

**SUMMONS  
(CITACION JUDICIAL)**

FOR COURT USE ONLY  
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Los Angeles Superior Court

AUG 13 2010

John A. Clarke, Executive Officer/Clerk  
By Amber LaFleur-Clayton Deputy  
A.E. LaFLEUR-CLAYTON

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

United Pet Group, Inc., a Delaware Corporation; Spectrum Brands, Inc., a Missouri Corporation; and Does 1-50

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

Consumer Advocacy Group, Inc., in the public interest.

**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 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](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): 111 N. Hill St.  
Los Angeles, CA 90012

CASE NUMBER:  
(Número del Caso):

**B C 4 4 3 6 4 5**

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):  
Yeroushalmi & Associates, 9100 Wilshire Blvd. Suite 610, Beverly Hills, CA 90212

DATE:  
(Fecha)

**JOHN A. CLARKE, CLERK**, by  
(Secretario)

**AMBER LaFLEUR-CLAYTON**, 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]  
  
AUG 13 2010

**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):

AUG 13 2010

John A. Clarke, Executive Officer/Clerk  
By A.E. LaFleur-Clayton, Deputy  
A.E. LAFLEUR-CLAYTON

1 REUBEN YEROUSHALMI (SBN 193981)  
2 DANIEL D. CHO (SBN 105409)  
3 BEN YEROUSHALMI (SBN 232540)  
4 **YEROUSHALMI & ASSOCIATES**  
5 9100 WILSHIRE BLVD., SUITE 610E  
6 LOS ANGELES, CA 90010  
7 Telephone: 310-623-1926  
8 Facsimile: 310-623-1930

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 United Pet Group, Inc., a Delaware  
18 Corporation; Spectrum Brands, Inc., a  
19 Missouri Corporation; and DOES 1-50;

20 Defendants.

CASE NO.

**BC443645**

COMPLAINT FOR PENALTY,  
INJUNCTION, AND RESTITUTION

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

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

21  
22  
23  
24  
25 Plaintiff Consumer Advocacy Group, Inc. alleges, based on information and belief, a  
26 cause of action against defendants as follows:

27 ///

1 **THE PARTIES**

- 2 1. Plaintiff, Consumer Advocacy Group, Inc. ("Plaintiff"), is a non-profit corporation  
3 qualified to do business in the State of California. It brings this action in the public  
4 interest as defined under Health and Safety Code section 25249.7, subdivision (d).  
5 2. Defendant United Pet Group, Inc is a Delaware corporation. Defendant Spectrum Brands,  
6 Inc. is a Missouri corporation.  
7 3. Plaintiff is ignorant of the true names and capacities of defendants Does 1-50, and  
8 therefore sues these defendants by such fictitious names. Plaintiff will amend this  
9 complaint to allege their true names and capacities when ascertained. Plaintiff is  
10 informed, believes, and thereon alleges that each fictitiously named defendant is  
11 responsible in some manner for the occurrences herein alleged and the damages caused  
12 thereby.  
13 4. Plaintiff is informed, believes, and thereon alleges that United Pet Group, Inc. and  
14 Spectrum Brands, Inc. at all times mentioned herein have conducted business within the  
15 State of California.  
16 5. At all times mentioned herein, "Defendants" include United Pet Group, Inc., Spectrum  
17 Brands, Inc., and Does 1-50.  
18 6. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
19 Defendants was a person doing business within the meaning of Health and Safety Code  
20 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
21 employees.

22 **JURISDICTION**

- 23 7. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
24 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
25 those given by statute to other trial courts.

26 ///

27 ///

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1 California to Proposition 65-listed chemicals without providing clear and reasonable  
2 warnings of such to the exposed persons prior to exposure.

3 **SATISFACTION OF PRIOR NOTICE**

4 13. On or about February 23, 2010, Plaintiff gave notice of alleged violations of Health and  
5 Safety Code section 25249.6 subject to a private action to United Pet Group Inc.,  
6 Spectrum Brand, Inc. and to the California Attorney General, County District Attorneys,  
7 and City Attorneys for each city containing a population of at least 750,000 people in  
8 whose jurisdictions the violations allegedly occurred, concerning the consumer products  
9 Bird Protector for Small Cages and Bird Protector for Large Cages.

10 14. Before sending the notice of alleged violations, Plaintiff investigated the consumer  
11 product involved, the likelihood that such product would cause users to suffer exposures  
12 to p-Dichlorobenzene, and the corporate structure of each of the Defendants.

13 15. Plaintiff's notice of alleged violation included a certificate of merit executed by the  
14 attorney for the noticing party, Plaintiff. The certificate of merit stated that the attorney  
15 for Plaintiff who executed the certificate had consulted with at least one person with  
16 relevant and appropriate expertise who had reviewed data regarding the alleged  
17 exposures to p-Dichlorobenzene, the subject Proposition 65-listed chemical of this  
18 action. Based on that information, the attorney for Plaintiff who executed the certificate  
19 believed there was a reasonable and meritorious case for this private action. The attorney  
20 for Plaintiff attached to the certificate of merit served on the Attorney General  
21 information sufficient to establish the basis of the certificate of merit.

