Lead, without first providing any type of clear and reasonable  
15 warning of such to the exposed persons before the time of exposure. Defendants have  
16 distributed Battery Terminals in California. Defendants thereby violated Proposition 65.

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

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

24  
25 **SATISFACTION OF PRIOR NOTICE**

26 23. On or about August 11, 2008, Plaintiff gave notice of alleged violations of Health and  
27 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
28 private action to Bell Automotive Products, Inc. and Victor Automotive Products, Inc.,

1 identified in the notice as Bell Automotive Products, Inc. and Victor Automotive  
2 Products, Inc., and to the California Attorney General, County District Attorneys, and  
3 City Attorneys for each city containing a population of at least 750,000 people in whose  
4 jurisdictions the violations allegedly occurred, concerning Battery Terminals.

5 24. Before sending the notices of alleged violation, Plaintiff investigated the consumer  
6 products involved, the likelihood that such products would cause users to suffer  
7 significant exposures to Lead, the corporate structure of each of the Defendants, and  
8 other relevant matters.

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

18 26. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
19 gave notice of the alleged violations to Bell Automotive Products, Inc., Victor  
20 Automotive Products, Inc., and to the public prosecutors referenced in Paragraph 23.

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

24  
25 **PRAYER FOR RELIEF**

26 Plaintiff demands against each of the Defendants as follows:

- 27 1. A permanent injunction mandating Proposition 65-compliant warnings;
- 28 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);

- 1 3. Costs of suit;  
2 4. Reasonable attorney fees and costs; and  
3 5. Any further relief that the court may deem just and equitable.  
4

5 Dated: February 24, 2009

YEROUSHALMI & ASSOCIATES

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8 BY:   
9 Daniel D. Cho  
10 Attorneys for Plaintiff,  
11 Consumer Advocacy Group, Inc.  
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