

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Fernando Aenlle-Rocha

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9 CONSUMER ADVOCACY GROUP, INC.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

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

14 Plaintiff,

15 v.

16 THE TJX COMPANIES, INC., a Delaware
17 Corporation;
18 and DOES 1-20,

19 Defendants.

CASE NO.

20STCV46166

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)

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21 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges three causes of action
22 against defendants THE TJX COMPANIES, INC., and DOES 1-20 as follows:
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THE PARTIES

1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an organization qualified to do business in the State of California. CAG is a person within the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting as a private attorney general, brings this action in the public interest as defined under Health and Safety Code Section 25249.7, subdivision (d).
2. Defendant TJX COMPANIES INC. (“TJX”) is a Delaware Corporation doing business in the State of California at all relevant times herein.
3. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
4. At all times mentioned herein, the term “Defendants” includes TJX and DOES 1-20.
5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all times mentioned herein have conducted business within the State of California.
6. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-20, was an agent, servant, or employee of each of the other Defendants. In conducting the activities alleged in this Complaint, each of the Defendants was acting within the course and scope of this agency, service, or employment, and was acting with the consent, permission, and authorization of each of the other Defendants. All actions of each of the Defendants alleged in this Complaint were ratified and approved by every other Defendant or their officers or managing agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the alleged wrongful conduct of each of the other Defendants.

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

5 **JURISDICTION**

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

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

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

23 **BACKGROUND AND PRELIMINARY FACTS**

24 11. In 1986, California voters approved an initiative to address growing concerns about
25 exposure to toxic chemicals and declared their right “[t]o be informed about exposures
26 to chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,
27 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
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1 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections
2 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources
3 from contamination, to allow consumers to make informed choices about the products
4 they buy, and to enable persons to protect themselves from toxic chemicals as they see
5 fit.

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

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

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

23 15. Plaintiff identified certain practices of manufacturers and distributors of Di-n-butyl
24 Phthalate (“DBP”) and Diisononyl phthalate (“DINP”) -bearing products of exposing,
25 knowingly and intentionally, persons in California to DINP and DBP of such products
26 without first providing clear and reasonable warnings of such to the exposed persons
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1 prior to the time of exposure. Plaintiff later discerned that Defendants engaged in such
2 practice.

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

9 17. On December 2, 2005, the Governor of California added Di-n-butyl Phthalate (“DBP”)
10 to the list of chemicals known to the State to cause developmental, and reproductive
11 toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)). DBP is known to the State to cause
12 developmental, female, and male reproductive toxicity. Pursuant to Health and Safety
13 Code Sections 25249.9 and 25249.10, twenty (20) months after addition of DBP to the
14 list of chemicals known to the State to cause reproductive toxicity, DBP became fully
15 subject to Proposition 65 warning requirements and discharge prohibitions.

16 **SATISFACTION OF PRIOR NOTICE**

17 18. Plaintiff gave notice of alleged violations of Health and Safety Code Section 25249.6 as
18 follows:

19 a. On or about May 14, 2020, concerning consumer products exposures subject to
20 a private action to TJX and to the California Attorney General, County District
21 Attorneys, and City Attorneys for each city containing a population of at least
22 750,000 people in whose jurisdictions the violations allegedly occurred,
23 concerning Suction Caddy.

24 b. On or about September 9, 2020, Plaintiff gave notice of alleged violations of
25 Health and Safety Code Section 25249.6, concerning consumer products
26 exposures subject to a private action to TJX and to the California Attorney
27 General, County District Attorneys, and City Attorneys for each city containing
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1 a population of at least 750,000 people in whose jurisdictions the violations
2 allegedly occurred, concerning Suction Cup Phone Mount with PVC
3 Components.

4 19. Before sending the notice of alleged violations, Plaintiff investigated the consumer
5 products involved, the likelihood that such products would cause users to suffer
6 significant exposures to DBP and DINP, and the corporate structure of each of the
7 Defendants.

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

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

21 22. Plaintiff is commencing this action more than sixty (60) days from the dates that
22 Plaintiff gave notice of the alleged violations to TJX, and the public prosecutors
23 referenced in Paragraph 18.

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

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1 **FIRST CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against TJX, and DOES 1-10**
3 **for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement**
4 **Act of 1986 (Health & Safety Code, §§ 25249.5, et seq.))**

5 **Sink Suction Caddy**

- 6 24. Plaintiff repeats and incorporates by reference paragraphs 1 through 23 of this
7 complaint as though fully set forth herein.
- 8 25. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
9 distributor, promoter, or retailer of Suction Caddies including but not limited to: “AQ;”
10 “SINK SUCTION CADDY;” “WWW.ROBELY.COM;” “MADE IN CHINA;” “ST-
11 7320-CAD;” “0 66518 29073 9;” (“Caddies”).
- 12 26. Caddies contain DBP.
- 13 27. Defendants knew or should have known that DBP has been identified by the State of
14 California as a chemical known to cause developmental toxicity; and reproductive
15 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants
16 were also informed of the presence of DBP in Caddies within Plaintiff’s notice of
17 alleged violations further discussed above at Paragraph 18a.
- 18 28. Plaintiff’s allegations regarding Caddies concerns “[c]onsumer products exposure[s],”
19 which “is an exposure that results from a person’s acquisition, purchase, storage,
20 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
21 that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b)*.
22 Caddies are consumer products, and, as mentioned herein, exposures to DBP took place
23 as a result of such normal and foreseeable consumption and use.
- 24 29. Plaintiff is informed, believes, and thereon alleges that between May 14, 2017 and the
25 present, each of the Defendants knowingly and intentionally exposed California
26 consumers and users of Caddies, which Defendants manufactured, distributed, or sold
27 as mentioned above, to DBP, without first providing any type of clear and reasonable
28 warning of such to the exposed persons before the time of exposure. Defendants have

1 distributed and sold Caddies in California. Defendants know and intend that California
2 consumers will use Caddies, thereby exposing them to DBP. Defendants thereby
3 violated Proposition 65.

