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8 CONSUMER ADVOCACY GROUP, INC.

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

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

13 Plaintiff,

14 v.

15 AHQ, LLC, a New York Limited Liability
16 Company,
17 MARSHALLS OF CA, LLC, a Virginia
18 Limited Liability Company;
19 MARSHALLS OF MA, INC., a
20 Massachusetts Corporation;
21 MARSHALLS OF NEVADA, INC., a Nevada
22 Corporation;
23 THE TJX COMPANIES, INC., a Delaware
24 Corporation;
25 THE TJX OPERATING COMPANIES, INC.,
26 a Delaware Corporation;
27 HOMEGOODS, INC., a Delaware
28 Corporation;
and DOES 1-80,

Defendants.

CASE NO. 19STCV40125

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)

1 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges eight causes of action
2 against defendants AHQ, LLC, MARSHALLS OF CA, LLC, MARSHALLS OF MA, INC.,
3 MARSHALLS OF NEVADA, INC., THE TJX COMPANIES, INC., THE TJX OPERATING
4 COMPANIES, INC., HOMEGOODS, INC., and DOES 1-80 as follows:

5 **THE PARTIES**

- 6 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
7 organization qualified to do business in the State of California. CAG is a person within
8 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting
9 as a private attorney general, brings this action in the public interest as defined under
10 Health and Safety Code Section 25249.7, subdivision (d).
- 11 2. Defendant AHQ, LLC (“AHQ”) is a New York Limited Liability Company doing
12 business in the State of California at all relevant times herein.
- 13 3. Defendant MARSHALLS OF CA, LLC (“MARSHALLS CA”) is a Virginia Limited
14 Liability Company, doing business in the State of California at all relevant times herein.
- 15 4. Defendant MARSHALLS OF MA, INC. (“MARSHALLS MA”) is a Massachusetts
16 Corporation, doing business in the State of California at all relevant times herein.
- 17 5. Defendant MARSHALLS OF NEVADA, INC. (“MARSHALLS NV”) is a Nevada
18 Corporation, doing business in the State of California at all relevant times herein.
- 19 6. Defendant THE TJX COMPANIES, INC. (“TJX”) is a Delaware Corporation, doing
20 business in the State of California at all relevant times herein.
- 21 7. Defendant THE TJX OPERATING COMPANIES, INC. (“TJX OP”) is a Delaware
22 Corporation, doing business in the State of California at all relevant times herein.
- 23 8. Defendant HOMEGOODS, INC. (“HOMEGOODS”) is a Delaware Corporation, doing
24 business in the State of California at all relevant times herein.
- 25 9. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-80,
26 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
27 Complaint to allege their true names and capacities when ascertained. Plaintiff is

1 informed, believes, and thereon alleges that each fictitiously named defendant is
2 responsible in some manner for the occurrences herein alleged and the damages caused
3 thereby.

4 10. At all times mentioned herein, the term “Defendants” includes AHQ, MARSHALLS CA,
5 MARSHALLS MA, MARSHALLS NV, TJX, TJX OP, HOMEGOODS, and DOES 1-
6 80.

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

9 12. Upon information and belief, at all times relevant to this action, each of the Defendants,
10 including DOES 1-80, was an agent, servant, or employee of each of the other
11 Defendants. In conducting the activities alleged in this Complaint, each of the
12 Defendants was acting within the course and scope of this agency, service, or
13 employment, and was acting with the consent, permission, and authorization of each of
14 the other Defendants. All actions of each of the Defendants alleged in this Complaint
15 were ratified and approved by every other Defendant or their officers or managing agents.
16 Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged
17 wrongful conduct of each of the other Defendants.

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

22 **JURISDICTION**

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

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

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

13 **BACKGROUND AND PRELIMINARY FACTS**

14 17. In 1986, California voters approved an initiative to address growing concerns about
15 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
16 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
17 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
18 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections
19 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
20 from contamination, to allow consumers to make informed choices about the products
21 they buy, and to enable persons to protect themselves from toxic chemicals as they see
22 fit.

