

ENDORSED
FILED
ALAMEDA COUNTY

NOV 25 2020

CLERK OF THE SUPERIOR COURT
E. Gallagher

1 Evan J. Smith, Esquire (SBN 242352)
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8 *Attorneys for Plaintiff*

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 Case No.: *RG 20081872*

12 EMA BELL,

13 Plaintiff,

14 vs.

15 THE TJX COMPANIES, INC.,

16 Defendant.

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

**(Violation of Health & Safety Code § 25249.5 et
seq.)**

17 Plaintiff Ema Bell ("Plaintiff"), by and through her attorneys, alleges the following cause
18 of action in the public interest of the citizens of the State of California.

19 **BACKGROUND OF THE CASE**

20 1. Plaintiff brings this representative action on behalf of all California citizens to
21 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
22 the Health and Safety Code § 25249.5 et seq ("Proposition 65"), which reads, in relevant part,
23 "[n]o person in the course of doing business shall knowingly and intentionally expose any
24 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
25 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

26 2. This complaint is a representative action brought by Plaintiff in the public interest
27 of the citizens of the State of California to enforce the People's right to be informed of the health
28 hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in
bags/totes/cases sold and/or distributed by defendant The TJX Companies, Inc. ("TJX" or the
"Defendant") in California.

- 1 -

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF - VIOLATION OF
HEALTH & SAFETY CODE §25249.5

Filed By Fax

1 3. DEHP is a harmful chemical known to the State of California to cause cancer and
2 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical known
3 to the State to cause cancer and it has come under the purview of Proposition 65 regulations since
4 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).
5 On October 24, 2003, the State of California listed DEHP as a chemical known to cause
6 reproductive toxicity.

7 4. Proposition 65 requires all businesses with ten (10) or more employees that operate
8 within California or sell products therein to comply with Proposition 65 regulations. Included in
9 such regulations is the requirement that businesses must label any product containing a Proposition
10 65-listed chemical with a “clear and reasonable” warning before “knowingly and intentionally”
11 exposing any person to any such listed chemical.

12 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
13 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
14 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
15 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
16 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
17 25249.7.

18 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,
19 without a requisite exposure warning, bags/totes/cases (the “Products”) that expose persons to
20 DEHP.

21 7. Defendant’s failure to warn consumers and other individuals in California of the
22 health hazards associated with exposure to DEHP in conjunction with the sale and/or distribution
23 of the Products is a violation of Proposition 65 and subjects Defendant to the enjoinder and civil
24 penalties described herein.

25 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition 65
26 in accordance with Health and Safety Code § 25249.7(b).

27 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
28 Defendant to provide purchasers or users of the Products with required warnings related to the

1 dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety Code
2 § 25249.7(a).

3 10. Plaintiff further seeks a reasonable award of attorney's fees and costs.

4 **PARTIES**

5 11. Plaintiff is a citizen of the State of California acting in the interest of the general
6 public to promote awareness of exposures to toxic chemicals in products sold in California and to
7 improve human health by reducing hazardous substances contained in such items. She brings this
8 action in the public interest pursuant to Health and Safety Code § 25249.7(d).

9 12. Defendant TJX, through its business, effectively imports, distributes, sells, and/or
10 offers the Products for sale or use in the State of California, or it implies by its conduct that it
11 imports, distributes, sells, and/or offers the Products for sale or use in the State of California.

12 13. Plaintiff alleges that defendant TJX is a "person" in the course of doing business
13 within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

14 **VENUE AND JURISDICTION**

15 14. Venue is proper in the County of Alameda because one or more of the instances of
16 wrongful conduct occurred, and continue to occur in this county and/or because Defendant
17 conducted, and continues to conduct, business in the County of Alameda with respect to the
18 Products.

19 15. This Court has jurisdiction over this action pursuant to California Constitution
20 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
21 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the enforcement
22 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has
23 jurisdiction over this lawsuit.

