

**SUMMONS
(CITACION JUDICIAL)**

FOR COURT USE ONLY
**CONFORMED COPY
 OF ORIGINAL FILED**
 Los Angeles Superior Court

MAR 21 2011

John A. Clarke, Executive Officer/Clerk
 By Rugena Lopez, Deputy

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**
PENSKE TRUCK LEASING CO., L.P., a Delaware Limited Partnership
; Additional Parties Attachment form is attached.

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**
CONSUMER ADVOCACY GROUP, INC., in the public interest

COPY

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.

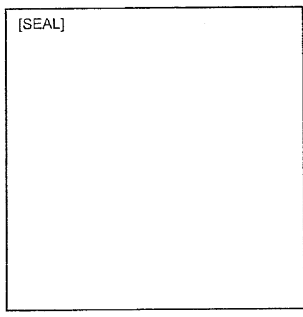
The name and address of the court is:
(El nombre y dirección de la corte es): **Stanley Mosk Courthouse
Superior Court of California for the County of Los Angeles
111 North Hill Street, Los Angeles, California 90012**

CASE NUMBER:
(Número del Caso): **BC 457669**

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):
Reuben Yeroushalmi (SBN193981), 9100 Wilshire Blvd #610E, L.A., CA 90212, (310) 623-1926

DATE: _____, Deputy
(Fecha) John A. Clarke Clerk, by _____ (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):

SHORT TITLE: Consumer Advocacy Group, Inc. v. Penske Truck Leasing Co., Lp	CASE NUMBER:
---	--------------

INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff Defendant Cross-Complainant Cross-Defendant
and PENSKE CORPORATION, a business entity unknown; and DOES 1-20.

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

MAR 21 2011

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

1 Reuben Yeroushalmi (SBN 193981)
Daniel D. Cho (SBN 105409)
2 Ben Yeroushalmi (SBN 232540)
3 **YEROUSHALMI & ASSOCIATES**
9100 Wilshire Boulevard, Suite 610E
4 Beverly Hills, California 90212
Telephone: 310.623.1926
5 Facsimile: 310.623.1930

6 Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

11 **BC 457669**

12 CONSUMER ADVOCACY GROUP, INC.,
in the public interest,

13 Plaintiff,

14 v.

15 PENSKE TRUCK LEASING CO., L.P., a
16 Delaware Limited Partnership; and PENSKE
17 CORPORATION, a business entity
18 unknown; and DOES 1-20;

19 Defendants.

CASE NO.

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)

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

23 ///

24 ///

25 ///

26 ///

27 ///

COPY

THE PARTIES

- 1
2 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff”) is an entity qualified to
3 do business in the State of California. CAG is a person within the meaning of Health and
4 Safety Code section 25249.11, subdivision (a). CAG, acting as a private attorney
5 general, brings this action in the public interest as defined under Health and Safety Code
6 section 25249.7, subdivision (d).
- 7 2. Defendant PENSKE TRUCK LEASING CO., L.P., (“PENSKE TRUCK LEASING”) is
8 a Delaware Limited Partnership qualified to do business and doing business in the State
9 of California at all relevant times herein.
- 10 3. Defendant PENSKE CORPORATION (“PENSKE CORP.”) is a business entity, form
11 unknown, qualified to do business and doing business in the State of California at all
12 relevant times herein.
- 13 4. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-20,
14 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
15 complaint to allege their true names and capacities when ascertained. Plaintiff is
16 informed, believes, and thereon alleges that each fictitiously named defendant is
17 responsible in some manner for the occurrences herein alleged and the damages caused
18 thereby.
- 19 5. At all times mentioned herein, the term “Defendants” includes PENSKE TRUCK
20 LEASING, PENSKE CORP., and DOES 1-20.
- 21 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
22 times mentioned herein have conducted business within the State of California.
- 23 7. At all times relevant to this action, each of the Defendants was an agent, servant, or
24 employee of each of the other Defendants. In conducting the activities alleged in this
25 Complaint, each of the Defendants was acting within the course and scope of this agency,
26 service, or employment, and was acting with the consent, permission, and authorization
27 of each of the other Defendants. All actions of each of the Defendants alleged in this
28

1 Complaint were ratified and approved by every other Defendant or their officers or
2 managing agents. Alternatively, each of the Defendants aided, conspired with and/or
3 facilitated the alleged wrongful conduct of each of the other Defendants.