23 18. Proposition 65 requires the Governor of California to publish a list of chemicals known to
24 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
25 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
26 chemicals and chemical families. Proposition 65 imposes warning requirements and
27 other controls that apply to Proposition 65-listed chemicals.

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

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

13 21. Plaintiff identified certain practices of manufacturers and distributors of exposing,
14 knowingly and intentionally, persons in California to Di(2-ethylhexyl) phthalate
15 (“DEHP”) and Diisononyl Phthalate (“DINP”) without first providing clear and
16 reasonable warnings of such to the exposed persons prior to the time of exposure.
17 Plaintiff later discerned that Defendants engaged in such practice.

18 22. On January 1, 1988, the Governor of California added DEHP to the list of chemicals
19 known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to
20 Health and Safety Code Sections 25249.9 and 25249.10, twenty (20) months after
21 addition of DEHP to the list of chemicals known to the State to cause cancer, DEHP
22 became fully subject to Proposition 65 warning requirements and discharge prohibitions.

23 23. On October 24, 2003, the Governor of California added DEHP to the list of chemicals
24 known to the State to cause reproductive and developmental toxicity (*Cal. Code Regs.* tit.
25 27, § 27001(c)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,
26 twenty (20) months after addition of DEHP to the list of chemicals known to the State to
27

1 cause reproductive and developmental toxicity, DEHP became fully subject to
2 Proposition 65 warning requirements and discharge prohibitions.

3 24. On December 20, 2013, the Governor of California added DINP to the list of chemicals
4 known to the State to cause cancer (*Cal. Code Regs.* tit. 27, § 27001(b)). Pursuant to
5 Health and Safety Code Sections 25249.9 and 25249.10, twenty (20) months after
6 addition of DINP to the list of chemicals known to the State to cause cancer, DINP
7 became fully subject to Proposition 65 warning requirements and discharge prohibitions.

8 **SATISFACTION OF PRIOR NOTICE**

9 25. On or about April 12, 2019, Plaintiff gave notice of alleged violations of Health and
10 Safety Code Section 25249.6, concerning consumer products exposures, subject to a
11 private action to MARSHALLS CA, MARSHALLS MA, HOMEGOODS, and to the
12 California Attorney General, County District Attorneys, and City Attorneys for each city
13 containing a population of at least 750,000 people in whose jurisdictions the violations
14 allegedly occurred, concerning the product Fitted Cap with Polymer Brim.

15 26. On or about July 2, 2019, Plaintiff gave notice of alleged violations of Health and Safety
16 Code Section 25249.6, concerning consumer products exposures, subject to a private
17 action to MARSHALLS CA, MARSHALLS MA, MARSHALLS NV, TJX, TJX OP,
18 and to the California Attorney General, County District Attorneys, and City Attorneys for
19 each city containing a population of at least 750,000 people in whose jurisdictions the
20 violations allegedly occurred, concerning the product Notebook with Plastic
21 Components.

22 27. On or about July 15, 2019, Plaintiff gave notice of alleged violations of Health and Safety
23 Code Section 25249.6, concerning consumer products exposures, subject to a private
24 action to MARSHALLS CA, MARSHALLS MA, MARSHALLS NV, TJX, TJX OP,
25 and to the California Attorney General, County District Attorneys, and City Attorneys for
26 each city containing a population of at least 750,000 people in whose jurisdictions the
27

1 violations allegedly occurred, concerning the product Jewelry Box with Plastic
2 Components.

3 28. On or about July 17, 2019, Plaintiff gave notice of alleged violations of Health and Safety
4 Code Section 25249.6, concerning consumer products exposures, subject to a private
5 action to AHQ, MARSHALLS CA, and to the California Attorney General, County
6 District Attorneys, and City Attorneys for each city containing a population of at least
7 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the
8 product Cosmetic Bag.

