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SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

AUG 03 2011

John A. Clarke, Executive Officer/Clerk  
BY  Deputy  
Gina Grider

6 Attorneys for Plaintiffs,  
7 Consumer Advocacy Group, Inc.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9  
10 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

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

CASE NO. **BC 466836**

13 Plaintiff,

COMPLAINT FOR PENALTY,  
INJUNCTION, AND RESTITUTION

14 v.

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

15 ELEGANT USA, LLC, a New Jersey  
16 Limited Liability Company; CONCORD  
17 BUYING GROUP, INC., a New Hampshire  
18 Corporation; THE TJX COMPANIES, INC.,  
a Delaware Corporation; and Does 1-50,

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

19 Defendants.

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

22 **THE PARTIES**

- 23 1. Plaintiff Consumer Advocacy Group, Inc. (“Plaintiff” OR “CAG”) is a corporation  
24 qualified to do business in the State of California. CAG is a person within the meaning  
25 of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private  
26 attorney general, brings this action in the public interest as defined under Health and  
27 Safety Code section 25249.7, subdivision (d).

COPY

- 1 2. Defendant Elegant USA, LLC ("Elegant") is a limited liability company incorporated in  
2 the State of New Jersey, and qualified to do business and doing business in the State of  
3 California at all relevant times herein.
- 4 3. Defendant Concord Buying Group, Inc. ("Concord") is a New Hampshire Corporation,  
5 doing business as A.J. Wright, and qualified to do business and doing business in the  
6 State of California at all relevant times herein.
- 7 4. Defendant TJX Companies, Inc. ("TJX") is a Delaware Corporation, qualified to do  
8 business and doing business in the State of California at all relevant times herein
- 9 5. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-50,  
10 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
11 complaint to allege their true names and capacities when ascertained. Plaintiff is  
12 informed, believes, and thereon alleges that each fictitiously named defendant is  
13 responsible in some manner for the occurrences herein alleged and the damages caused  
14 thereby.
- 15 6. At all times mentioned herein, the term "Defendants" includes Elegant, Concord, TJX,  
16 and Does 1-50.
- 17 7. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
18 times mentioned herein have conducted business within the State of California.
- 19 8. At all times relevant to this action, each of the Defendants, including Does 1-50, was an  
20 agent, servant, or employee of each of the other Defendants. In conducting the activities  
21 alleged in this Complaint, each of the Defendants was acting within the course and scope  
22 of this agency, service, or employment, and was acting with the consent, permission, and  
23 authorization of each of the other Defendants. All actions of each of the Defendants  
24 alleged in this Complaint were ratified and approved by every other Defendant or their  
25 officers or managing agents. Alternatively, each of the Defendants aided, conspired with  
26 and/or facilitated the alleged wrongful conduct of each of the other Defendants.
- 27 9. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
28 Defendants was a person doing business within the meaning of Health and Safety Code

1 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
2 employees at all relevant times.

### 3 JURISDICTION

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

9 11. This Court has jurisdiction over Defendants named herein because Defendants either  
10 reside or are located in this State or are foreign corporations authorized to do business in  
11 California, are registered with the California Secretary of State, or who do sufficient  
12 business in California, have sufficient minimum contacts with California, or otherwise  
13 intentionally avail themselves of the markets within California through their manufacture,  
14 distribution, promotion, marketing, or sale of their products within California to render  
15 the exercise of jurisdiction by the California courts permissible under traditional notions  
16 of fair play and substantial justice. Furthermore, Defendants have purposefully availed  
17 themselves of California by deliberately placing products within the stream of commerce  
18 with the full knowledge and intent that they be sold and distributed in California, and  
19 thereby directed their activities towards, and had a substantial connection with, the State  
20 of California.

21 12. 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 13. In 1986, California voters approved an initiative to address growing concerns about  
27 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to  
28 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,

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

7 14. 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 15. 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 16. Proposition 65 provides that any person "violating or threatening to violate" the statute  
19 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
20 "Threaten to violate" means "to create a condition in which there is a substantial  
21 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
22 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
23 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

24 17. Plaintiff identified certain practices of manufacturers and distributors of lead-bearing  
25 products of exposing, knowingly and intentionally, persons in California to the  
26 Proposition 65-listed chemicals of such products without first providing clear and  
27 reasonable warnings of such to the exposed persons prior to the time of exposure.  
28 Plaintiff later discerned that Defendants engaged in such practice.

1 18. On October 1, 1992, the Governor of California added Lead and Lead Compounds to the  
2 list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)).  
3 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months  
4 after addition of Lead and Lead compounds to the list of chemicals known to the State to  
5 cause cancer, Lead and Lead compounds became fully subject to Proposition 65 warning  
6 requirements and discharge prohibitions.

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

14 **SATISFACTION OF PRIOR NOTICE**

15 20. On or about December 31, 2010 Plaintiff gave notice of alleged violations of Health and  
16 Safety Code section 25249.6, concerning consumer products exposures, occupational  
17 exposures, and environmental exposures, subject to a private action to Elegant, identified  
18 in the notice as "Elegant USA," to Concord, A.J. Wright, and TJX, as well as to the  
19 California Attorney General, County District Attorneys, and City Attorneys for each city  
20 containing a population of at least 750,000 people in whose jurisdictions the violations  
21 allegedly occurred, concerning the consumer product identified as "'Elegant®', 'Steering  
22 Wheel Cover' (Black with Brown on the outside)."

