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**ORIGINAL FILED**  
Superior Court Of California  
County Of Los Angeles

**MAY 04 2015**

Sherri R. Carter, Executive Officer/Clerk  
By: Judi Lara, Deputy

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

8  
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF LOS ANGELES**

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

14 Plaintiff,

15 v.

16 OLIVIER NAPA VALLEY INC., a  
17 California Corporation; THE TJX  
COMPANIES, INC., a Delaware  
18 Corporation; T.J. MAXX OF CA, LLC, a  
19 Delaware Limited Liability Company and  
DOES 1-20;

20 Defendants.

CASE NO.

**BC 580857**

COMPLAINT FOR PENALTY AND  
INJUNCTION

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 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
23 Defendants OLIVIER NAPA VALLEY INC., THE TJX COMPANIES, INC., T.J. MAXX OF  
24 CA, LLC and DOES 1-20 as follows:

25 **THE PARTIES**

- 26 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an  
27 organization qualified to do business in the State of California. CAG is a person within  
28 the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting

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 OLIVIER NAPA VALLEY INC. ("OLIVIER NAPA") is a California  
4 Corporation doing business in the State of California at all relevant times herein.

5 3. Defendant THE TJX COMPANIES, INC. ("TJX ") is a Delaware Corporation doing  
6 business in the State of California at all relevant times herein.

7 4. Defendant T.J. MAXX OF CA, LLC. ("TJ MAXX") is a Delaware Limited Liability  
8 Corporation 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 1-20,  
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 OLIVIER NAPA, TJX,  
16 TJ MAXX and DOES 1-20.

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. Upon information and belief, at all times relevant to this action, each of the Defendants,  
20 including DOES 1-20, was an agent, servant, or employee of each of the other  
21 Defendants. In conducting the activities alleged in this Complaint, each of the  
22 Defendants was acting within the course and scope of this agency, service, or  
23 employment, and was acting with the consent, permission, and authorization of each of  
24 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
25 were ratified and approved by every other Defendant or their officers or managing agents.  
26 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged  
27 wrongful conduct of each of the other Defendants.

28

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

5 **JURISDICTION**

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

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

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

23 **BACKGROUND AND PRELIMINARY FACTS**

24 13. In 1986, California voters approved an initiative to address growing concerns about  
25 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to  
26 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,  
27 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
28 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections

1 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources  
2 from contamination, to allow consumers to make informed choices about the products  
3 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
4 fit.

5 14. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
6 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
7 § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
8 chemicals and chemical families. Proposition 65 imposes warning requirements and  
9 other controls that apply to Proposition 65-listed chemicals.

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

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

22 17. On February 27, 1987, the Governor of California added lead to the list of chemicals  
23 known to the State to cause reproductive toxicity (Cal. Code Regs. tit. 27, § 27001(c)).  
24 lead is known to the State to cause developmental, female, and male reproductive  
25 toxicity. Pursuant to *Health and Safety Code* sections 25249.9 and 25249.10, twenty (20)  
26 months after addition of lead to the list of chemicals known to the State to cause  
27 reproductive toxicity, lead became fully subject to Proposition 65 warning requirements  
28 and discharge prohibitions.

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

7 **SATISFACTION OF PRIOR NOTICE**

8 19. On or about January 9, 2015, Plaintiff gave notice of alleged violations of Health and  
9 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
10 private action to OLIVIER NAPA, TJX, TJ MAXX and to the California Attorney  
11 General, County District Attorneys, and City Attorneys for each city containing a  
12 population of at least 750,000 people in whose jurisdictions the violations allegedly  
13 occurred, concerning the product Cooking Ingredients containing LEAD.

14 20. Before sending the notice of alleged violations, Plaintiff investigated the consumer  
15 products involved, the likelihood that such products would cause users to suffer  
16 significant exposures to LEAD and the corporate structure of each of the Defendants.

17 21. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
18 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
19 Plaintiff who executed the certificate had consulted with at least one person with relevant  
20 and appropriate expertise who reviewed data regarding the exposures to LEAD, the  
21 subject Proposition 65-listed chemicals of this action. Based on that information, the  
22 attorney for Plaintiff who executed the Certificate of Merit believed there was a  
23 reasonable and meritorious case for this private action. The attorney for Plaintiff attached  
24 to the Certificate of Merit served on the Attorney General the confidential factual  
25 information sufficient to establish the basis of the Certificate of Merit.