9 29. On or about August 2, 2019, Plaintiff gave notice of alleged violations of Health and
10 Safety Code Section 25249.6, concerning consumer products exposures, subject to a
11 private action to MARSHALLS CA, MARSHALLS MA, MARSHALLS NV, TJX, TJX
12 OP, and to the California Attorney General, County District Attorneys, and City
13 Attorneys for each city containing a population of at least 750,000 people in whose
14 jurisdictions the violations allegedly occurred, concerning the product Cosmetic Bag with
15 Plastic Components.

16 30. On or about August 2, 2019, Plaintiff gave notice of alleged violations of Health and
17 Safety Code Section 25249.6, concerning consumer products exposures, subject to a
18 private action to MARSHALLS CA, MARSHALLS MA, MARSHALLS NV, TJX, TJX
19 OP, and to the California Attorney General, County District Attorneys, and City
20 Attorneys for each city containing a population of at least 750,000 people in whose
21 jurisdictions the violations allegedly occurred, concerning the product Bagckpack with
22 Plastic Components.

23 31. On or about August 21, 2019, Plaintiff gave notice of alleged violations of Health and
24 Safety Code Section 25249.6, concerning consumer products exposures, subject to a
25 private action to MARSHALLS CA, MARSHALLS MA, HOMEGOODS, and to the
26 California Attorney General, County District Attorneys, and City Attorneys for each city
27

1 containing a population of at least 750,000 people in whose jurisdictions the violations
2 allegedly occurred, concerning the product Suitcase with Plastic Components.

3 32. On or about August 21, 2019, Plaintiff gave notice of alleged violations of Health and
4 Safety Code Section 25249.6, concerning consumer products exposures, subject to a
5 private action to MARSHALLS CA and to the California Attorney General, County
6 District Attorneys, and City Attorneys for each city containing a population of at least
7 750,000 people in whose jurisdictions the violations allegedly occurred, concerning the
8 product Backpack with PVC Components.

9 33. Before sending the notices of alleged violation, Plaintiff investigated the consumer
10 products involved, the likelihood that such products would cause users to suffer
11 significant exposures to DEHP and/or DINP, and the corporate structure of each of the
12 Defendants.

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

23 35. Plaintiff's notices of alleged violations also included Certificates of Service and a
24 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
25 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

26 36. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
27 gave notices of the alleged violations to AHQ, MARSHALLS CA, MARSHALLS MA,

1 MARSHALLS NV, TJX, TJX OP, HOMEGOODS, and the public prosecutors
2 referenced in Paragraphs 25-32.

3 37. 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 **FIRST CAUSE OF ACTION**

7 **(By CONSUMER ADVOCACY GROUP, INC. and against MARSHALLS CA,
8 MARSHALLS MA, HOMEGOODS, and DOES 1-10 for Violations of Proposition
9 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety
Code, §§ 25249.5, et seq.*))**

10 **Men's Accessories**

11 38. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
12 reference paragraphs 1 through 37 of this Complaint as though fully set forth herein.

13 39. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
14 distributor, promoter, or retailer of Fitted Cap with Polymer Brim including but not
15 limited to: Light blue cap with holographic polymer brim and embroidered letters p.s.;
16 "p.s. from Aeropostale"; "one size"; "CA#07043"; "RN164597"; "DA000750118
17 JAN05"; "Made in China" ("Fitted Cap").

18 40. Fitted Cap contains DEHP.

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

24 42. Plaintiff's allegations regarding Fitted Cap concerns "[c]onsumer products exposure[s],"
25 which "is an exposure that results from a person's acquisition, purchase, storage,
26 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
27 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.

1 Fitted Cap is a consumer product, and, as mentioned herein, exposures to DEHP took
2 place as a result of such normal and foreseeable use.