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

8 **JURISDICTION**

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

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

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

26 //

27 //

28

1 **BACKGROUND AND PRELIMINARY FACTS**

2 12. In 1986, California voters approved an initiative to address growing concerns about
3 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
4 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
5 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
6 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
7 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
8 from contamination, to allow consumers to make informed choices about the products
9 they buy, and to enable persons to protect themselves from toxic chemicals as they see
10 fit.

11 13. Proposition 65 requires the Governor of California to publish a list of chemicals known to
12 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
13 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
14 chemicals and chemical families. Proposition 65 imposes warning requirements and
15 other controls that apply to Proposition 65-listed chemicals.

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

22 15. Proposition 65 provides that any person "violating or threatening to violate" the statute
23 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
24 "Threaten to violate" means "to create a condition in which there is a substantial
25 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
26 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
27 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

1 16. Through research and investigation, Plaintiff identified that certain truck rental
2 companies allowed persons to smoke cigarettes and other tobacco products in their
3 vehicles, thereby facilitating the production of an environment in which Second-Hand
4 Tobacco Smoke and Environmental Tobacco Smoke existed, and exposing, knowingly
5 and intentionally, persons in California to the Proposition 65-listed chemicals contained
6 in second-hand tobacco smoke or environmental tobacco smoke without first providing
7 clear and reasonable warnings of such to the exposed persons prior to exposure. Plaintiff
8 later discerned that Defendants engaged in such practice, thereby violating Proposition
9 65.

10 17. Plaintiff is informed, believes, and thereon alleges that second-hand tobacco smoke and
11 environmental tobacco smoke contains Tobacco Smoke, a chemical known to the State of
12 California to cause Cancer and Reproductive Toxicity.

13 18. Plaintiff is informed, believes, and thereon alleges that second-hand tobacco smoke and
14 environmental tobacco smoke contain the following chemicals known to the State of
15 California to cause cancer or reproductive toxicity (Constituent Chemicals):

16 **CARCINOGENS**

17 Tobacco smoke	Acetaldehyde
18 Acetamide	Acrolein
19 Acrylonitrile	4-Aminobiphenyl
20 Aniline	o-Anisidine
21 Benz[a]anthracene	Benzene
22 Benzo[b]fluoranthene	Benzo[j]fluoranthene
23 Benzo[k]fluoranthene	Benzo[a]pyrene
24 1,3-Butadiene	Captan
25 Carbon disulfide	Carbon monoxide
26 Chrysene	DDT
27 Dibenz[a,h]acridine	Dibenz[a,j]acridine

1	Dibenz[a,h]anthracene	7H-Dibenzo[c,g]carbazole
2	Dibenzo[a,e]pyrene	Dibenzo[a,h]pyrene
3	Dibenzo[a,i]pyrene	Dibenzo[a,l]pyrene
4	1,1-Dimethylhydrazine	1-Naphthylamine
5	2-Naphthylamine	Nicotine
6	2-Nitropropane	N-Nitrosodi-n-butylamine
7	N-Nitrosodiethanolamine	N-Nitrosodiethylamine
8	N-Nitroso-n-methylethylamine	N'-Nitrososomnicotine
9	N-Nitrosopiperidine	N-Nitrosopyrrolidine
10	Styrene	Toluene
11	2-Toluidine	Urethane
12	Vinyl chloride	Arsenic
13	Cadmium	Chromium
14	Lead	Nickel

REPRODUCTIVE TOXINS

17	Arsenic (inorganic oxides)	Cadmium
18	Carbon disulfide	Carbon monoxide
19	Lead	Nicotine
20	Toluene	Tobacco Smoke
21	Urethane	

19. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of Tobacco Smoke and each of the Constituent Chemicals to the list of chemicals known to the State to cause cancer (*Cal. Code Regs. 27 §27001(b)*) or reproductive toxicity (*Cal. Code Regs. 27§ 27001(c)*), Tobacco Smoke and each of the Constituent Chemicals became fully subject to Proposition 65 warning requirements and

1 discharge prohibitions. Tobacco Smoke and each of the Constituent Chemicals are now
2 fully subject to Proposition 65 warning requirements and discharge prohibitions.

