

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

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

JUL 22 2010

John A. Clarke, Executive Officer/Clerk
By *[Signature]* Deputy
RUGENA LOPEZ

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

CONCORD BUYING GROUP, INC., a New Hampshire Corporation;
(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

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):

111 N. Hill St.
Los Angeles, CA 90012

CASE NUMBER:
(Número del Caso):

BC442078

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 & Assoc., 9100 Wilshire Blvd. Suite 610E, Beverly Hills, CA 90212, 310.623.1926

DATE:
(Fecha)

JUL 22 2010

Clerk, by
(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 served for the fictitious name of (specify):
JOHN A. CLARKE
- 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. Concord Buying Group, Inc.	CASE NUMBER:
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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

A.J. WRIGHT, a New Hampshire Corporation; THE TJX COMPANIES, INC., a Delaware Corporation; POWER DEVICES LLC, a Ohio Limited Liability Company; and DOES 1-50

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 BEVERLY HILLS, CA 90212
7 Telephone: 310.623.1926
8 Facsimile: 310.623.1930

6 Attorneys for Plaintiffs,
7 Consumer Advocacy Group, Inc

CONFIRMED COPY

OF ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUL 22 2010

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

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES – UNLIMITED

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

13 Plaintiff,

14 v.

15 CONCORD BUYING GROUP, INC., a New
16 Hampshire Corporation; A.J. WRIGHT, a
17 New Hampshire Corporation; THE TJX
18 COMPANIES, INC., a Delaware
19 Corporation; POWER DEVICES LLC, a
Ohio Limited Liability Company; and DOES
1-50

20 Defendants.
21

CASE NO.

BC442078

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)

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

24 **THE PARTIES**

- 25 1. Plaintiff Consumer Advocacy Group, Inc. (“Plaintiff” OR “CAG”) is a non-profit
26 corporation qualified to do business in the State of California. CAG is a person within
27 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting
28

1 as a private attorney general, brings this action in the public interest as defined under
2 Health and Safety Code section 25249.7, subdivision (d).

3 2. Defendant Concord Buying Group, Inc. is a New Hampshire Corporation, qualified to do
4 business and doing business in the State of California at all relevant times herein;

5 Defendant A.J. Wright is a New Hampshire Corporation, qualified to do business and
6 doing business in the State of California at all relevant times herein; Defendant The TJX
7 Companies, Inc. is a Delaware Corporation, qualified to do business and doing business
8 in the State of California at all relevant times herein; Defendant Power Devices LLC, is
9 an Ohio limited liability company, qualified to do business and doing business in the
10 State of California at all relevant times herein.

11 3. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-50,
12 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
13 Complaint to allege their true names and capacities when ascertained. Plaintiff is
14 informed, believes, and thereon alleges that each fictitiously named defendant is
15 responsible in some manner for the occurrences herein alleged and the damages caused
16 thereby.

17 4. At all times mentioned herein, the term "Defendants" includes Concord Buying Group,
18 Inc., A.J. Wright, The TJX Companies, Inc., Power Devices LLC, and Does 1-50.

19 5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
20 times mentioned herein has conducted business within the State of California.

21 6. At all times relevant to this action, each of the Defendants, including Does 1-50, was an
22 agent, servant, or employee of each of the other Defendants. In conducting the activities
23 alleged in this Complaint, each of the Defendants was acting within the course and scope
24 of this agency, service, or employment, and was acting with the consent, permission, and
25 authorization of each of the other Defendants. All actions of each of the Defendants
26 alleged in this Complaint were ratified and approved by every other Defendant or their
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1 officers or managing agents. Alternatively, each of the Defendants aided, conspired with
2 and/or facilitated the alleged wrongful conduct of each of the other Defendants.

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

7 **JURISDICTION**

- 8 8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
9 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
10 those given by statute to other trial courts. This Court has jurisdiction over this action
11 pursuant to Health and Safety Code section 25249.7, which allows enforcement of
12 violations of Proposition 65 in any Court of competent jurisdiction.
- 13 9. This Court has jurisdiction over Defendants named herein because Defendants either
14 reside or are located in this State or are foreign corporations authorized to do business in
15 California, are registered with the California Secretary of State, or who do sufficient
16 business in California, have sufficient minimum contacts with California, or otherwise
17 intentionally avail themselves of the markets within California through their manufacture,
18 distribution, promotion, marketing, or sale of their products within California to render
19 the exercise of jurisdiction by the California courts permissible under traditional notions
20 of fair play and substantial justice.
- 21 10. Venue is proper in the County of Los Angeles because one or more of the instances of
22 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
23 because Defendants conducted, and continue to conduct, business in the County of Los
24 Angeles with respect to the consumer product that is the subject of this action.

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

1 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,
2 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 53. The initiative, The Safe Drinking
3 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
4 25249.5, et seq. ("Proposition 65"), helps protect California's drinking water sources
5 from contamination, allow consumers to make informed choices about the products they
6 buy, and enable persons to protect themselves from toxic chemicals as they see 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 §
20 25249.7. "Threaten to violate" means "to create a condition in which there is a
21 substantial 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 in 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.
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1 **SATISFACTION OF PRIOR NOTICE**

2 16. On or about December 23, 2009, Plaintiff gave notice of alleged violations of Health and
3 Safety Code section 25249.6, concerning consumer products exposure, subject to a
4 private action to Concord Buying Group, Inc., A.J. Wright, The TJX Companies, Inc.,
5 Power Devices LLC, and to the California Attorney General, County District Attorneys,
6 and City Attorneys for each city containing a population of at least 750,000 people in
7 whose jurisdictions the violations allegedly occurred, concerning consumer product RCA
8 Soft Grip Flashlight.