3 43. Plaintiff is informed, believes, and thereon alleges that between April 12, 2016 and the
4 present, each of the Defendants knowingly and intentionally exposed California
5 consumers and users of Fitted Cap, which Defendants manufactured, distributed, or sold
6 as mentioned above, to DEHP, without first providing any type of clear and reasonable
7 warning of such to the exposed persons before the time of exposure. Defendants have
8 distributed and sold Fitted Cap in California. Defendants know and intend that California
9 consumers will use Fitted Cap, thereby exposing them to DEHP. Defendants thereby
10 violated Proposition 65.

11 44. The principal routes of exposure are through dermal contact and ingestion. Persons
12 sustain exposures by using, handling, or carrying Fitted Cap without wearing gloves or
13 by touching bare skin or mucous membranes with or without gloves after handling Fitted
14 Cap, as well as through direct and indirect hand to mouth contact, hand to mucous
15 membrane, or breathing in particulate matter emanating from Fitted Cap during use, as
16 well as through environmental mediums that carry the DEHP once contained within the
17 Fitted Cap.

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

24 46. 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 47. 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 Fitted Cap, pursuant to Health
3 and Safety Code Section 25249.7(b).

4 48. 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 MARSHALLS CA,
9 MARSHALLS MA, MARSHALLS NV, TJX, TJX OP, and DOES 11-20 for
10 Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act
11 of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

12 **Notebooks**

13 49. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
14 reference paragraphs 1 through 48 of this Complaint as though fully set forth herein.

15 50. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
16 distributor, promoter, or retailer of Notebook with Plastic Components including but not
17 limited to: “Sweet Life;” “Although time may change so many things, happiness and
18 friendship never change;” “Marshalls;” “1281-004310765-000499-14-2”; “8102-0258-
19 110250-81” (“Notebooks”).

20 51. Notebooks contain DEHP.

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

26 53. Plaintiff’s allegations regarding Notebooks concerns “[c]onsumer products exposure[s],”
27 which “is an exposure that results from a person’s acquisition, purchase, storage,
28 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, § 25602(b).

1 Notebooks are consumer products, and, as mentioned herein, exposures to DEHP took
2 place as a result of such normal and foreseeable use.

3 54. Plaintiff is informed, believes, and thereon alleges that between July 2, 2016 and the
4 present, each of the Defendants knowingly and intentionally exposed California
5 consumers and users of Notebooks, which Defendants manufactured, distributed, or sold
6 as mentioned above, to DEHP, without first providing any type of clear and reasonable
7 warning of such to the exposed persons before the time of exposure. Defendants have
8 distributed and sold Notebooks in California. Defendants know and intend that
9 California consumers will use Notebooks, thereby exposing them to DEHP. Defendants
10 thereby violated Proposition 65.

11 55. The principal routes of exposure are through dermal contact and ingestion. Persons
12 sustain exposures by using, handling, or carrying Notebooks without wearing gloves or
13 by touching bare skin or mucous membranes with or without gloves after handling
14 Notebooks, as well as through direct and indirect hand to mouth contact, hand to mucous
15 membrane, or breathing in particulate matter emanating from Notebooks during use, as
16 well as through environmental mediums that carry the DEHP once contained within the
17 Notebooks.

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

24 57. 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 58. 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 Notebooks, pursuant to Health
3 and Safety Code Section 25249.7(b).

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

6 **THIRD CAUSE OF ACTION**

7 **(By CONSUMER ADVOCACY GROUP, INC. and against MARSHALLS CA,
8 MARSHALLS MA, MARSHALLS NV, TJX, TJX OP, and DOES 21-30 for
9 Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act
of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

10 **Jewelry Box**

11 60. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
12 reference paragraphs 1 through 59 of this Complaint as though fully set forth herein.

13 61. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
14 distributor, promoter, or retailer of Jewelry Box with Plastic Components including but
15 not limited to: “CYNTHIA ROWLEY;” “NEW YORK;” “MADE IN CHINA;” “8122-
16 2230-068988-FLS1” (“Jewelry Boxes”).

17 62. Jewelry Boxes contain DINP.

