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Superior Court of California
County of Los Angeles

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF LOS ANGELES**

13 **BC 547230**

14 CONSUMER ADVOCACY GROUP, INC.,
15 in the public interest,

16 Plaintiff,

17 v.

18 MARCHON EYEWEAR, INC., a New York
19 Corporation; PVH CORP., a Delaware
20 corporation; ROSS STORES, INC., a
21 Delaware Corporation; ROSS DRESS FOR
22 LESS, INC., a Virginia Corporation; THE
23 TJX COMPANIES, INC., a Delaware
24 Corporation; T.J. MAXX OF CA, LLC, a
25 Delaware Limited Liability Company; and
26 DOES 1-20;

27 Defendants.

CASE NO.

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)

28 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against
defendants MARCHON EYEWEAR, INC., PVH CORP., ROSS STORES, INC., ROSS DRESS
FOR LESS, INC., THE TJX COMPANIES, INC., T.J. MAXX OF CA, LLC, and DOES 1-20 as
follows:

THE PARTIES

1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an organization qualified to do business in the State of California. CAG is a person within the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private attorney general, brings this action in the public interest as defined under Health and Safety Code section 25249.7, subdivision (d).
2. Defendant MARCHON EYEWEAR, INC. ("MARCHON") is a New York corporation, doing business in the State of California at all relevant times herein.
3. Defendant PVH CORP. ("PVH") is a Delaware corporation, doing business in the State of California at all relevant times herein.
4. Defendant ROSS STORES, INC. ("ROSS STORES") is a Delaware corporation, doing business in the State of California at all relevant times herein.
5. Defendant ROSS DRESS FOR LESS, INC. ("ROSS DRESS") is a Virginia corporation, doing business in the State of California at all relevant times herein.
6. Defendant THE TJX COMPANIES, INC. ("TJX") is a Delaware corporation, doing business in the State of California at all relevant times herein.
7. Defendant T.J. MAXX OF CA, LLC ("T.J. MAXX") is a Delaware limited liability company, doing business in the State of California at all relevant times herein.
8. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
9. At all times mentioned herein, the term "Defendants" includes MARCHON EYEWEAR, INC., PHILIPS-VAN HEUSEN CORPORATION, PVH CORP., ROSS STORES, INC., ROSS DRESS FOR LESS, INC., THE TJX COMPANIES, INC., T.J. MAXX OF CA, LLC, and DOES 1-20.

1 10. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
2 times mentioned herein have conducted business within the State of California.

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

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

16 **JURISDICTION**

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

22 14. This Court has jurisdiction over Defendants named herein because Defendants either
23 reside or are located in this State or are foreign corporations authorized to do business in
24 California, are registered with the California Secretary of State, or who do sufficient
25 business in California, have sufficient minimum contacts with California, or otherwise
26 intentionally avail themselves of the markets within California through their manufacture,
27 distribution, promotion, marketing, or sale of their products within California to render
28

1 the exercise of jurisdiction by the California courts permissible under traditional notions
2 of fair play and substantial justice.

3 15. Venue is proper in the County of Los Angeles because one or more of the instances of
4 wrongful conduct occurred, and continues to occur, in County of Los Angeles and/or
5 because Defendants conducted, and continue to conduct, business in County of Los
6 Angeles with respect to the consumer product that is the subject of this action.

7
8 **BACKGROUND AND PRELIMINARY FACTS**

9 16. In 1986, California voters approved an initiative to address growing concerns about
10 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
11 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
12 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
13 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections
14 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
15 from contamination, to allow consumers to make informed choices about the products
16 they buy, and to enable persons to protect themselves from toxic chemicals as they see
17 fit.

18 17. Proposition 65 requires the Governor of California to publish a list of chemicals known to
19 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
20 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
21 chemicals and chemical families. Proposition 65 imposes warning requirements and
22 other controls that apply to Proposition 65-listed chemicals.

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

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

7 20. Plaintiff identified certain practices of manufacturers and distributors of Di (2-ethylhexy)
8 phthalate ("DEHP")-bearing products of exposing, knowingly and intentionally, persons
9 in California to the Proposition 65-listed chemicals of such products without first
10 providing clear and reasonable warnings of such to the exposed persons prior to the time
11 of exposure. Plaintiff later discerned that Defendants engaged in such practice.