24 16. This Court has jurisdiction over Defendant because Defendant is either a citizen of
25 the State of California, has sufficient minimum contacts with the State of California, is registered
26 with the California Secretary of State as foreign corporations authorized to do business in the State
27 of California, and/or has otherwise purposefully availed itself of the California market. Such
28

1 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and
2 permissible with traditional notions of fair play and substantial justice.

3 STATUTORY BACKGROUND

4 17. The people of the State of California declared in Proposition 65 their right “[t]o be
5 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
6 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

7 18. To effect this goal, Proposition 65 requires that individuals be provided with a
8 “clear and reasonable warning” before being exposed to substances listed by the State of California
9 as causing cancer or reproductive toxicity. H&S Code § 25249.6 states, in pertinent part:

10 No person in the course of doing business shall knowingly and intentionally expose any
11 individual to a chemical known to the state to cause cancer or reproductive toxicity without
12 first giving clear and reasonable warning to such individual...

13 19. An exposure to a chemical in a consumer product is one “which results from a
14 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
15 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
16 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
17 shall provide a warning to any person to whom the product is sold or transferred unless the product
18 is packaged or labeled with a clear and reasonable warning.”

19 20. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or
20 more of the following methods individually or in combination:¹

- 21 a. A warning that appears on a product’s label or other labeling.
- 22 b. Identification of the product at the retail outlet in a manner which provides
23 a warning. Identification may be through shelf labeling, signs, menus, or a combination
24 thereof.

25
26
27 ¹ Alternatively, a person in the course of doing business may elect to comply with the warning
28 requirements set out in the amended version of 27 CCR 25601, *et.seq.* as amended on August 30,
2016, and operative on August 30, 2018.

1 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be
2 prominently placed upon a product's labels or other labeling or displayed at the retail outlet
3 with such conspicuousness, as compared with other words, statements, designs, or devices
4 in the label, labeling or display as to render it likely to be read and understood by an
5 ordinary individual under customary conditions of purchase or use.

6 d. A system of signs, public advertising identifying the system and toll-free
7 information services, or any other system that provides clear and reasonable warnings.

8 21. Proposition 65 provides that any "person who violates or threatens to violate" the
9 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
10 "threaten to violate" is defined to mean creating "a condition in which there is a substantial
11 probability that a violation will occur." (H&S Code § 25249.11(e).) Violators are liable for civil
12 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
13 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

14 **FACTUAL BACKGROUND**

15 22. On January 1, 1988, the State of California listed DEHP as a chemical known to
16 the State to cause cancer and it has come under the purview of Proposition 65 regulations since
17 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).
18 On October 24, 2003, the State of California listed DEHP as a chemical known to cause
19 reproductive toxicity.

20 23. The consumer exposures that are the subject of this Complaint result primarily from
21 dermal absorption. Users can be exposed to DEHP by dermal absorption through direct skin
22 contact with the Products when handled with bare hands. DEHP from the Products can absorb to
23 the surface of contents placed in the Products that are subsequently handled, held in direct contact
24 with skin, mouthed, or ingested by the user. If the Products are stored or transported in a carrier,
25 DEHP that leaches from the Products may contaminate other articles contained within these closed
26 spaces that are subsequently handled, worn, mouthed or ingested by the user. Finally, while
27 mouthing of the Products does not seem likely, some amount of exposure through ingestion can
28 occur by touching the Products with subsequent touching of the user's hand to mouth.

1 24. Defendant has marketed, distributed, offered to sell and/or sold the Products in
2 California since at least January 23, 2020. The Products continue to be distributed and sold in
3 California without the requisite warning information.

4 25. At all times relevant to this action, Defendant has knowingly and intentionally
5 exposed users and/or consumers of the Products to DEHP without first giving a clear and
6 reasonable exposure warning to such individuals.

7 26. As a proximate result of acts by Defendant, as a person in the course of doing
8 business within the meaning of H&S Code § 25249.11, individuals throughout the State of
9 California, including in Alameda County, have been exposed to DEHP without a clear and
10 reasonable warning on the Products. The individuals subject to the violative exposures include
11 normal and foreseeable users and consumers that use the Products, as well as all others exposed to
12 the Products.