9 17. Before sending the notices of alleged violations, Plaintiff investigated the consumer
10 product involved, and the likelihood that such product would cause users to suffer
11 exposures to lead, and the corporate structure of each of the Defendants.

12 18. Plaintiff's notices of alleged violations each included a Certificate of Merit executed by
13 the attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney
14 for Plaintiff who executed the certificates had consulted with at least one person with
15 relevant and appropriate expertise who reviewed data regarding the exposures to lead,
16 which is the subject Proposition 65-listed chemical of this action. Based on that
17 information, the attorney for Plaintiff who executed the Certificate of Merit believed
18 there was a reasonable and meritorious case for this private action. The attorney for
19 Plaintiff attached to each Certificate of Merit served on the Attorney General the
20 confidential factual information sufficient to establish the bases of the Certificate of
21 Merit.

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

25 20. Plaintiff is commencing this action more than sixty (60) days from the date that Plaintiff
26 gave notice of the alleged violation to Concord Buying Group, Inc., A.J. Wright, The
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1 TJX Companies, Inc., Power Devices LLC, and to the public prosecutors referenced in
2 Paragraphs 16-17.

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

6 **CAUSE OF ACTION**

7 **(By Consumer Advocacy Group, Inc. against Concord Buying Group, Inc.; A.J. Wright;**
8 **The TJX Companies, Inc.; and Power Devices LLC, for Violations Of Proposition 65, The**
9 **Safe Drinking Water And Toxic Enforcement Act Of 1986 (*Health & Safety Code*, §§**
10 **25249.5, *et seq.*))**

11 **RCA Soft Grip Flashlight**

12 22. Plaintiff, Consumer Advocacy Group, Inc. repeats and incorporates by reference
13 paragraphs 1 through 21 of this complaint as though fully set forth herein.

14 23. Each of the Defendants is, and at all times mentioned herein, was a manufacturer, or
15 distributor, or retailer of RCA Soft Grip Flashlight ("Flashlight"), a consumer product
16 which is designed to be used as a small portable lamp.

17 24. Plaintiff is informed, believes, and thereon alleges that Flashlight contains lead.

18 25. On February 27, 1987, the Governor of California added lead to the list of chemicals
19 known to the State to cause reproductive toxicity, developmental, female, and male (Cal.
20 Code Regs. 27 § 25001(c)). Pursuant to Health and Safety Code sections 25249.9 and
21 25249.10, twenty (20) months after addition of lead to the list of chemicals known to the
22 State to cause reproductive toxicity, lead became fully subject to Proposition 65 warning
23 requirements and discharge prohibitions.

24 26. On October 1, 1992, the Governor of California added lead and lead compounds to the
25 list of chemicals known to the State to cause cancer (Cal. Code Regs. 27 § 25001(c)).
26 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
27 after addition of lead to the list of chemicals known to the State to cause cancer, lead and
28

1 lead compounds became fully subject to Proposition 65 warning requirements and
2 discharge prohibitions.

3 27. Plaintiff is informed, believes, and thereon alleges that between December 18, 2006, and
4 the present, each of the Defendants knowingly and intentionally exposed California
5 consumers and users to Flashlight with lead, which it manufactured or distributed as
6 mentioned above, without first giving clear and reasonable warning of such to the
7 exposed persons before the time of exposure. Defendants have distributed lead in
8 California. Defendants know and intend that California consumers will use and consume
9 Flashlight thereby exposing them to lead. Defendants thereby violated Proposition 65.

10 28. The principal, but not exclusive, routes of exposure with regard to Flashlight are and
11 were through dermal contact, ingestion, and inhalation. Persons sustain exposures by
12 handling Flashlight without wearing gloves or any other personal protective equipment,
13 or by touching bare skin or mucous membranes with gloves after handling Flashlight, as
14 well as through hand to mouth contact, hand to mucous membrane, or touching,
15 ingesting, or breathing in particulate matter dispersed from Flashlight.

16 29. Plaintiff's allegations regarding Flashlight concern a "[c]onsumer products exposure,"
17 which "is an exposure that results from a person's acquisition, purchase, storage,
18 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
19 that results from receiving a consumer service." Cal. Code Regs. 27 § 25602(b).
20 Flashlight is a consumer product, and exposures to lead took place as a result of such
21 consumption and foreseeable use as is described herein.

22 30. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
23 Proposition 65 as to Flashlight have been ongoing and continuous to the date of the
24 signing of this complaint, so that a separate and distinct violation of Proposition 65
25 occurred each and every time a consumer was exposed to lead by using Flashlight as
26 mentioned herein.

1 31. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
2 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
3 violations alleged herein will continue to occur into the future.

4 32. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to lead from Flashlight, pursuant to Health and
6 Safety Code section 25249.7(b).

7 33. In the absence of equitable relief, California consumers, the general public, and others
8 will continue to be involuntarily exposed to lead that is contained in Flashlight, creating a
9 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,
10 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate
11 remedy at law.

12 34. Plaintiff has engaged in good faith efforts to resolve the claim alleged herein prior to
13 filing this Complaint.

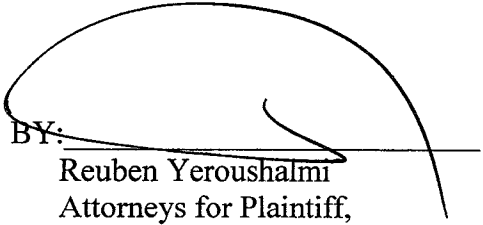
14 **PRAYER FOR RELIEF**

15 Plaintiff demands against each of the Defendants as follows:

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

21
22 Dated: 7/21, 2010

YEROUSHALMI & ASSOCIATES

23
24
25 BY: 
26 Reuben Yeroushalmi
27 Attorneys for Plaintiff,
28 Consumer Advocacy Group, Inc.