12 21. On January 1, 1988, the Governor of California added DEHP to the list of chemicals
13 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP
14 to the list of chemicals known to the State to cause developmental male reproductive
15 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)
16 months after addition of DEHP to the list of chemicals known to the State to cause
17 reproductive toxicity, DEHP became fully subject to Proposition 65 warning
18 requirements and discharge prohibitions.

19 **SATISFACTION OF PRIOR NOTICE**

20 22. On or about September 27, 2013, Plaintiff gave notice of alleged violations of Health and
21 Safety Code section 25249.6, concerning consumer products exposures and occupational
22 exposures, subject to a private action to MARCHON EYEWEAR, INC., PVH CORP.,
23 THE TJX COMPANIES, INC., T.J. MAXX OF CA, LLC, and to the California Attorney
24 General, County District Attorneys, and City Attorneys for each city containing a
25 population of at least 750,000 people in whose jurisdictions the violations allegedly
26 occurred, concerning the products Sunglasses, containing DEHP.

27 23. On or about December 21, 2013, Plaintiff gave notice of alleged violations of Health and
28 Safety Code section 25249.6, concerning consumer products exposures and occupational

1 exposures, subject to a private action to PVH CORP., ROSS STORES, INC., and ROSS
2 DRESS FOR LESS, INC., and to the California Attorney General, County District
3 Attorneys, and City Attorneys for each city containing a population of at least 750,000
4 people in whose jurisdictions the violations allegedly occurred, concerning the products
5 Sunglasses, containing DEHP.

6 24. Before sending the notices of alleged violation, Plaintiff investigated the consumer
7 products involved, the likelihood that such products would cause users to suffer
8 significant exposures to DEHP, and the corporate structure of each of the Defendants.

9 25. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the
10 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for
11 Plaintiff who executed the certificate had consulted with at least one person with relevant
12 and appropriate expertise who reviewed data regarding the exposures to DEHP, the
13 subject Proposition 65-listed chemical of this action. Based on that information, the
14 attorney for Plaintiff who executed the Certificate of Merit believed there was a
15 reasonable and meritorious case for this private action. The attorney for Plaintiff attached
16 to the Certificate of Merit served on the Attorney General the confidential factual
17 information sufficient to establish the basis of the Certificate of Merit.

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

21 27. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
22 gave notices of the alleged violations to MARCHON, PVH, ROSS STORES, ROSS
23 DRESS, TJX, T.J. MAXX, and DOES 1-20, and the public prosecutors referenced in
24 Paragraph 23 and 24.

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

28

1 **FIRST CAUSE OF ACTION**

2 (By CONSUMER ADVOCACY GROUP, INC. and against MARCHON EYEWEAR,
3 INC., PVH CORP., THE TJX COMPANIES, INC., T.J. MAXX OF CA, LLC, and DOES
4 1-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act
5 of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))

6 **Sunglasses**

7 29. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
8 reference paragraphs 1 through 28 of this complaint as though fully set forth herein.

9 30. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
10 distributor, promoter, or retailer of Sunglasses, which includes but is not limited to
11 Calvin Klein Brand Sunglasses, with brown frames, brown-tinted lenses, and brown
12 plastic ear pieces, Product # 125-R131S 201, T.J. Maxx tag: 74-7841-624149-001999-13-
13 2 ("SUNGLASSES").

14 31. SUNGLASSES contain DEHP.

15 32. Defendants knew or should have known that DEHP has been identified by the State of
16 California as a chemical known to cause reproductive toxicity and therefore was subject
17 to Proposition 65 warning requirements. Defendants were also informed of the presence
18 of DEHP in SUNGLASSES within Plaintiff's notice of alleged violations further
19 discussed above at Paragraph 22.

20 33. Plaintiff's allegations regarding SUNGLASSES concerns "[c]onsumer products
21 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
22 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
23 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
24 *25602(b)*. SUNGLASSES is a consumer product, and, as mentioned herein, exposures to
25 DEHP took place as a result of such normal and foreseeable consumption and use.

26 34. Plaintiff's allegations regarding SUNGLASSES also concern Occupational Exposures,
27 which "means an exposure to any employee in his or her employer's workplace." *Cal.*
28 *Code Regs. tit. 27, § 25602(f)*. Exposures of DEHP to Defendants' employees occurred
through the course of their employment in their employers' workplaces.