4 30. The principal routes of exposure are through dermal contact, ingestion and inhalation.
5 Persons sustain exposures by using, carrying, or handling the Caddies without wearing
6 gloves or by touching bare skin or mucous membranes with or without gloves after
7 handling Caddies, as a direct and indirect hand to mouth contact, hand to mucous
8 membrane, trans-dermal absorption, or breathing in particulate matter emanating from
9 Caddies during use, as well as through environmental mediums that carry the DBP once
10 contained within the Caddies.

11 31. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations
12 of Proposition 65 as to Caddies have been ongoing and continuous, as Defendants
13 engaged and continue to engage in conduct which violates Health and Safety Code
14 Section 25249.6, including the manufacture, distribution, promotion, and sale of
15 Caddies, so that a separate and distinct violation of Proposition 65 occurred each and
16 every time a person was exposed to DBP by Caddies as mentioned herein.

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

20 33. Based on the allegations herein, Defendants are liable for civil penalties of up to
21 \$2,500.00 per day per individual exposure to DBP from Caddies, pursuant to Health and
22 Safety Code Section 25249.7(b).

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

25 **SECOND CAUSE OF ACTION**

26 **(By CONSUMER ADVOCACY GROUP, INC. and against TJX, and DOES 11-20**
27 **for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement**
28 **Act of 1986 (Health & Safety Code, §§ 25249.5, et seq.))**

Car Accessories

- 1
- 2 35. Plaintiff repeats and incorporates by reference paragraphs 1 through 34 of this
- 3 complaint as though fully set forth herein.
- 4 36. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
- 5 distributor, promoter, or retailer of Suction Cup Phone Mount with PVC Components
- 6 including but not limited to: “ArmorAll™”; “Phone Mount/Support with extendable
- 7 arm”; “360 Rotation”; “Get behind the shield”; “Ext Arm Mount #AMK3-0919-BLK”;
- 8 “UPC 8 05106 80107 6”; “SKU 59-7520-940601-00699-24-2” (“Suction Cups”).
- 9 37. Suction Cups contain DINP.
- 10 38. Defendants knew or should have known that DINP has been identified by the State of
- 11 California as a chemical known to cause cancer and therefore was subject to Proposition
- 12 65 warning requirements. Defendants were also informed of the presence of DINP in
- 13 Suction Cups within Plaintiff’s notice of alleged violations further discussed above at
- 14 Paragraph 18b.
- 15 39. Plaintiff’s allegations regarding Suction Cups concerns “[c]onsumer products
- 16 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
- 17 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
- 18 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
- 19 *25602(b)*. Suction Cups are consumer products, and, as mentioned herein, exposures to
- 20 DINP took place as a result of such normal and foreseeable consumption and use.
- 21 40. Plaintiff is informed, believes, and thereon alleges that between September 9, 2017 and
- 22 the present, each of the Defendants knowingly and intentionally exposed California
- 23 consumers and users of Suction Cups, which Defendants manufactured, distributed, or
- 24 sold as mentioned above, to DINP, without first providing any type of clear and
- 25 reasonable warning of such to the exposed persons before the time of exposure.
- 26 Defendants have distributed and sold Suction Cups in California. Defendants know and

1 intend that California consumers will use Suction Cups, thereby exposing them to
2 DINP. Defendants thereby violated Proposition 65.

3 41. The principal routes of exposure are through dermal contact, ingestion and inhalation.
4 Persons sustain exposures by using, carrying, or handling the Handbags without
5 wearing gloves or by touching bare skin or mucous membranes with or without gloves
6 after handling Handbags, as a direct and indirect hand to mouth contact, hand to mucous
7 membrane, trans-dermal absorption, or breathing in particulate matter emanating from
8 Handbags during use, as well as through environmental mediums that carry the DINP
9 once contained within the Handbags.

10 42. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations
11 of Proposition 65 as to Suction Cups have been ongoing and continuous, as Defendants
12 engaged and continue to engage in conduct which violates Health and Safety Code
13 Section 25249.6, including the manufacture, distribution, promotion, and sale of
14 Suction Cups, so that a separate and distinct violation of Proposition 65 occurred each
15 and every time a person was exposed to DINP by Suction Cups as mentioned herein.

16 43. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
17 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
18 violations alleged herein will continue to occur into the future.

19 44. Based on the allegations herein, Defendants are liable for civil penalties of up to
20 \$2,500.00 per day per individual exposure to DINP from Suction Cups, pursuant to
21 Health and Safety Code Section 25249.7(b).

22 45. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
23 filing this Complaint.

24 **PRAYER FOR RELIEF**

25 Plaintiff demands against each of the Defendants as follows:

26 46. A permanent injunction mandating Proposition 65-compliant warnings;

27 47. Penalties pursuant to Health and Safety Code Section 25249.7, subdivision (b);

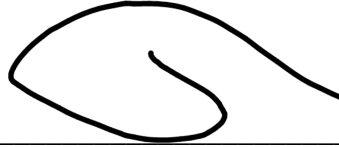
28 48. Costs of suit;

1 49. Reasonable attorney fees and costs; and

2 50. Any further relief that the court may deem just and equitable.

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4 Dated: December 2, 2020

YEROUSHALMI & YEROUSHALMI*

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7 _____
8 Reuben Yeroushalmi
9 Attorneys for Plaintiff,
10 CONSUMER ADVOCACY GROUP, INC.