

1 Reuben Yeroushalmi (SBN 193981)  
2 Ben Yeroushalmi (SBN 232540)  
3 Peter T. Sato (SBN 238486)  
4 **YEROUSHALMI & YEROUSHALMI**  
5 An Association of Independent Law Corporations  
6 9100 Wilshire Boulevard, Suite 240W  
7 Beverly Hills, California 90212  
8 Telephone: 310.623.1926  
9 Facsimile: 310.623.1930

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

APR 19 2017

Shari R. Garter, Executive Officer/Clerk  
By: Christa Robinson, Deputy

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

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

10 **COUNTY OF LOS ANGELES**

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

13 Plaintiff,

14 v.

15 THE TJX COMPANIES, INC., a Delaware  
16 Corporation; MARSHALLS OF MA, INC., a  
17 Massachusetts Corporation; MARSHALLS  
18 OF CA, LLC, a Delaware Limited Liability  
19 Company; T.J. MAXX OF CA, LLC, a  
20 Delaware Limited Liability Company;  
21 LASELVA DESIGNS, LLC, a California  
22 Limited Liability Company; LA SELVA  
23 BEACH SPICE CO. LTD., a California  
24 Corporation; and DOES 1-20;

25 Defendants.

CASE NO.

**BC 6 5 8 4 5 6**

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)

26 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
27 Defendants THE TJX COMPANIES, INC., MARSHALLS OF MA, INC., MARSHALLS OF  
28 CA, LLC, T.J. MAXX OF CA, LLC, LASELVA DESIGNS, LLC, LA SELVA BEACH SPICE  
CO. LTD., 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 THE TJX COMPANIES, INC. (“TJX”), is a Delaware Corporation, doing business in the State of California at all relevant times herein.
3. Defendant MARSHALLS OF MA, INC. (“MARSHALLS”), is a Massachusetts Corporation, doing business in the State of California at all relevant times herein.
4. Defendant MARSHALLS OF CA, LLC (“CA MARSHALLS”), is a Delaware limited liability company, doing business in the State of California at all relevant times herein.
5. Defendant T.J. MAXX OF CA, LLC (“CA MAXX”), is a Delaware limited liability company, doing business in the State of California at all relevant times herein.
6. Defendant LA SELVA DESIGNS, LLC (“LASELVA”), is a California limited liability company, doing business in the State of California at all relevant times herein.
7. Defendant LA SELVA BEACH SPICE CO. LTD. (“BEACH”), is a California Corporation, 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 TJX, MARSHALLS, CA MARSHALLS, CA MAXX, LASELVA, BEACH, and DOES 1-20.
10. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all times mentioned herein have conducted business within the State of California.

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

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

#### 14 JURISDICTION

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

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

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

5 **BACKGROUND AND PRELIMINARY FACTS**

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

14 17. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
15 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
16 § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
17 chemicals and chemical families. Proposition 65 imposes warning requirements and  
18 other controls that apply to Proposition 65-listed chemicals.

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

25 19. Proposition 65 provides that any person “violating or threatening to violate” the statute  
26 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
27 “Threaten to violate” means “to create a condition in which there is a substantial  
28 probability that a violation will occur.” *Health & Safety Code* § 25249.11(e).

1 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
2 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

3 20. Plaintiff identified certain practices of manufacturers and distributors of Lead and Lead  
4 Compounds (“LEAD”) exposing, knowingly and intentionally, persons in California to  
5 the Proposition 65-listed chemicals of such products without first providing clear and  
6 reasonable warnings of such to the exposed persons prior to the time of exposure.

7 Plaintiff later discerned that Defendants engaged in such practice.

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

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

21 **SATISFACTION OF PRIOR NOTICE**

22 23. On or about December 13, 2016, Plaintiff gave notice of alleged violations of Health and  
23 Safety Code section 25249.6, concerning consumer products exposures subject to a  
24 private action to TJX, MARSHALLS, CA MARSHALLS, CA MAXX, LASELVA,  
25 BEACH and to the California Attorney General, County District Attorneys, and City  
26 Attorneys for each city containing a population of at least 750,000 people in whose  
27 jurisdictions the violations allegedly occurred, concerning the product TURMERIC  
28 containing LEAD.