3 20. Through further research and investigation, Plaintiff identified that Defendants also
4 allowed emissions from Gasoline and Diesel Engine Exhaust to expel and permeate the
5 areas surrounding the rental trucks, including confined spaces such as the interior of the
6 rental vehicle and nearby buildings, including but not limited to rental sales offices in
7 immediate proximity to the areas where Gasoline and Diesel Rental Vehicles are driven
8 and/ or stored. These acts facilitated the production of an environment in which Gasoline
9 and Diesel Exhaust fumes existed, and exposed, knowingly and intentionally, persons in
10 California to the Proposition 65-listed chemicals contained in Gasoline and Diesel
11 Exhaust fumes without first providing clear and reasonable warnings of such to the
12 exposed persons prior to exposure. Defendants thereby violated Proposition 65.

13 21. Plaintiff is informed, believes, and thereon alleges that Gasoline and Diesel Exhaust
14 fumes contain chemicals known to the State of California to cause Cancer and
15 Reproductive Toxicity

16 22. Plaintiff is informed, believes, and thereon alleges that Gasoline and Diesel Exhaust
17 fumes contain the following chemicals known to the State of California to cause cancer
18 or reproductive toxicity ("Covered Chemicals"):

19 **CARCINOGENS**

20 Acetaldehyde	Acrylonitrile
21 Arsenic (inorganic arsenic compounds)	Asbestos
22 Benza[a]anthracene	Benzene
23 Benzo[a]pyrene	Benzo[b]fluoranthene
24 Benzo[j]fluoranthene	Benzo[k]fluoranthene
25 Beryllium and Beryllium Compounds	Bitumens, extracts of steam-refined and air-refined
26 1,3 Butadiene	Cadmium and Cadmium compounds
27 Carbazole	Chromium (hexavalent compounds)

1	Chrysene	Cobalt sulfate heptahydrate
2	Dibenz[a,h]anthracene	Dibenz[a,h]acridine
3	Dibenz[a,j]acridine	7H-Dibenzo[c,g]carbazole
4	Dibenzo[a,e]pyrene	Dibenzo[a,h]pyrene
5	Dibenzo[a,i]pyrene	Dibenzo[a,l]pyrene
6	Dichloromethane (Methylene Chloride)	Diesel engine exhaust
7	1, 1-Dimethylhydrazine (UDMH)	Ethylbenzene
8	Formaldehyde (gas)	Hydrazine
9	Indeno[1,2,3-s-cd]pyrene	Lead and Lead Compounds
10	3-Methylcholanthrene	5-Methylchrysene
11	Naphthalene	Nickel and Certain Nickel Compounds
12	2-Nitropropane	N-Nitrosodiethanolamine
13	N-Nitrosodiethylamine	N-Nitrosodimethylamine
14	4-(N-Nitrosomethylamino)-1-(3-pyridyl)1-butanone	N-Nitrosomorpholine
15	N-Nitrosomnicotine	N-Nitrosopyrrolidine
16	Quinoline and its strong acid salts	Silica, Crystalline (airborne particles of respirable size)
17		
18	Soots, tars and mineral oils (untreated and mildly treated oils and used engine oils)	Tetrachloroethylene (Perchloroethylene)
19		
20	ortho-Toluidine	Trichloroethylene
21	Urethane (Ethyl carbamate)	

REPRODUCTIVE TOXINS

24	Arsenic (inorganic oxides)	Benzene
25	Cadmium	Carbon Disulfide
26	Carbon Monoxide	Lead
27	Mercury and Mercury Compounds	Methyl Chloride

23. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of Diesel Engine Exhaust and each of the Covered Chemicals to the list of chemicals known to the State to cause cancer (*Cal. Code Regs. 27 §27001(b)*) or reproductive toxicity (*Cal. Code Regs. 27§ 27001(c)*), Diesel Engine Exhaust and each of the Covered Chemicals became fully subject to Proposition 65 warning requirements and discharge prohibitions. Diesel Engine Exhaust and each of the Covered Chemicals are now fully subject to Proposition 65 warning requirements and discharge prohibitions.

24. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of Gasoline Engine Exhaust and each of the Covered Chemicals to the list of chemicals known to the State to cause cancer (*Cal. Code Regs. 27 §27001(b)*) or reproductive toxicity (*Cal. Code Regs. 27§ 27001(c)*), Gasoline Engine Exhaust and each of the Covered Chemicals became fully subject to Proposition 65 warning requirements and discharge prohibitions. Gasoline Engine Exhaust and each of the Covered Chemicals are now fully subject to Proposition 65 warning requirements and discharge prohibitions.

SATISFACTION OF PRIOR NOTICE

25. On or about December 27, 2010, Plaintiff gave notice of alleged violations of Health and Safety Code section 25249.6, concerning occupational exposure and environmental exposure, subject to a private action to Penske Truck Leasing Co., L.P., and Penske Corporation dba "Penske Truck Rental," and to the California Attorney General, County District Attorneys, and City Attorneys for each city containing a population of at least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning exposures to (1) Tobacco Smoke and the Constituent Chemicals and (2) Gasoline and Diesel Engine Exhaust from Trucks and Other Vehicles.

26. Before sending the notice of alleged violations, Plaintiff investigated the Locations involved, second-hand tobacco smoke and environmental tobacco smoke, the likelihood that such products and services would cause users to suffer significant exposures to

1 Tobacco Smoke and the Constituent Chemicals, the corporate structure of each of the
2 Defendants, and other relevant matters.

3 27. Also prior to sending the notice of alleged violations, Plaintiff investigated the Locations
4 involved, Gasoline and Diesel Engine Exhaust, the likelihood that such products and
5 services would cause users to suffer significant exposures to Gasoline and Diesel Engine
6 Exhaust and the Covered Chemicals, the corporate structure of each of the Defendants,
7 and other relevant matters.

8 28. Plaintiff's notice of alleged violations included a certificate of merit executed by the
9 attorney for the noticing party, CAG. The certificate of merit stated that the attorney for
10 Plaintiff who executed the certificate had consulted with at least one person with relevant
11 and appropriate expertise who reviewed data regarding the exposure to Tobacco Smoke
12 and the Constituent Chemicals and Gasoline and Diesel Engine Exhaust and the Covered
13 Chemicals, respectively, which are the subject Proposition 65-listed chemicals of this
14 action. Based on that information, the attorney for Plaintiff who executed the certificate
15 of merit believed there was a reasonable and meritorious case for this private action. The
16 attorney for Plaintiff attached to the certificates of merit served on the Attorney General
17 the confidential factual information sufficient to establish the basis of the certificates of
18 merit.

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

22 30. Plaintiff is commencing this action more than sixty (60) days from the date that Plaintiff
23 gave notice of the alleged violations to PENSKE TRUCK LEASING and PENSKE
24 CORP. and to the public prosecutors referenced in Paragraph 25.

25 31. 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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIRST CAUSE OF ACTION

(By Consumer Advocacy Group, Inc. and against Penske Truck Leasing Co., L.P., and Penske Corporation For Violation Of Proposition 65, The Safe Drinking Water And Toxic Enforcement Act Of 1986 (Cal. Health & Safety Code § 25249.5, et seq.)

Exposures to Second-Hand Tobacco Smoke, and Environmental Tobacco Smoke

32. Plaintiff, Consumer Advocacy Group, Inc. repeats and incorporates by reference paragraphs 1 through 31 of this complaint as though fully set forth herein.

33. Plaintiff's allegations regarding Second-Hand Tobacco Smoke and Environmental Tobacco Smoke concern an "[e]nvironmental exposure" which is an exposure which may foreseeably occur as the result of contact with an environmental medium, including, but not limited to, ambient air, indoor air, drinking water, standing water, running water, soil, vegetation, or manmade or natural substances, either through inhalation, ingestion, skin contact or otherwise. Environmental exposures include all exposures which are not consumer products exposures, or occupational exposure." *Cal. Code Regs. tit. 27, § 25602(c)*. Defendants failed to provide clear and reasonable Proposition 65-compliant warnings to exposed persons prior to the knowing and intentional exposures described herein, and thereby violated Proposition 65.