18 63. Defendants knew or should have known that DINP has been identified by the State of
19 California as a chemical known to cause cancer and therefore was subject to Proposition
20 65 warning requirements. Defendants were also informed of the presence of DINP in
21 Jewelry Boxes within Plaintiff’s notice of alleged violations further discussed above at
22 Paragraph 27.

23 64. Plaintiff’s allegations regarding Jewelry Boxes concerns “[c]onsumer products
24 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
25 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
26 exposure that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, §
27

1 25602(b). Jewelry Boxes are consumer products, and, as mentioned herein, exposures to
2 DINP took place as a result of such normal and foreseeable use.

3 65. Plaintiff is informed, believes, and thereon alleges that between July 15, 2016 and the
4 present, each of the Defendants knowingly and intentionally exposed California
5 consumers and users of Jewelry Boxes, which Defendants manufactured, distributed, or
6 sold as mentioned above, to DINP, without first providing any type of clear and
7 reasonable warning of such to the exposed persons before the time of exposure.
8 Defendants have distributed and sold Jewelry Boxes in California. Defendants know and
9 intend that California consumers will use Jewelry Boxes, thereby exposing them to
10 DINP. Defendants thereby violated Proposition 65.

11 66. The principal routes of exposure are through dermal contact and ingestion. Persons
12 sustain exposures by using, or handling Jewelry Boxes without wearing gloves or by
13 touching bare skin or mucous membranes with or without gloves after handling Jewelry
14 Boxes, as well as through direct and indirect hand to mouth contact, hand to mucous
15 membrane, or breathing in particulate matter emanating from Jewelry Boxes during use,
16 as well as through environmental mediums that carry the DINP once contained within the
17 Jewelry Boxes.

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

24 68. 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 69. Based on the allegations herein, Defendants are liable for civil penalties of up to
2 \$2,500.00 per day per individual exposure to DINP from Jewelry Boxes, pursuant to
3 Health and Safety Code Section 25249.7(b).

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

6 **FOURTH CAUSE OF ACTION**

7 **(By CONSUMER ADVOCACY GROUP, INC. and against AHQ, MARSHALLS**
8 **CA, and DOES 31-40 for Violations of Proposition 65, The Safe Drinking Water and**
9 **Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

10 **Women's Accessories**

11 71. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
12 reference paragraphs 1 through 70 of this Complaint as though fully set forth herein.

13 72. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
14 distributor, promoter, or retailer of Cosmetic Bag including but not limited to: "CL" BY
15 CHRISTIAN LACROIX"; "RN#137646"; "Style # CCXS9014"; "COLOR/COULEUR:
16 GARDEN BEIGE – ON BLACK/JARDIN BEIGE-ON NOIR"; "UPC 8 84239 00588
17 9"; "MADE IN CHINA" ("Cosmetic Bag").

18 73. Cosmetic Bag contains DINP.

19 74. Defendants knew or should have known that DINP has been identified by the State of
20 California as a chemical known to cause cancer and therefore was subject to Proposition
21 65 warning requirements. Defendants were also informed of the presence of DINP in
22 Cosmetic Bag within Plaintiff's notice of alleged violations further discussed above at
23 Paragraph 28.

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

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

3 76. Plaintiff is informed, believes, and thereon alleges that between July 17, 2016 and the
4 present, each of the Defendants knowingly and intentionally exposed California
5 consumers and users of Cosmetic Bag, which Defendants manufactured, distributed, or
6 sold as mentioned above, to DINP, without first providing any type of clear and
7 reasonable warning of such to the exposed persons before the time of exposure.
8 Defendants have distributed and sold Cosmetic Bag in California. Defendants know and
9 intend that California consumers will use Cosmetic Bag, thereby exposing them to DINP.
10 Defendants thereby violated Proposition 65.