13 **SATISFACTION OF NOTICE REQUIREMENTS**

14 ***The Alleged Violations of Health and Safety Code § 25249.6 to TJX***

15 27. On January 23, 2020, Plaintiff gave notice of alleged violation of Health and Safety
16 Code § 25249.6 (a “Notice of Violation”) to Defendant concerning the exposure of California
17 citizens to DEHP contained in the Love2Design 4 pc. Set – Clear Tote, with TJX identifying tag
18 #s RN# 164597, 1272-091682600-001699-23-2, 7211-1105-366028-81, DA00210 without proper
19 warning, subject to a private action to Defendant and to the California Attorney General’s office
20 and the offices of the County District attorneys and City Attorneys for each city with a population
21 greater than 750,000 persons wherein the herein violations allegedly occurred. See attached at
22 Exhibit “A” a true and correct copy of the January 23, 2020 Notice of Violation.

23 28. On January 23, 2020, Plaintiff gave notice of alleged violation of Health and Safety
24 Code § 25249.6 to Defendant concerning the exposure of California citizens to DEHP contained
25 in the Fifth Avenue Two Standard Pillowcases – Case, with TJX identifying tag #s RN# 104905,
26 6002-0250-990130-81, 1260-091303842-000499-23-2, without proper warning, subject to a
27 private action to Defendant and to the California Attorney General’s office and the offices of the
28 County District attorneys and City Attorneys for each city with a population greater than 750,000

1 persons wherein the herein violations allegedly occurred. See attached at Exhibit “B” a true and
2 correct copy of the January 23, 2020 Notice of Violation.

3 29. On July 10, 2020, Plaintiff gave notice of alleged violation of Health and Safety
4 Code § 25249.6 to Defendant concerning the exposure of California citizens to DEHP contained
5 in the Moon and Stars Kids Collection Twin Swiss CTJX Flannel Sheet Set – Plastic Case, UPC#
6 628451305392, with TJX identifying tag #s 4000021247100883020, CA# 58248, RN# 148488,
7 01805000012345654026, Marshalls Order# 20286665970, without proper warning, subject to a
8 private action to Defendant and to the California Attorney General’s office and the offices of the
9 County District attorneys and City Attorneys for each city with a population greater than 750,000
10 persons wherein the herein violations allegedly occurred. See attached at Exhibit “C” a true and
11 correct copy of the January 10, 2020 Notice of Violation.

12 30. The Notices of Violation described herein are collectively referred to as, the
13 “Notices.”

14 31. The Notices complied with all procedural requirements of Proposition 65 including
15 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at
16 least one person with relevant and appropriate expertise who reviewed relevant data regarding
17 DEHP exposure, and that counsel believed there was meritorious and reasonable cause for a private
18 action.

19 32. After receiving the Notices, and to Plaintiff’s best information and belief, none of
20 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
21 cause of action against Defendant under Proposition 65 to enforce the alleged violations which are
22 the subject of the Notices.

23 33. Plaintiff is commencing this action more than sixty (60) days from the date of the
24 Notices to Defendant, as required by law.

25 34. On April 6, the Judicial Council first adopted emergency rule 9 to suspend statutes
26 of limitation on all civil cases until 90 days after Governor Newsom lifts the state of emergency
27 related to the COVID-19 pandemic. On May 29, 2020 the Judicial Council approved a revision to
28 emergency rule 9 regarding the statutes of limitations for filing civil cases during the COVID-19

1 pandemic. The Council amended emergency rule 9 by circulating order so that it is no longer tied
2 to the state of emergency declaration. The new rule suspends from April 6, 2020 to October 1,
3 2020 the statutes of limitations and repose for civil causes of action that exceed 180 days. The rule
4 is broad in scope and applies to all civil causes of action.

5 **FIRST CAUSE OF ACTION**

6 **(By Plaintiff against Defendant for the Violation of Proposition 65)**

7 35. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 37 of
8 this Complaint as though fully set forth herein.