34. Plaintiff's allegations regarding Second-Hand Tobacco Smoke and Environmental Tobacco Smoke also concern an "[o]ccupational exposure", which "means an exposure to any employee in his or her employer's workplace." *Cal. Code Regs. 27 § 25602(f)*. Exposures of Tobacco Smoke and its Constituent Chemicals to Defendants' employees occurred through the course of their employment.

35. The sources of exposure are numerous. The locations of exposure were at each of Defendants' facilities located throughout California where truck rental services are rendered, and where Defendants permitted or not expressly prohibited the smoking of tobacco and tobacco products in such trucks (hereinafter "Locations").

36. Each of the Defendants allowed, and allows, individuals to smoke cigarettes, and other tobacco products inside the rental trucks, thereby exposing employees, customers, and

1 passengers to Tobacco Smoke and the Constituent Chemicals found in second-hand
2 tobacco smoke or environmental tobacco smoke. Each of the Defendants maintain
3 exclusive control over the rental trucks, as these trucks are owned, operated, and leased
4 by Defendants as part of their business function. The amount of control over the relevant
5 vehicles possessed by each of the Defendants is sufficient so as to enable them to prohibit
6 or allow smoking or to post Proposition 65-compliant warnings and to control the quality
7 of ambient air entering and circulating the rental trucks.

8 37. Each of the Defendants permits persons to smoke tobacco in rental trucks and often
9 facilitates the smoking of tobacco by providing cigarette lighter in the rental trucks, yet
10 no power outlets. When persons, including customers and employees of each of the
11 Defendants occupy, drive, or pass through the rental trucks, they are exposed to Tobacco
12 Smoke and the Constituent Chemicals present in the ambient air and trapped in the
13 interior fibers. Plaintiff's investigations show that children and pregnant women are
14 often among the exposed persons.

15 38. A route of exposure to Tobacco Smoke and the Constituent Chemicals is inhalation
16 contact caused when exposed persons breathe in the ambient air containing second-hand
17 tobacco smoke or environmental tobacco smoke, causing exposure of Tobacco Smoke
18 and the Constituent Chemicals to the mouth, throat, bronchi, esophagi, and lungs.
19 Another route of exposure for the violations dermal contact and skin absorption when
20 tobacco smoke condensates accumulate on various surfaces, including but not limited to
21 upholstery, dashboard, armrest, fabric, and other surfaces in each vehicle. Exposure of
22 Tobacco Smoke and the Constituent Chemicals generates risks of cancer and
23 reproductive toxicity to the exposed persons, both males and females alike.

24 39. Plaintiff is informed, believes, and thereon alleges between August 24, 2007 and the
25 present, each of the Defendants knowingly and intentionally exposed persons in
26 California to Tobacco Smoke and its Constituent Chemicals, without first providing any
27 type of clear and reasonable warning of such to the exposed persons before the time of
28

1 exposure, as described above. These exposures occurred on, but not beyond, the property
2 owned or controlled by Defendants. Defendants thereby violated Proposition 65.

3 40. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
4 Proposition 65 as to second-hand tobacco smoke and environmental tobacco smoke have
5 been ongoing and continuous to the date of the signing of this complaint, so that a
6 separate and distinct violation of Proposition 65 occurred each and every time a person
7 was exposed to Tobacco Smoke and the Constituent Chemicals as described herein.

8 41. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
9 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
10 violations alleged herein will continue to occur in the future.

11 42. Based on the allegations herein, Defendants are liable for civil penalties of up to
12 \$2,500.00 per day per individual exposure to Tobacco Smoke and its Constituent
13 Chemicals, pursuant to Health and Safety Code section 25249.7(b).

14 43. In the absence of equitable relief, California consumers, the general public, and others
15 will continue to be involuntarily exposed to Tobacco Smoke and its Constituent
16 Chemicals, creating a substantial risk of irreparable harm. Thus, by committing the acts
17 alleged herein, Defendants have caused irreparable harm for which there is no plain,
18 speedy, or adequate remedy at law.