22 16. Plaintiff is commencing this action more than sixty (60) days from the date that Plaintiff  
23 gave notice of the alleged violation to Bird Protector for Small Cages and Bird Protector  
24 for Large Cages, and to the public prosecutors referenced in Paragraph 31.

25 17. 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

1 FIRST CAUSE OF ACTION

2 (By Consumer Advocacy Group, Inc. and against United Pet Group, Inc., Spectrum Brand,  
3 Inc., and Does 1-50 For Violation Of Proposition 65, The Safe Drinking Water And Toxic  
4 Enforcement Act Of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))  
5 (8 in 1® Bird Protector Protects Birds from Lice and Mites for Small Cages (Item No.  
6 C311))

7 18. Plaintiff, Consumer Advocacy Group, Inc. repeats and incorporates by reference  
8 paragraphs 1 through 17 of this complaint as though fully set forth herein.

9 19. Each of the Defendants is, and at all times mentioned herein, was a manufacturer or  
10 distributor of 8 in 1® Bird Protector Protects Birds from Lice and Mites for Small Cages  
11 (Item No. C311) “Bird Protector for Small Cages), a consumer product and pesticide  
12 designed to treat pet birds in the home or other environments, and designed for  
13 application in confined spaces.

14 20. Plaintiff is informed, believes, and thereon alleges that Bird Protector for Small Cages  
15 contains p-Dichlorobenzene.

16 21. Plaintiff is informed, believes, and thereon alleges that between February 23, 2007, and  
17 the present, each of the Defendants knowingly and intentionally exposed California  
18 consumers and users of Bird Protector for Small Cages, which it manufactured or  
19 distributed as mentioned above, to p-dichlorobenzene without first giving clear and  
20 reasonable warning of such to the exposed persons before the time of exposure.

21 Defendants have distributed Bird Protector for Small Cages in California. Defendants  
22 thereby violated Proposition 65.

23 22. The principal, but not exclusive, routes of exposure were and are through dermal contact  
24 and inhalation caused when users of Bird Protector for Small Cages in California breath  
25 in vapor emanating from the Bird Protector for Small Cages during application and  
26 installation as well as through environmental mediums that carry the p-Dichlorobenzene  
27 once contained within the Bird Protector for Small Cages, or by handling the Bird  
28

1           Protectors without wearing gloves or by touching bare skin or mucous membranes with  
2           gloves after handling Bird Protector for Small Cages, as well as hand to mouth contact,  
3           and hand to mucous membrane contact.

4           23. Plaintiff's allegations regarding Bird Protector for Small Cages concern a "[c]onsumer  
5           products exposure," which "is an exposure that results from a person's acquisition,  
6           purchase, storage, consumption, or other reasonably foreseeable use of a consumer good,  
7           or any exposure that results from receiving a consumer service." *Cal. Code Regs. 27 §*  
8           25602(b). Bird Protector for Small Cages is a consumer product, and exposures to p-  
9           Dichlorobenzene took place as a result of such consumption and foreseeable use as is  
10          described herein.

11          24. Plaintiff's allegations also concern "[e]nvironmental exposure[s]," which "is an exposure  
12          that may foreseeably occur as the result of contact with an environmental medium,  
13          including, but not limited to, ambient air, indoor air, drinking water, standing water,  
14          running water, soil vegetation, or manmade or natural substances, either through  
15          inhalation, ingestion, skin contact, or otherwise. Environmental exposures include all  
16          exposures that are not consumer products exposures or occupational exposures." *Cal.*  
17          *Code Regs. tit. 27, § 25602(c)*. Defendants caused environmental exposures by not  
18          providing any Proposition 65-compliant warnings with the Bird Protector for Small  
19          Cages. Environmental exposures occur on and beyond the property owned or controlled  
20          by Defendants when the p-Dichlorobenzene existing in the Bird Protector for Small  
21          Cages is released from the Bird Protector for Small Cages as a gas into environmental  
22          mediums such as indoor air, outdoor air and ambient air, and is exposed to individuals.

23          25. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
24          Proposition 65 as to Bird Protector for Small Cages have been ongoing and continuous to  
25          the date of the signing of this complaint, so that a separate and distinct violation of  
26          Proposition 65 occurred each and every time a consumer was exposed to p-  
27          dichlorobenzene by using Bird Protector for Small Cages as mentioned herein.

1 26. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
2 mentioned herein is ever continuing.