1 24. Before sending the notice of alleged violations, Plaintiff investigated the consumer  
2 products involved, the likelihood that such products would cause users to suffer  
3 significant exposures to LEAD and the corporate structure of each of the Defendants.

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

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

16 27. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
17 gave notices of the alleged violation to TJX, MARSHALLS, CA MARSHALLS, CA  
18 MAXX, LASELVA, BEACH, and the public prosecutors referenced in Paragraph 25.

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

### 22 **FIRST CAUSE OF ACTION**

23 **(By CONSUMER ADVOCACY GROUP, INC. and against TJX, MARSHALLS, CA**  
24 **MARSHALLS, CA MAXX, LASELVA, BEACH, and DOES 1-20, for Violations of**  
25 **Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health &***  
***Safety Code*, §§ 25249.5, *et seq.*))**

### 26 **Ground Turmeric**

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

1 of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor,  
2 promoter, or retailer of ground turmeric, which includes but is not limited to: (1) "La  
3 Selva Beach Spice"; Turmeric; Net wt. 3oz 84g; Serving Size 1 tbs 6.8g; Servings Per  
4 Container 15; La Selva Beach Spice Co. Ltd. La Selva Beach CA 95076; BATCH  
5 02152016; Marshalls®; 1285-058140983-000299-04-2; (2) "La Selva Beach Spice";  
6 Turmeric; Net wt. 5oz 140g; Serving Size 1 tbs 6.8g; Servings per Container: 23; La  
7 Selva Beach Spice Co. Ltd. La Selva Beach CA 95076; BATCH 01292016; T.J. Maxx®;  
8 85-4040-456894-000399-02-2; 03023409401; (3) "La Selva Beach Spice"; Turmeric;  
9 Curcuma Aromatica; Net wt. 3.5oz 98g; Serving Size 1 tbs 6.8g; Servings Per Container  
10 15; La Selva Beach Spice Co. Ltd. La Selva Beach CA 95076; 02152016; Marshalls®  
11 1285-014950715-000299-04-2; 03023409402; (4) "La Selva Beach Spice"; Turmeric;  
12 Net wt. 5oz 140g; Serving Size 1 tbs 6.8g; Servings Per Container 23; La Selva Beach  
13 Spice Co. Ltd. La Selva Beach CA 95076; BATCH 03252016; Marshalls® 1285-  
14 058140945-000399-04-2 ("TURMERIC")

15 30. TURMERIC contains LEAD.

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

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

27 33. Plaintiff is informed, believes, and thereon alleges that between December 13, 2013, and  
28 the present, each of the Defendants knowingly and intentionally exposed their employees,

1 California consumers of TURMERIC, which Defendants manufactured, distributed, or  
2 sold as mentioned above, to LEAD without first providing any type of clear and  
3 reasonable warning of such to the exposed persons before the time of exposure.

4 Defendants have distributed and sold TURMERIC in California. Defendants know and  
5 intend that California consumers will use and consume TURMERIC, thereby exposing  
6 them to LEAD. Defendants thereby violated Proposition 65.

7 34. The principal routes of exposure are through ingestion, dermal contact, and inhalation.

8 Persons sustain exposures by eating and consuming TURMERIC, handling TURMERIC  
9 without wearing gloves or any other personal protective equipment, or by touching bare  
10 skin or mucous membranes with gloves after handling TURMERIC, as well as through  
11 direct and indirect hand to mouth contact, hand to mucous membrane, or breathing in  
12 particulate matter dispersed from TURMERIC.

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

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

23 37. Based on the allegations herein, Defendants are liable for civil penalties of up to  
24 \$2,500.00 per day per individual exposure to LEAD from TURMERIC, pursuant to  
25 Health and Safety Code section 25249.7(b).

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.

8

9 Dated: April 19, 2017

YEROUSHALMI & YEROUSHLAMI

10 BY: \_\_\_\_\_

11 Reuben Yeroushalmi  
12 Attorney for Plaintiff,  
13 Consumer Advocacy Group, Inc.

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28