1 35. Plaintiff is informed, believes, and thereon alleges that between September 27, 2010 and
2 the present, each of the Defendants knowingly and intentionally exposed their employees
3 and California consumers and users of SUNGLASSES, which Defendants manufactured,
4 distributed, or sold as mentioned above, to DEHP, without first providing any type of
5 clear and reasonable warning of such to the exposed persons before the time of exposure.
6 Defendants have distributed and sold SUNGLASSES in California. Defendants know
7 and intend that California consumers will use and consume SUNGLASSES, thereby
8 exposing them to DEHP. Defendants thereby violated Proposition 65.

9 36. The principal routes of exposure are through dermal contact, ingestion and inhalation.
10 Persons sustain exposures by handling SUNGLASSES without wearing gloves or any
11 other personal protective equipment, or by touching bare skin or mucous membranes with
12 gloves after handling SUNGLASSES, as well as through direct and indirect hand to
13 mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed
14 from SUNGLASSES. And as to Defendants' employees, employees may be exposed to
15 DEHP in the course of their employment by handling, distributing, and selling
16 SUNGLASSES.

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

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

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

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

6
7 **SECOND CAUSE OF ACTION**

8 **(By CONSUMER ADVOCACY GROUP, INC. and against ROSS STORES, INC., ROSS**
9 **DRESS FOR LESS, INC., PVH CORP., and DOES 1-20 for Violations of Proposition 65,**
10 **The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§**
11 **25249.5, *et seq.*))**

12 **Sunglasses**

13 41. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
14 reference paragraphs 1 through 40 of this complaint as though fully set forth herein.

15 42. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
16 distributor, promoter, or retailer of Sunglasses, which includes but is not limited to
17 Calvin Klein Full Metal Shield Sunglasses, purple-gray tinted lenses with gray vinyl
18 covered ear pieces, SKU #400072699933 ("SUNGLASSES").

19 43. SUNGLASSES contain DEHP.

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

25 45. Plaintiff's allegations regarding SUNGLASSES concerns "[c]onsumer products
26 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
27 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
28 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*

1 25602(b). SUNGLASSES is a consumer product, and, as mentioned herein, exposures to
2 DEHP took place as a result of such normal and foreseeable consumption and use.

3 46. Plaintiff's allegations regarding SUNGLASSES also concern Occupational Exposures,
4 which "means an exposure to any employee in his or her employer's workplace." *Cal.*
5 *Code Regs.* tit. 27, § 25602(f). Exposures of DEHP to Defendants' employees occurred
6 through the course of their employment in their employers' workplaces.

7 47. Plaintiff is informed, believes, and thereon alleges that between December 21, 2010 and
8 the present, each of the Defendants knowingly and intentionally exposed their employees
9 and California consumers and users of SUNGLASSES, which Defendants manufactured,
10 distributed, or sold as mentioned above, to DEHP, without first providing any type of
11 clear and reasonable warning of such to the exposed persons before the time of exposure.
12 Defendants have distributed and sold SUNGLASSES in California. Defendants know
13 and intend that California consumers will use and consume SUNGLASSES, thereby
14 exposing them to DEHP. Defendants thereby violated Proposition 65.

15 48. The principal routes of exposure are through dermal contact, ingestion and inhalation.
16 Persons sustain exposures by handling SUNGLASSES without wearing gloves or any
17 other personal protective equipment, or by touching bare skin or mucous membranes with
18 gloves after handling SUNGLASSES, as well as through direct and indirect hand to
19 mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed
20 from SUNGLASSES. And as to Defendants' employees, employees may be exposed to
21 DEHP in the course of their employment by handling, distributing, and selling
22 SUNGLASSES.

23 49. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
24 Proposition 65 as to SUNGLASSES have been ongoing and continuous to the date of the
25 signing of this complaint, as Defendants engaged and continue to engage in conduct
26 which violates Health and Safety Code section 25249.6, including the manufacture,
27 distribution, promotion, and sale of SUNGLASSES, so that a separate and distinct
28

1 violation of Proposition 65 occurred each and every time a person was exposed to DEHP
2 by SUNGLASSES as mentioned herein.

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

6 51. Based on the allegations herein, Defendants are liable for civil penalties of up to
7 \$2,500.00 per day per individual exposure to DEHP from SUNGLASSES, pursuant to
8 Health and Safety Code section 25249.7(b).

9 52. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
10 filing this Complaint.

11 **PRAYER FOR RELIEF**

12 Plaintiff demands against each of the Defendants as follows:

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

18
19 Dated: 5/29/, 2014

YEROUSHALMI & ASSOCIATES

20
21 BY: [Signature]
22 Reuben Yeroushalmi
23 Attorneys for Plaintiff,
24 Consumer Advocacy Group, Inc.
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