9 36. Defendant has, at all times mentioned herein, acted as distributor and/or retailer of
10 the Product.

11 37. The Products contain DEHP, a hazardous chemical found on the Proposition 65 list
12 of chemicals known to be hazardous to human health.

13 38. The Products do not comply with the Proposition 65 warning requirements.

14 39. Plaintiff, based on her best information and belief, avers that at all relevant times
15 herein, and at least since January 23, 2020, continuing until the present, that Defendant has
16 continued to knowingly and intentionally expose California users and consumers of the Product to
17 DEHP without providing required warnings under Proposition 65.

18 40. The exposures that are the subject of the Notices result from the purchase,
19 acquisition, handling and recommended use of the Products. Consequently, the primary route of
20 exposure to these chemicals is through dermal absorption. Users can be exposed to DEHP by
21 dermal absorption through direct skin contact with the Products when handled with bare hands.
22 DEHP from the Products can absorb to the surface of contents placed in the Products that are
23 subsequently handled, held in direct contact with skin, mouthed, or ingested by the user. If the
24 Products are stored or transported in a carrier, DEHP that leaches from the Products may
25 contaminate other articles contained within these closed spaces that are subsequently handled,
26 worn, mouthed or ingested by the user. Finally, while mouthing of the Products does not seem
27 likely, some amount of exposure through ingestion can occur by touching the Products with
28 subsequent touching of the user's hand to mouth.

1 41. Plaintiff, based on her best information and belief, avers that such exposures will
2 continue every day until clear and reasonable warnings are provided to purchasers and users of the
3 Products or until this known toxic chemical is removed from the Products.

4 42. Defendant has knowledge that the normal and reasonably foreseeable use of the
5 Products will expose individuals to DEHP, and Defendant intends that exposures to DEHP will
6 occur by its deliberate, non-accidental participation in the importation, distribution, sale and
7 offering of the Products to consumers in California

8 43. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
9 Complaint.

10 44. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
11 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

12 45. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
13 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff demands judgment against Defendant and requests the following
16 relief:

17 A. That the court assess civil penalties against each Defendant in the amount of \$2,500
18 per day for each violation for up to 365 days (up to a maximum civil penalty amount per
19 violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);


20 B. That the court preliminarily and permanently enjoin Defendant mandating
21 Proposition 65 compliant warnings on the Products;

22 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the
23 amount of \$50,000.00.

24 D. That the court grant any further relief as may be just and proper.

25 Dated: November 24, 2020

BRODSKY & SMITH, LLC

26 By: 
27 Evan J. Smith (SBN242352)
28 Ryan P. Cardona (SBN302113)
9595 Wilshire Boulevard, Suite 900

Beverly Hills, CA 90212
Telephone: (877) 534-2590
Facsimile: (310) 247-0160

Attorneys for Plaintiff

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EXHIBIT “A”

LAW OFFICES
BRODSKY & SMITH, LLC

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BALA CYNWYD, PA 19004

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January 23, 2020

esmith@brodskysmith.com

President/CEO/Owner Love2Design 15 West 34 th Street, 3 rd Floor New York, NY 10001	Member/Manager Artisanal Accessories, LLC 15 West 34 th Street, 3 rd Floor New York, NY 10001
Member/Manager One Design Accessories, LLC 115 Kennedy Drive Sayreville, NJ 08872	President/CEO The TJX Companies, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801
President/CEO Marshalls of MA, Inc. c/o CT Corporation System 155 Federal Street, Suite 700 Boston, MA 02110	

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING
THE ATTACHED CERTIFICATE OF SERVICE

Re: Notice of Violation of California Health & Safety Code §25249.6, *et seq.*

To Whom It May Concern:

Brodsky & Smith, LLC ("Brodsky Smith") represents Ema Bell ("Bell"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items.