3 **SECOND CAUSE OF ACTION**

4 **(By Consumer Advocacy Group, Inc. and against United Pet Group, Inc., Spectrum**  
5 **Brand, Inc., and Does 1-50 For Violation Of Proposition 65, The Safe Drinking Water**  
6 **And Toxic Enforcement Act Of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

7 **(8 in 1® Bird Protector Protects Birds from Lice and Mites for Large Cages (Item**  
8 **No. C310))**

9 27. Plaintiff, Consumer Advocacy Group, Inc. repeats and incorporates by reference  
10 paragraphs 1 through 17 of this complaint as though fully set forth herein.

11 28. Each of the Defendants is, and at all times mentioned herein, was a manufacturer or  
12 distributor of 8 in 1® Bird Protector Protects Birds from Lice and Mites for Large Cages  
13 (Item No. C311) (“Bird Protector for Large Cages), a consumer product and pesticide  
14 designed to treat pet birds in the home or other environments, and designed for  
15 application in confined spaces.

16 29. Plaintiff is informed, believes, and thereon alleges that Bird Protector for Large Cages  
17 contains p-Dichlorobenzene.

18 30. Plaintiff is informed, believes, and thereon alleges that between February 23, 2007, and  
19 the present, each of the Defendants knowingly and intentionally exposed California  
20 consumers and users of Bird Protector for Large Cages, which it manufactured or  
21 distributed as mentioned above, to p-dichlorobenzene without first giving clear and  
22 reasonable warning of such to the exposed persons before the time of exposure.

23 Defendants have distributed Bird Protector for Large Cages in California. Defendants  
24 thereby violated Proposition 65.

25 31. The principal, but not exclusive, routes of exposure were and are through dermal contact  
26 and inhalation caused when users of Bird Protector for Large Cages in California breath  
27 in vapor emanating from the Bird Protector for Large Cages during application and  
28

1 installation as well as through environmental mediums that carry the p-Dichlorobenzene  
2 once contained within the Bird Protector for Large Cages, or by handling the Bird  
3 Protectors without wearing gloves or by touching bare skin or mucous membranes with  
4 gloves after handling Bird Protector for Large Cages, as well as hand to mouth contact,  
5 and hand to mucous membrane contact.

6 32. Plaintiff's allegations regarding Bird Protector for Large Cages concern a "[c]onsumer  
7 products exposure," which "is an exposure that results from a person's acquisition,  
8 purchase, storage, consumption, or other reasonably foreseeable use of a consumer good,  
9 or any exposure that results from receiving a consumer service." *Cal. Code Regs. 27 §*  
10 *25602(b)*. Bird Protector for Large Cages is a consumer product, and exposures to p-  
11 Dichlorobenzene took place as a result of such consumption and foreseeable use as is  
12 described herein.

13 33. Plaintiff's allegations also concern "[e]nvironmental exposure[s]," which "is an exposure  
14 that may foreseeably occur as the result of contact with an environmental medium,  
15 including, but not limited to, ambient air, indoor air, drinking water, standing water,  
16 running water, soil vegetation, or manmade or natural substances, either through  
17 inhalation, ingestion, skin contact, or otherwise. Environmental exposures include all  
18 exposures that are not consumer products exposures or occupational exposures." *Cal.*  
19 *Code Regs. tit. 27, § 25602(c)*. Defendants caused environmental exposures by not  
20 providing any Proposition 65-compliant warnings with the Bird Protector for Large  
21 Cages. Environmental exposures occur on and beyond the property owned or controlled  
22 by Defendants when the p-Dichlorobenzene existing in the Bird Protector for Small  
23 Cages is released from the Bird Protector for Large Cages as a gas into environmental  
24 mediums such as indoor air, outdoor air and ambient air, and is exposed to individuals.

25 34. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
26 Proposition 65 as to Bird Protector for Large Cages have been ongoing and continuous to  
27 the date of the signing of this complaint, so that a separate and distinct violation of  
28

1 Proposition 65 occurred each and every time a consumer was exposed to p-  
2 dichlorobenzene by using Bird Protector for Large Cages as mentioned herein.

3 35. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
4 mentioned herein is ever continuing.

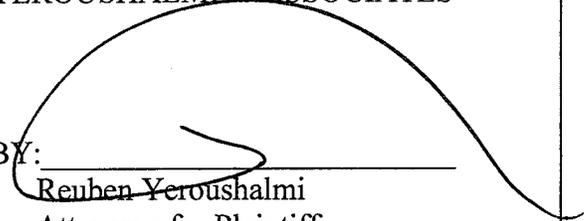
5 **PRAYER FOR RELIEF**

6 Plaintiff demands against each of the Defendants as follows:

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

12  
13 Dated: August 10, 2010

YEROUSHALMI & ASSOCIATES

14  
15  
16 BY: 

Reuben Yeroushalmi  
Attorneys for Plaintiff,  
Consumer Advocacy Group, Inc.