19 44. Plaintiff has engaged in good faith efforts to resolve the claim alleged herein prior to
20 filing this Complaint.

21 SECOND CAUSE OF ACTION

22 **(By Consumer Advocacy Group, Inc. and against Penske Truck Leasing Co., L.P., and**
23 **Penske Corporation For Violation Of Proposition 65, The Safe Drinking Water And Toxic**
Enforcement Act Of 1986 (Cal. Health & Safety Code § 25249.5, et seq.)

24 **Exposures to Gasoline Engine Exhaust**

25 45. Plaintiff, Consumer Advocacy Group, Inc. repeats and incorporates by reference
26 paragraphs 1 through 44 of this complaint as though fully set forth herein.

1 46. Plaintiff's allegations regarding exposures to Gasoline Engine Exhaust concern an
2 "[e]nvironmental exposure" which is an exposure which may foreseeably occur as the
3 result of contact with an environmental medium, including, but not limited to, ambient
4 air, indoor air, drinking water, standing water, running water, soil, vegetation, or
5 manmade or natural substances, either through inhalation, ingestion, skin contact or
6 otherwise. Environmental exposures include all exposures which are not consumer
7 products exposures, or occupational exposure." *Cal. Code Regs.* tit. 27, § 25602(c).
8 Defendants failed to provide clear and reasonable Proposition 65-compliant warnings to
9 exposed persons prior to the knowing and intentional exposures described herein, and
10 thereby violated Proposition 65.

11 47. Plaintiff's allegations regarding exposures to Gasoline Engine Exhaust concern an
12 "[o]ccupational exposure", which "means an exposure to any employee in his or her
13 employer's workplace." *Cal. Code Regs.* 27 § 25602(f). Exposures of Tobacco Smoke
14 and its Constituent Chemicals to Defendants' employees occurred through the course of
15 their employment.

16 48. The sources of exposure are numerous. The locations of exposure were at each of
17 Defendants' facilities located throughout California where rental trucks are stored and/ or
18 driven, including confined spaces such as the interior of the rental vehicle, and buildings
19 in close proximity to where these rental vehicles are driven and/or stored (hereinafter
20 "Locations"). Each of the Defendants was an employer employing employees at each of
21 the Locations each day between August 24, 2007 and the present.

22 49. Each of the Defendants allowed, and allows, exhaust from Gasoline Engine Rental
23 vehicles to expel and permeate the air in the surrounding areas, including confined spaces
24 such as the interior of the rental vehicle and nearby buildings, including but not limited to
25 rental sales offices in immediate proximity to the areas where Gasoline Engine Rental
26 Vehicles are driven and/ or stored. These actions expose Defendants' customers,
27
28

1 prospective customers, Defendants' employees, and employees of others to Gasoline
2 Engine Exhaust and the Covered Chemicals found in Gasoline Engine Exhaust.

3 50. Each of the Defendants maintain exclusive control over the rental trucks, as these trucks
4 are owned, operated, and leased by Defendants as part of their business function. Each of
5 the Defendants also maintains exclusive control over their rental sales offices, and the
6 lots in which the rental trucks are stored. The amount of control over the relevant
7 locations possessed by each of the Defendants is sufficient so as to enable them to post
8 Proposition 65-compliant warnings and to control the quality of ambient air entering and
9 circulating the rental trucks and the surrounding areas.

10 51. Each of the Defendants permits the emission of Gasoline Engine Exhaust from their
11 rental trucks, and in the confined relevant areas which they control. When persons,
12 including customers and employees of each of the Defendants occupy, drive, or pass
13 through the relevant locations, they are exposed to Gasoline Engine Exhaust and the
14 Covered Chemicals present in the ambient air and trapped in the interior fibers.
15 Plaintiff's investigations show that children and pregnant women are often among the
16 exposed persons.