With respect to the product identified below, Bell has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at Cal. Health & Safety Code §25249.5, *et seq.* This violation has occurred and continues to occur because the alleged Violator(s) identified below failed to provide required clear and reasonable warnings with this product. Section 25249.6 of the statute provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to this listed chemical that results from contact with this product, California citizens lack the information necessary to make an informed decision on whether and/or how to eliminate (or reduce) their risk of exposure to the listed chemical from the reasonably foreseeable use of the product.

Please allow this letter to serve as notice of this violation to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Brodsky Smith intends to file a private enforcement action on behalf of Bell sixty (60) days after effective service of this notice unless the public enforcement agencies¹ have commenced and are earnestly prosecuting an action to redress these violations.

Alleged Violator(s): The name of the companies covered by this notice that Violated Proposition 65 (hereinafter “the Violators”) are:

Love2Design
 One Design Accessories, LLC
 Artisanal Accessories, LLC
 Marshalls of MA, Inc.
 The TJX Companies, Inc.

Product Category/Type: The type of product causing this violation is:

<i>Product²</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Love2Design 4 pc. Set – Clear Tote RN# 164597 1272-091682600-001699-23-2 7211-1105-366028-81 DA00210	Marshalls of MA, Inc. The TJX Companies, Inc.	Love2Design One Design Accessories, LLC Artisanal Accessories, LLC

Listed Chemicals: This violation involves exposure to the chemical Di(2-ethylhexyl) phthalate (DEHP). On January 1, 1988, the State of California listed DEHP as a chemical known to the State to cause cancer. On October 24, 2003, the State of California listed Di(2-ethylhexyl) phthalate (DEHP) as a chemical known to cause developmental male reproductive toxicity. Both additions took place more than twenty (20) months before Bell served this Notice.

Violations: The alleged Violators knowingly and intentionally have exposed and continue to knowingly and intentionally expose consumers within the State of California to Di(2-ethylhexyl) phthalate (DEHP) at levels that, upon reasonable use of the product, exceed the No Significant Risk Level and the Maximum Allowable Dose Level without providing clear and reasonable warning of this exposure. In particular, the product does not warn that it contains chemicals known to the State of California to cause both cancer and reproductive toxicity, developmental, male.

Route of Exposure: The exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of the product. Consequently, the primary route of exposure to these chemicals is through dermal absorption. Users can be exposed to DEHP by dermal absorption through direct skin contact with the clear plastic tote when handled with bare hands. DEHP from the clear plastic tote can absorb to the surface of contents placed in the tote bag that are subsequently

¹ The public enforcement agencies that have been served with copies of this notice of violations are identified in the attached distribution list accompanying the Certificate of Service.

² The specifically identified example of the type of product that is subject to this Notice is for the recipient’s benefit to assist in its investigation of, among other things, the magnitude of potential exposures to the listed chemical from other items within the product category. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under “Product.” Further, it is Bell’s position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient’s custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

handled, held in direct contact with skin, mouthed, or ingested by the user. If the clear plastic tote is stored or transported in a carrier, DEHP that leaches from the item may contaminate other articles contained within these closed spaces that are subsequently handled, worn, mouthed or ingested by the user. Finally, while mouthing of the product does not seem likely, some amount of exposure through ingestion can occur by touching the product with subsequent touching of the user's hand to mouth.

Duration of the Violations: Each of these ongoing violations has occurred on every day since at least November 16, 2019; as well as every day since the product was introduced to the California marketplace and following the one-year anniversary date of the listing at issue; and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is removed from the product.

Pursuant to Title 11, C.C.R. §3100, a certificate of merit is attached hereto. Pursuant to Title 27, C.C.R. §25903(b), a copy of "The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary" is also enclosed.

Consistent with the public interest goals of Proposition 65 and desire to have these ongoing violations of California law quickly rectified, Bell is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation.

Bell has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action. My business address is 2 Bala Plaza, Suite 510, Bala Cynwyd, Pennsylvania. I am employed in Montgomery County where the mailing occurred.