23 21. Before sending the notice of alleged violation, Plaintiff investigated the consumer  
24 products involved, the likelihood that such products would cause users to suffer  
25 significant exposures to Lead, and the corporate structure of each of the Defendants.

26 22. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
27 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
28 Plaintiff who executed the certificate had consulted with at least one person with relevant

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

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

11 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
12 gave notice of the alleged violations to Elegant, Concord, TJX, and the public prosecutors  
13 referenced in Paragraph 20.

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

### 17 FIRST CAUSE OF ACTION

18 **(By Consumer Advocacy Group, Inc. and against Elegant, Concord, TJX, and Does 1-50**  
19 **for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of**  
20 **1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

21 **"Elegant @", "Steering Wheel Cover" (Black with Brown on the outside)**

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

24 27. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
25 distributor, promoter, or retailer of "Elegant@," "Steering Wheel Cover" (Black with  
26 Brown on the outside), ("Steering Wheel Cover"), a consumer product designed for  
27 personal use as an automotive accessory.

1 28. Plaintiff is informed, believes, and thereon alleges that Steering Wheel Cover contains  
2 Lead.

3 29. Defendants knew or should have known that Lead has been identified by the State of  
4 California as a chemical known to cause cancer and reproductive toxicity and therefore  
5 was subject to Proposition 65 warning requirements. Defendants were also informed of  
6 the presence of Lead in the Steering Wheel Cover within Plaintiff's notice of alleged  
7 violations further discussed above at Paragraph 20.

8 30. Plaintiff's allegations regarding Steering Wheel Cover as to Elegant, Concord, and TJX  
9 concern "[c]onsumer products exposure[s]," which "is an exposure that results from a  
10 person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use  
11 of a consumer good, or any exposure that results from receiving a consumer service."  
12 *Cal. Code Regs. tit. 27, § 25602(b)*. Steering Wheel Cover is a consumer product, and, as  
13 mentioned in herein, exposures to Lead took place as a result of such normal and  
14 foreseeable consumption and use.

15 31. Plaintiff's allegations regarding Steering Wheel Cover as to Concord and TJX also  
16 concern "[o]ccupational exposure[s]," which are exposures "to any employees in his or  
17 her employer's workplace." *Cal. Code Reg. tit. 27, § 25602(f)*. Employees were exposed  
18 to Lead in their employer's workplace as a result of handling Steering Wheel Cover, in  
19 conjunction with packaging, shipping, distributing and/or selling Steering Wheel Cover,  
20 among other activities, without having first been given clear and reasonable warnings that  
21 such handling would cause exposures to Lead.

22 32. Plaintiff's allegations regarding Steering Wheel Cover as to Elegant, Concord, and TJX  
23 also concern "[e]nvironmental exposure[s]," which "is an exposure that may foreseeably  
24 occur as the result of contact with an environmental medium, including, but not limited  
25 to, ambient air, indoor air, drinking water, standing water, running water, soil vegetation,  
26 or manmade or natural substances, either through inhalation, ingestion, skin contact, or  
27 otherwise. Environmental exposures include all exposures that are not consumer  
28 products exposures or occupational exposures." *Cal. Code Regs. tit. 27, § 25602(c)*.

- 1 33. The principal routes of exposure with regard to Steering Wheel Cover are and were  
2 through dermal contact, ingestion, and inhalation. Persons sustain exposures, including  
3 but not limited to, handling Steering Wheel Cover without wearing gloves or any other  
4 personal protective equipment, or touching bare skin or mucous membranes with gloves  
5 after handling Steering Wheel Cover, as well as through hand to mouth contact, hand to  
6 mucous membrane, or breathing in particulate matter dispersed from Steering Wheel  
7 Cover.
- 8 34. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
9 Proposition 65 as to Steering Wheel Cover have been ongoing and continuous to the date  
10 of the signing of this complaint, as Defendants engaged and continue to engage in  
11 conduct which violates Health and Safety Code section 25249.6, including the  
12 manufacture, distribution, promotion, and sale of Steering Wheel Cover, so that a  
13 separate and distinct violation of Proposition 65 occurred each and every time a person  
14 was exposed to Lead by Steering Wheel Cover as mentioned herein.
- 15 35. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
16 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
17 violations alleged herein will continue to occur into the future.
- 18 36. Based on the allegations herein, Defendants are liable for civil penalties of up to  
19 \$2,500.00 per day per individual exposure to Lead from Steering Wheel Cover, pursuant  
20 to Health and Safety Code section 25249.7(b).
- 21 37. In the absence of equitable relief, the general public and Defendants' employees will  
22 continue to be involuntarily exposed to Lead that is contained in Steering Wheel Cover,  
23 creating a substantial risk of irreparable harm. Thus, by committing the acts alleged  
24 herein, Defendants have caused irreparable harm for which there is no plain, speedy, or  
25 adequate remedy at law.
- 26 38. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
27 filing this Complaint.
- 28

1 **PRAYER FOR RELIEF**

2 Plaintiff demands against each of the Defendants as follows:

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

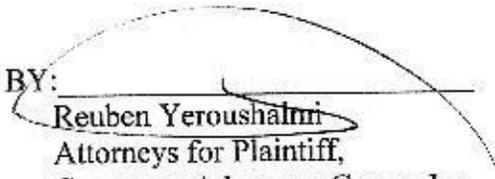
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9 Dated: August 2, 2011

YEROUSHALMI & ASSOCIATES

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12 BY:  Reuben Yeroushalmi

13 Attorneys for Plaintiff,

14 Consumer Advocacy Group, Inc.

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