17 52. The routes of exposure for the violations were and are inhalation, dermal contact, and
18 skin absorption when the Exhaust from Gasoline Engine Vehicles containing the Covered
19 Chemicals is released into the air and becomes available for inhalation and dermal
20 contact (especially as it accumulates in the confined spaces set out above), as well as
21 when the residual Exhaust from Gasoline Engine Vehicles containing the Covered
22 Chemicals then accumulates on various surfaces inside the vehicle, including but not
23 limited to upholstery, dashboard, armrest, and fabric, or on the individual exposed, or in
24 structures near to the areas where the rental vehicles are driven/and or stored. Exposure
25 of the Covered Chemicals generates risks of cancer and reproductive toxicity to the
26 affected persons.

1 53. Plaintiff is informed, believes, and thereon alleges between August 24, 2007 and the
2 present, each of the Defendants knowingly and intentionally exposed persons in
3 California to Gasoline Engine Exhaust and its Covered Chemicals, without first providing
4 any type of clear and reasonable warning of such to the exposed persons before the time
5 of exposure, as described above. These exposures occurred on, but not beyond, the
6 property owned or controlled by Defendants. Defendants thereby violated Proposition
7 65.

8 54. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
9 Proposition 65 as to Gasoline Engine Exhaust have been ongoing and continuous to the
10 date of the signing of this complaint, so that a separate and distinct violation of
11 Proposition 65 occurred each and every time a person was exposed to Gasoline Engine
12 Exhaust and the Covered Chemicals as described herein.

13 55. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
14 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
15 violations alleged herein will continue to occur in the future.

16 56. Based on the allegations herein, Defendants are liable for civil penalties of up to
17 \$2,500.00 per day per individual exposure to Gasoline Engine Exhaust and its Covered
18 Chemicals, pursuant to Health and Safety Code section 25249.7(b).

19 57. In the absence of equitable relief, California consumers, the general public, and others
20 will continue to be involuntarily exposed to Gasoline Engine Exhaust and its Covered
21 Chemicals, creating a substantial risk of irreparable harm. Thus, by committing the acts
22 alleged herein, Defendants have caused irreparable harm for which there is no plain,
23 speedy, or adequate remedy at law.

24 58. Plaintiff has engaged in good faith efforts to resolve the claim alleged herein prior to
25 filing this Complaint.
26
27
28

1 **THIRD CAUSE OF ACTION**

2 **(By Consumer Advocacy Group, Inc. and against Penske Truck Leasing Co., L.P., and**
3 **Penske Corporation For Violation Of Proposition 65, The Safe Drinking Water And Toxic**
4 **Enforcement Act Of 1986 (Cal. Health & Safety Code § 25249.5, et seq.)**

5 **Exposures to Diesel Engine Exhaust**

6 59. Plaintiff, Consumer Advocacy Group, Inc. repeats and incorporates by reference
7 paragraphs 1 through 58 of this complaint as though fully set forth herein.

8 60. Plaintiff's allegations regarding exposures to Diesel Engine Exhaust concern an
9 "[e]nvironmental exposure" which is an exposure which may foreseeably occur as the
10 result of contact with an environmental medium, including, but not limited to, ambient
11 air, indoor air, drinking water, standing water, running water, soil, vegetation, or
12 manmade or natural substances, either through inhalation, ingestion, skin contact or
13 otherwise. Environmental exposures include all exposures which are not consumer
14 products exposures, or occupational exposure." *Cal. Code Regs. tit. 27, § 25602(c).*

15 Defendants failed to provide clear and reasonable Proposition 65-compliant warnings to
16 exposed persons prior to the knowing and intentional exposures described herein, and
17 thereby violated Proposition 65.

18 61. Plaintiff's allegations regarding exposures to Diesel Engine Exhaust concern an
19 "[o]ccupational exposure", which "means an exposure to any employee in his or her
20 employer's workplace." *Cal. Code Regs. 27 § 25602(f).* Exposures of Tobacco Smoke
21 and its Constituent Chemicals to Defendants' employees occurred through the course of
22 their employment.

23 62. The sources of exposure are numerous. The locations of exposure were at each of
24 Defendants' facilities located throughout California where rental trucks are stored and/ or
25 driven, including confined spaces such as the interior of the rental vehicle, and buildings
26 in close proximity to where these rental vehicles are driven and/or stored (hereinafter
27 "Locations"). Each of the Defendants was an employer employing employees at each of
28 the Locations each day between August 24, 2007 and the present.