On January 23, 2020, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on the following entities and individuals listed below by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Certified Mail:

President/CEO/Owner Love2Design 15 West 34 th Street, 3 rd Floor New York, NY 10001	Member/Manager Artisanal Accessories, LLC 15 West 34 th Street, 3 rd Floor New York, NY 10001
Member/Manager One Design Accessories, LLC 115 Kennedy Drive Sayreville, NJ 08872	President/CEO The TJX Companies, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801
President/CEO Marshalls of MA, Inc. c/o CT Corporation System 1555 Federal Street, Suite 700 Boston, MA 02110	

On January 23, 2020, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on each of the individuals on the service list attached hereto as Appendix B by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Priority Mail.

Executed on January 23, 2020, in Bala Cynwyd, Pennsylvania.



Evan J. Smith

CERTIFICATE OF MERIT
Health & Safety Code Section 25249.7(d)

I, Evan J. Smith, hereby declare:

- (1) This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice have violated Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
- (2) I am the attorney for the noticing party, Ema Bell.
- (3) I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies or other data regarding the alleged exposure to the listed chemicals that are the subject of the action.
- (4) Based on the information obtained through these consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator(s) will be able to establish any of the affirmative defenses set forth in the statute.
- (5) The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health & Safety Code Section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: January 23, 2020



Evan J. Smith
Attorney for Ema Bell

EXHIBIT “B”

LAW OFFICES
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January 23, 2020

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President/CEO Marshalls of MA, Inc. c/o CT Corporation System 155 Federal Street, Suite 700 Boston, MA 02110	President/CEO The TJX Companies, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801
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AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING
THE ATTACHED CERTIFICATE OF SERVICE

Re: Notice of Violation of California Health & Safety Code §25249.6, *et seq.*

To Whom It May Concern:

Brodsky & Smith, LLC ("Brodsky Smith") represents Ema Bell ("Bell"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items.

With respect to the product identified below, Bell has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at Cal. Health & Safety Code §25249.5, *et seq.* This violation has occurred and continues to occur because the alleged Violator(s) identified below failed to provide required clear and reasonable warnings with this product. Section 25249.6 of the statute provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to this listed chemical that results from contact with this product, California citizens lack the information necessary to make an informed decision on whether and/or how to eliminate (or reduce) their risk of exposure to the listed chemical from the reasonably foreseeable use of the product.

Please allow this letter to serve as notice of this violation to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Brodsky Smith intends to file a private enforcement action on behalf of Bell sixty (60) days after effective service of this notice unless the public enforcement agencies¹ have commenced and are earnestly prosecuting an action to redress these violations.

¹ The public enforcement agencies that have been served with copies of this notice of violations are identified in the attached distribution list accompanying the Certificate of Service.

Alleged Violator(s): The name of the companies covered by this notice that Violated Proposition 65 (hereinafter “the Violators”) are:

Marshalls of MA, Inc.
The TJX Companies, Inc.

Product Category/Type: The type of product causing this violation is:

<i>Product²</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Fifth Avenue Two Standard Pillowcases – Case RN# 104905 6002-0250-990130-81 1260-091303842-000499-23-2	Marshalls of MA, Inc. The TJX Companies, Inc.	Unknown

Listed Chemicals: This violation involves exposure to the chemical Di(2-ethylhexyl) phthalate (DEHP). On January 1, 1988, the State of California listed DEHP as a chemical known to the State to cause cancer. On October 24, 2003, the State of California listed Di(2-ethylhexyl) phthalate (DEHP) as a chemical known to cause developmental male reproductive toxicity. Both additions took place more than twenty (20) months before Bell served this Notice.

Violations: The alleged Violators knowingly and intentionally have exposed and continue to knowingly and intentionally expose consumers within the State of California to Di(2-ethylhexyl) phthalate (DEHP) at levels that, upon reasonable use of the product, exceed the No Significant Risk Level and the Maximum Allowable Dose Level without providing clear and reasonable warning of this exposure. In particular, the product does not warn that it contains chemicals known to the State of California to cause both cancer and reproductive toxicity, developmental, male.