11 77. The principal routes of exposure are through dermal contact and ingestion. Persons
12 sustain exposures by using, handling, or carrying Cosmetic Bag without wearing gloves
13 or by touching bare skin or mucous membranes with or without gloves after handling
14 Cosmetic Bag, as well as through direct and indirect hand to mouth contact, hand to
15 mucous membrane, or breathing in particulate matter emanating from Cosmetic Bag
16 during use, as well as through environmental mediums that carry the DINP once
17 contained within the Cosmetic Bag.

18 78. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
19 Proposition 65 as to Cosmetic Bag has been ongoing and continuous, as Defendants
20 engaged and continue to engage in conduct which violates Health and Safety Code
21 Section 25249.6, including the manufacture, distribution, promotion, and sale of
22 Cosmetic Bag, so that a separate and distinct violation of Proposition 65 occurred each
23 and every time a person was exposed to DINP by Cosmetic Bag as mentioned herein.

24 79. 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 80. Based on the allegations herein, Defendants are liable for civil penalties of up to
2 \$2,500.00 per day per individual exposure to DINP from Cosmetic Bag, pursuant to
3 Health and Safety Code Section 25249.7(b).

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

6 **FIFTH CAUSE OF ACTION**

7 **(By CONSUMER ADVOCACY GROUP, INC. and against MARSHALLS CA,
8 MARSHALLS MA, MARSHALLS NV, TJX, TJX OP, and DOES 41-50 for
9 Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act
of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

10 **Beauty Accessories**

11 82. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
12 reference paragraphs 1 through 81 of this Complaint as though fully set forth herein.

13 83. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
14 distributor, promoter, or retailer of Cosmetic Bag with Plastic Components including but
15 not limited to: “Filoso fille;” “Marshalls;” “12 87-085539136-01299” (“Cosmetic Bags”).

16 84. Cosmetic Bags contain DEHP.

17 85. Defendants knew or should have known that DEHP has been identified by the State of
18 California as a chemical known to cause cancer and developmental and reproductive
19 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants
20 were also informed of the presence of DEHP in Cosmetic Bags within Plaintiff’s notice of
21 alleged violations further discussed above at Paragraph 29.

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

1 87. Plaintiff is informed, believes, and thereon alleges that between August 2, 2016 and the
2 present, each of the Defendants knowingly and intentionally exposed California
3 consumers and users of Cosmetic Bags, which Defendants manufactured, distributed, or
4 sold as mentioned above, to DEHP, without first providing any type of clear and
5 reasonable warning of such to the exposed persons before the time of exposure.

6 Defendants have distributed and sold Cosmetic Bags in California. Defendants know and
7 intend that California consumers will use Cosmetic Bags, thereby exposing them to
8 DEHP. Defendants thereby violated Proposition 65.

9 88. The principal routes of exposure are through dermal contact and ingestion. Persons
10 sustain exposures by using, handling, or carrying Cosmetic Bags without wearing gloves
11 or by touching bare skin or mucous membranes with or without gloves after handling
12 Cosmetic Bags, as well as through direct and indirect hand to mouth contact, hand to
13 mucous membrane, or breathing in particulate matter emanating from Cosmetic Bags
14 during use, as well as through environmental mediums that carry the DEHP once
15 contained within the Cosmetic Bags.

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

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

25 91. Based on the allegations herein, Defendants are liable for civil penalties of up to
26 \$2,500.00 per day per individual exposure to DEHP from Cosmetic Bags, pursuant to
27 Health and Safety Code Section 25249.7(b).

1 92. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
2 filing this Complaint.

3
4 **SIXTH CAUSE OF ACTION**

5 **(By CONSUMER ADVOCACY GROUP, INC. and against MARSHALLS CA,
6 MARSHALLS MA, MARSHALLS NV, TJX, TJX OP, and DOES 51-60 for
7 Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act
8 of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

9 **Fashion Accessories**

10 93. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
11 reference paragraphs 1 through 92 of this Complaint as though fully set forth herein.