1 63. Each of the Defendants allowed, and allows, exhaust from Diesel Engine Rental vehicles
2 to expel and permeate the air in the surrounding areas, including confined spaces such as
3 the interior of the rental vehicle and nearby buildings, including but not limited to rental
4 sales offices in immediate proximity to the areas where Diesel Rental Vehicles are driven
5 and/ or stored. These actions expose Defendants' customers, prospective customers,
6 Defendants' employees, and employees of others to Diesel Engine Exhaust and the
7 Covered Chemicals found in Diesel Engine Exhaust.

8 64. Each of the Defendants maintain exclusive control over the rental trucks, as these trucks
9 are owned, operated, and leased by Defendants as part of their business function. Each of
10 the Defendants also maintains exclusive control over their rental sales offices, and the
11 lots in which the rental trucks are stored. The amount of control over the relevant
12 locations possessed by each of the Defendants is sufficient so as to enable them to post
13 Proposition 65-compliant warnings and to control the quality of ambient air entering and
14 circulating the rental trucks and the surrounding areas, despite the operation or control of
15 any Location by another entity.

16 65. Each of the Defendants permits the emission of Diesel Engine Exhaust from their rental
17 trucks in the confined relevant areas which they control. When persons, including
18 customers and employees of each of the Defendants occupy, drive, or pass through the
19 relevant locations, they are exposed to Diesel Engine Exhaust and the Covered Chemicals
20 present in the ambient air and trapped in the interior fibers. Employees of each of the
21 Defendants suffered, and suffer, additional exposures when they clean or service the
22 rental trucks and relevant locations. Because of the foregoing, employees of each of the
23 Defendants suffered, and suffer, exposures of significant duration on a regular basis,
24 without receiving warnings.

25 66. The routes of exposure for the violations were and are inhalation, dermal contact, and
26 skin absorption when the Exhaust from Diesel Engine Vehicles containing the Covered
27 Chemicals is released into the air and becomes available for inhalation and dermal
28

1 contact (especially as it accumulates in the confined spaces set out above), as well as
2 when the residual Exhaust from Diesel Engine Vehicles containing the Covered
3 Chemicals then accumulates on various surfaces inside the vehicle, including but not
4 limited to upholstery, dashboard, armrest, and fabric, or on the individual exposed, or in
5 structures near to the areas where the rental vehicles are driven/and or stored. Exposure
6 of the Covered Chemicals generates risks of cancer and reproductive toxicity to the
7 affected persons.

8 67. Plaintiff is informed, believes, and thereon alleges that on each day between August 24,
9 2007 and the present each of the Defendants knowingly and intentionally exposed
10 persons, including its employees, in California to Diesel Engine Exhaust and its Covered
11 Chemicals, without first giving clear and reasonable warning of such to the exposed
12 persons before the time of exposure, as described above. Defendants thereby violated
13 Proposition 65.

14 68. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
15 Proposition 65 as to Diesel Engine Exhaust have been ongoing and continuous to the date
16 of the signing of this complaint, so that a separate and distinct violation of Proposition 65
17 occurred each and every time a person was exposed to Diesel Engine Exhaust and the
18 Covered Chemicals as described herein.

19 69. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
20 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
21 violations alleged herein will continue to occur in the future.

22 70. Based on the allegations herein, Defendants are liable for civil penalties of up to
23 \$2,500.00 per day per individual exposure to Diesel Engine Exhaust and its Covered
24 Chemicals, pursuant to Health and Safety Code section 25249.7(b).

25 71. In the absence of equitable relief, California consumers, the general public, and others
26 will continue to be involuntarily exposed to Diesel Engine Exhaust and its Covered
27 Chemicals, creating a substantial risk of irreparable harm. Thus, by committing the acts
28

1 alleged herein, Defendants have caused irreparable harm for which there is no plain,
2 speedy, or adequate remedy at law.

3 72. Plaintiff has engaged in good faith efforts to resolve the claim alleged herein prior to
4 filing this Complaint.

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
14 Dated: 3/17, 2011

YEROUSHALMI & ASSOCIATES

15
16
17 BY: _____

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