26 22. Plaintiff's notices of alleged violations also included a Certificate of Service and a  
27 document-entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
28 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

1 23. Plaintiff is commencing this action ~~more than sixty (60)~~ days from the dates that Plaintiff  
2 gave notices of the alleged violation to OLIVIER NAPA, TJX and TJ MAXX the public  
3 prosecutors referenced in Paragraph 19.

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

7  
8 **FIRST CAUSE OF ACTION**

9 (By CONSUMER ADVOCACY GROUP, INC. and against OLIVIER NAPA, TJX,  
10 TJ MAXX and DOES 1-20 for Violations of Proposition 65,  
11 The Safe Drinking Water and Toxic Enforcement Act of 1986  
12 (*Health & Safety Code, §§ 25249.5, et seq.*))

13 **Vinegar**

14 25. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
15 reference paragraphs 1 through 24 of this complaint as though fully set forth herein. Each  
16 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,  
17 promoter, or retailer of Vinegar which includes but is not limited to, OLIVIER Napa  
18 Valley® RASPBERRY BALSAMIC VINEGAR; Net Wt. 6.75oz. (200mL); T.J. Maxx  
19 85-4641-237553-000799-08-2; COMPARE AT \$10.50; \$7.99; UPC: 7 65230 01204 8  
20 ("VINEGAR").

21 26. VINEGAR contains LEAD.

22 27. Defendants knew or should have known that LEAD has been identified by the State of  
23 California as a chemical known to cause cancer and reproductive toxicity and therefore  
24 was subject to Proposition 65 warning requirements. Defendants were also informed of  
25 the presence of LEAD in VINEGAR within Plaintiff's notice of alleged violations further  
26 discussed above at Paragraph 19.

27 28. Plaintiff's allegations regarding VINEGAR concerns "[c]onsumer products exposure[s],"  
28 which "is an exposure that results from a person's acquisition, purchase, storage,  
consumption, or other reasonably foreseeable use of a consumer good, or any exposure

1 that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, § 25602(b).

2 VINEGAR are consumer products, and, as mentioned herein, exposures to LEAD took  
3 place as a result of such normal and foreseeable consumption and use.

4 29. Plaintiff is informed, believes, and thereon alleges that between January 9, 2012 and the  
5 present, each of the Defendants knowingly and intentionally exposed their California  
6 consumers and users of VINEGAR, which Defendants manufactured, distributed, or sold  
7 as mentioned above, to LEAD, without first providing any type of clear and reasonable  
8 warning of such to the exposed persons before the time of exposure. Defendants have  
9 distributed and sold VINEGAR in California. Defendants know and intend that  
10 California consumers will use and consume VINEGAR, thereby exposing them to  
11 LEAD. Defendants thereby violated Proposition 65.

12 30. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
13 Persons sustain exposures by handling VINEGAR without wearing gloves or any other  
14 personal protective equipment, or by touching bare skin or mucous membranes with  
15 gloves after handling VINEGAR, as well as through direct and indirect hand to mouth  
16 contact, hand to mucous membrane, or breathing in particulate matter dispersed from  
17 VINEGAR.

18 31. Plaintiff is informed, believes, and thereon alleges that each of Defendants’ violations of  
19 Proposition 65 as to VINEGAR have been ongoing and continuous to the date of the  
20 signing of this complaint, as Defendants engaged and continue to engage in conduct  
21 which violates Health and Safety Code section 25249.6, including the manufacture,  
22 distribution, promotion, and sale of VINEGAR, so that a separate and distinct violation of  
23 Proposition 65 occurred each and every time a person was exposed to LEAD by  
24 VINEGAR as mentioned herein.

25 32. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
26 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
27 violations alleged herein will continue to occur into the future.

28

1 33. Based on the allegations herein, Defendants are liable for civil penalties of up to  
2 \$2,500.00 per day per individual exposure to LEAD from VINEGAR, pursuant to Health  
3 and Safety Code section 25249.7(b).

4 34. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
5 filing this Complaint.

6 **PRAYER FOR RELIEF**

7 Plaintiff demands against each of the Defendants as follows:

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

13  
14  
15 Dated: May 4, 2015

YEROUSHALMI & YEROUSHLAMI

16  
17 BY: 

18 Reuben Yeroushalmi  
19 Attorneys for Plaintiff,  
20 Consumer Advocacy Group, Inc.  
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