Route of Exposure: The exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of the product. Consequently, the primary route of exposure to these chemicals is through dermal absorption. Initial exposure would result from directly touching or holding the item during normal use. For example, the user will be expected to touch the clear plastic multiple times when removing or returning items to the bag. Ingestion would occur from hand to mouth contact, for example, from eating after having handled the item.

Duration of the Violations: Each of these ongoing violations has occurred on every day since at least November 16, 2019; as well as every day since the product was introduced to the California marketplace and following the one-year anniversary date of the listing at issue; and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is removed from the product.

² The specifically identified example of the type of product that is subject to this Notice is for the recipient’s benefit to assist in its investigation of, among other things, the magnitude of potential exposures to the listed chemical from other items within the product category. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under “Product.” Further, it is Bell’s position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient’s custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

Pursuant to Title 11, C.C.R. §3100, a certificate of merit is attached hereto. Pursuant to Title 27, C.C.R. §25903(b), a copy of "The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary" is also enclosed.

Consistent with the public interest goals of Proposition 65 and desire to have these ongoing violations of California law quickly rectified, Bell is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation.

Bell has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action. My business address is 2 Bala Plaza, Suite 510, Bala Cynwyd, Pennsylvania. I am employed in Montgomery County where the mailing occurred.

On January 23, 2020, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on the following entities and individuals listed below by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Certified Mail:

President/CEO Marshalls of MA, Inc. c/o CT Corporation System 1555 Federal Street, Suite 700 Boston, MA 02110	President/CEO The TJX Companies, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801
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On January 23, 2020, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on each of the individuals on the service list attached hereto as Appendix B by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Priority Mail.

Executed on January 23, 2020, in Bala Cynwyd, Pennsylvania.



Evan J. Smith

CERTIFICATE OF MERIT
Health & Safety Code Section 25249.7(d)

I, Evan J. Smith, hereby declare:

- (1) This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice have violated Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
- (2) I am the attorney for the noticing party, Ema Bell.
- (3) I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies or other data regarding the alleged exposure to the listed chemicals that are the subject of the action.
- (4) Based on the information obtained through these consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator(s) will be able to establish any of the affirmative defenses set forth in the statute.
- (5) The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health & Safety Code Section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: January 23, 2020



Evan J. Smith
Attorney for Ema Bell

EXHIBIT “C”

LAW OFFICES
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BEVERLY HILLS, CA 90212
877.534.2590

July 10, 2020

esmith@brodskysmith.com

President/CEO Shewak Lajwanti Home Fashions, Inc. c/o Gary Margolis 3452 East Foothill Blvd., Suite 125 Pasadena, CA 91107	President/CEO Shewak Lajwanti Home Fashions, Inc. 5601 Downey Road Vernon, CA 90058
President/CEO Marshalls of MA, Inc. c/o CT Corporation System 155 Federal Street, Suite 700 Boston, MA 02110	President/CEO The TJX Companies, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING
THE ATTACHED CERTIFICATE OF SERVICE

Re: Notice of Violation of California Health & Safety Code §25249.6, *et seq.*

To Whom It May Concern:

Brodsky & Smith, LLC ("Brodsky Smith") represents Ema Bell ("Ema"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items.

With respect to the product identified below, Bell has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at Cal. Health & Safety Code §25249.5, *et seq.* This violation has occurred and continues to occur because the alleged Violator(s) identified below failed to provide required clear and reasonable warnings with this product. Section 25249.6 of the statute provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to this listed chemical that results from contact with this product, California citizens lack the information necessary to make an informed decision on whether and/or how to eliminate (or reduce) their risk of exposure to the listed chemical from the reasonably foreseeable use of the product.

Please allow this letter to serve as notice of this violation to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Brodsky Smith intends to file a private enforcement action on behalf of Bell sixty (60) days after effective service of this

notice unless the public enforcement agencies¹ have commenced and are earnestly prosecuting an action to redress these violations.