12 94. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
13 distributor, promoter, or retailer of Backpack with Plastic Components including but not
14 limited to: “Fashion Backpack;” “10 INCHES;” “DISTRIBUTED BY LOVE2DESIGN;”
15 “15 West 34th st. New York, NY 10001;” “MADE IN CHINA;” “RN# 164597;”
16 “Marshalls;” “1272-086244262-001299-15-2” (“Backpacks”).

17 95. Backpacks contain DEHP.

18 96. Defendants knew or should have known that DEHP has been identified by the State of
19 California as a chemical known to cause cancer and developmental and reproductive
20 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants
21 were also informed of the presence of DEHP in Backpacks within Plaintiff’s notice of
22 alleged violations further discussed above at Paragraph 30.

23 97. Plaintiff’s allegations regarding Backpacks concerns “[c]onsumer products exposure[s],”
24 which “is an exposure that results from a person’s acquisition, purchase, storage,
25 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
26 that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b)*.
27 Backpacks are consumer products, and, as mentioned herein, exposures to DEHP took
28 place as a result of such normal and foreseeable use.

1 98. Plaintiff is informed, believes, and thereon alleges that between August 2, 2016 and the
2 present, each of the Defendants knowingly and intentionally exposed California
3 consumers and users of Backpacks, which Defendants manufactured, distributed, or sold
4 as mentioned above, to DEHP, without first providing any type of clear and reasonable
5 warning of such to the exposed persons before the time of exposure. Defendants have
6 distributed and sold Backpacks in California. Defendants know and intend that
7 California consumers will use Backpacks, thereby exposing them to DEHP. Defendants
8 thereby violated Proposition 65.

9 99. The principal routes of exposure are through dermal contact and ingestion. Persons
10 sustain exposures by using, handling, or carrying Backpacks without wearing gloves or
11 by touching bare skin or mucous membranes with or without gloves after handling
12 Backpacks, as well as through direct and indirect hand to mouth contact, hand to mucous
13 membrane, or breathing in particulate matter emanating from Backpacks during use, as
14 well as through environmental mediums that carry the DEHP once contained within the
15 Backpacks.

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

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

25 102. Based on the allegations herein, Defendants are liable for civil penalties of up to
26 \$2,500.00 per day per individual exposure to DEHP from Backpacks, pursuant to Health
27 and Safety Code Section 25249.7(b).

1 103. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
2 filing this Complaint.

3 **SEVENTH CAUSE OF ACTION**

4 **(By CONSUMER ADVOCACY GROUP, INC. and against MARSHALLS CA,
5 MARSHALLS MA, HOMEGOODS, and DOES 61-70 for Violations of Proposition
6 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety
Code, §§ 25249.5, et seq.*))**

7 **Suitcases**

8 104. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
9 reference paragraphs 1 through 103 of this Complaint as though fully set forth herein.

10 105. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
11 distributor, promoter, or retailer of Suitcases with Plastic Components including but not
12 limited to: (a) “LiMiTeD ToO;” “MADE IN CHINA;” “RN#90737;” “Marshalls;”
13 “1272-088335678-001499-18-2;” “7295-9595-346110-81;”; and (b) “LiMiTeD ToO;”
14 “MADE IN CHINA;” “RN#90737;” “Marshalls;” “1272-088351625-001499-18-2;”
15 “7295-9595-346356-81;” (“Suitcases”).

16 106. Suitcases contain DINP.

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

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

1 109. Plaintiff is informed, believes, and thereon alleges that between August 21, 2016 and the
2 present, each of the Defendants knowingly and intentionally exposed California
3 consumers and users of Suitcases, which Defendants manufactured, distributed, or sold as
4 mentioned above, to DINP, without first providing any type of clear and reasonable
5 warning of such to the exposed persons before the time of exposure. Defendants have
6 distributed and sold Suitcases in California. Defendants know and intend that California
7 consumers will use Suitcases, thereby exposing them to DINP. Defendants thereby
8 violated Proposition 65.

9 110. The principal routes of exposure are through dermal contact and ingestion. Persons
10 sustain exposures by using, handling, or carrying Suitcases without wearing gloves or by
11 touching bare skin or mucous membranes with or without gloves after handling
12 Suitcases, as well as through direct and indirect hand to mouth contact, hand to mucous
13 membrane, or breathing in particulate matter emanating from Suitcases during use, as
14 well as through environmental mediums that carry the DINP once contained within the
15 Suitcases.

16 111. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
17 Proposition 65 as to Suitcases have been ongoing and continuous, as Defendants engaged
18 and continue to engage in conduct which violates Health and Safety Code Section
19 25249.6, including the manufacture, distribution, promotion, and sale of Suitcases, so that
20 a separate and distinct violation of Proposition 65 occurred each and every time a person
21 was exposed to DINP by Suitcases as mentioned herein.

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

25 113. Based on the allegations herein, Defendants are liable for civil penalties of up to
26 \$2,500.00 per day per individual exposure to DINP from Suitcases, pursuant to Health
27 and Safety Code Section 25249.7(b).

1 114. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
2 filing this Complaint.

3 **EIGHTH CAUSE OF ACTION**

4 **(By CONSUMER ADVOCACY GROUP, INC. and against MARSHALLS CA and**
5 **DOES 71-80 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
6 **Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

7 **Women's/Children's Accessories**

8 115. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by
9 reference paragraphs 1 through 114 of this Complaint as though fully set forth herein.

10 116. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
11 distributor, promoter, or retailer of Backpack with PVC Components including but not
12 limited to: "Clear Rosegold backpack with Unicorn print. "OMG Accessories;"
13 "Marshalls;" "1272-087001828-001499-15-2;" "7229-2966-338080-81;" "Manufacturer:
14 OMGAcessories, Lot/Batch No: B-609"; "Made in Myanmar" ("Backpack").

15 117. Backpack contains DEHP.

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

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

1 120. Plaintiff is informed, believes, and thereon alleges that between August 21, 2016 and the
2 present, each of the Defendants knowingly and intentionally exposed California
3 consumers and users of Backpack, which Defendants manufactured, distributed, or sold as
4 mentioned above, to DEHP, without first providing any type of clear and reasonable
5 warning of such to the exposed persons before the time of exposure. Defendants have
6 distributed and sold Backpack in California. Defendants know and intend that California
7 consumers will use Backpack, thereby exposing them to DEHP. Defendants thereby
8 violated Proposition 65.

9 121. The principal routes of exposure are through dermal contact and ingestion. Persons
10 sustain exposures by using, handling, or carrying Backpack without wearing gloves or by
11 touching bare skin or mucous membranes with or without gloves after handling Backpack,
12 as well as through direct and indirect hand to mouth contact, hand to mucous membrane,
13 or breathing in particulate matter emanating from Backpack during use, as well as through
14 environmental mediums that carry the DEHP once contained within the Backpacks

15 122. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
16 Proposition 65 as to Backpack has been ongoing and continuous, as Defendants engaged
17 and continue to engage in conduct which violates Health and Safety Code Section
18 25249.6, including the manufacture, distribution, promotion, and sale of Backpack, so that
19 a separate and distinct violation of Proposition 65 occurred each and every time a person
20 was exposed to DEHP by Backpack as mentioned herein.

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

24 124. Based on the allegations herein, Defendants are liable for civil penalties of up to
25 \$2,500.00 per day per individual exposure to DEHP from Backpack, pursuant to Health
26 and Safety Code Section 25249.7(b).

1 125. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
2 filing this Complaint.

3 **PRAYER FOR RELIEF**

4 Plaintiff demands against each of the Defendants as follows:

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

10
11 Dated: NOVEMBER 7, 2019

YEROUSHALMI & YEROUSHALMI

12
13
14 BY: 

15 Reuben Yeroushalmi
16 Attorneys for Plaintiff,
17 Consumer Advocacy Group, Inc.
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