Alleged Violator(s): The name of the companies covered by this notice that Violated Proposition 65 (hereinafter “the Violators”) are:

Shewak Lajwanti Home Fashions, Inc.
Marshalls of MA, Inc.
The TJX Companies, Inc.

Product Category/Type: The type of product causing this violation is:

Product²	Retailer(s)	Manufacturer(s)/Distributor(s)
Moon and Stars Kids Collection Twin Swiss Cross Flannel Sheet Set – Plastic Case UPC# 628451305392 4000021247100883020 CA# 58248 RN# 148488 01805000012345654026 Marshalls Order# 20286665970	Marshalls of MA, Inc. The TJX Companies, Inc.	Shewak Lajwanti Home Fashions, Inc.

Listed Chemicals: This violation involves exposure to the chemical Di(2-ethylhexyl) phthalate (DEHP). On January 1, 1988, the State of California listed DEHP as a chemical known to the State to cause cancer. On October 24, 2003, the State of California listed Di(2-ethylhexyl) phthalate (DEHP) as a chemical known to cause developmental male reproductive toxicity. Both additions took place more than twenty (20) months before Bell served this Notice.

Violations: The alleged Violators knowingly and intentionally have exposed and continue to knowingly and intentionally expose consumers within the State of California to Di(2-ethylhexyl) phthalate (DEHP) at levels that, upon reasonable use of the product, exceed the No Significant Risk Level and the Maximum Allowable Dose Level without providing clear and reasonable warning of this exposure. In particular, the product does not warn that it contains chemicals known to the State of California to cause both cancer and reproductive toxicity, developmental, male.

Route of Exposure: The exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of the product. Consequently, the primary route of exposure to these chemicals is through dermal absorption. The product can be expected to emit gas-phase DEHP into the air and accumulate DEHP at the surface over the lifetime of the product. Dermal absorption of DEHP can occur through direct skin contact when the clear plastic is contacted with bare hands. Concentrations of DEHP can be expected to build within the interior of the case. Articles placed in the case, including but not limited to the manufacturer’s sheet set, can absorb DEHP. A DEHP contaminated

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² The specifically identified example of the type of product that is subject to this Notice is for the recipient’s benefit to assist in its investigation of, among other things, the magnitude of potential exposures to the listed chemical from other items within the product category. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under “Product.” Further, it is Ferreiro’s position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient’s custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

sheet and pillowcase can contact the user's body and face resulting in dermal exposure to DEHP. Finally, while mouthing of the product does not seem likely, some amount of exposure through ingestion can occur by handling the product with subsequent touching of the user's hand to mouth.

Duration of the Violations: Each of these ongoing violations has occurred on every day since at least March 11, 2020; as well as every day since the product was introduced to the California marketplace and following the one-year anniversary date of the listing at issue; and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is removed from the product.

Pursuant to Title 11, C.C.R. §3100, a certificate of merit is attached hereto. Pursuant to Title 27, C.C.R. §25903(b), a copy of "The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary" is also enclosed.

Consistent with the public interest goals of Proposition 65 and desire to have these ongoing violations of California law quickly rectified, Bell is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation.

Bell has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action. My business address is 2 Bala Plaza, Suite 510, Bala Cynwyd, Pennsylvania. I am employed in Montgomery County where the mailing occurred.

On July 10, 2020, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on the following entities and individuals listed below by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Certified Mail:

President/CEO Shewak Lajwanti Home Fashions, Inc. c/o Gary Margolis 3452 East Foothill Blvd., Suite 125 Pasadena, CA 91107	President/CEO Shewak Lajwanti Home Fashions, Inc. 5601 Downey Road Vernon, CA 90058
President/CEO Marshalls of MA, Inc. c/o CT Corporation System 155 Federal Street, Suite 700 Boston, MA 02110	President/CEO The TJX Companies, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801

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Health & Safety Code Section 25249.7(d)

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- (4) Based on the information obtained through these consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator(s) will be able to establish any of the affirmative defenses set forth in the statute.
- (5) The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health & Safety Code Section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: July 10, 2020



Evan J. Smith
Attorney for Ema Bell