

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Theresa Traber

1 Reuben Yeroushalmi (SBN 193981)

2 reuben@yerausalmi.com

3 **YEROUSHALMI & YEROUSHALMI***

4 9100 Wilshire Boulevard, Suite 240W

5 Beverly Hills, California 90212

6 Telephone: (310) 623-1926

7 Facsimile: (310) 623-1930

8 Attorneys for Plaintiff,

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 HOMEGOODS, INC., a Delaware
19 Corporation;
20 MARSHALLS OF MA, INC., a
21 Massachusetts Corporation;
22 and DOES 1-60,

23 Defendants.

24 CASE NO. **21STCV05055**

25 COMPLAINT FOR PENALTY AND
26 INJUNCTION

27 Violation of Proposition 65, the Safe
28 Drinking Water and Toxic Enforcement
Act of 1986 (*Health & Safety Code*, §
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL
CASE (exceeds \$25,000)

29 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges six causes of action against
30 defendants THE TJX COMPANIES, INC.; HOMEGOODS, INC.; MARSHALLS OF MA,
31 INC.; and DOES 1-60 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 THE TJX COMPANIES, INC. (“TJX”) is a Delaware Corporation doing business in the State of California at all relevant times herein.
3. Defendant HOMEGOODS, INC. (“HOMEGOODS”) is a Delaware Corporation doing business in the State of California at all relevant times herein.
4. Defendant MARSHALLS OF MA, INC. (“MARSHALLS”) is a Massachusetts Corporation doing business in the State of California at all relevant times herein.
5. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-60, 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.
6. At all times mentioned herein, the term “Defendants” includes TJX, HOMEGOODS, MARSHALLS, and DOES 1-60.
7. 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.
8. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-60, 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

1 the other Defendants. All actions of each of the Defendants alleged in this Complaint
2 were ratified and approved by every other Defendant or their officers or managing
3 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the
4 alleged wrongful conduct of each of the other Defendants.

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

9 **JURISDICTION**

- 10 10. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
11 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
12 those given by statute to other trial courts. This Court has jurisdiction over this action
13 pursuant to Health and Safety Code Section 25249.7, which allows enforcement of
14 violations of Proposition 65 in any Court of competent jurisdiction.
- 15 11. This Court has jurisdiction over Defendants named herein because Defendants either
16 reside or are located in this State or are foreign corporations authorized to do business in
17 California, are registered with the California Secretary of State, or who do sufficient
18 business in California, have sufficient minimum contacts with California, or otherwise
19 intentionally avail themselves of the markets within California through their
20 manufacture, distribution, promotion, marketing, or sale of their products within
21 California to render the exercise of jurisdiction by the California courts permissible
22 under traditional notions of fair play and substantial justice.
- 23 12. Venue is proper in the County of Los Angeles because one or more of the instances of
24 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
25 because Defendants conducted, and continue to conduct, business in the County of Los
26 Angeles with respect to the consumer product that is the subject of this action.

1 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

22 16. Proposition 65 provides that any person "violating or threatening to violate" the statute
23 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
24 25249.7. "Threaten to violate" means "to create a condition in which there is a
25 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
26 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
27 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

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1 17. Plaintiff identified certain practices of manufacturers and distributors exposing,
2 knowingly and intentionally, persons in California to Diethyl Hexyl Phthalate and Bis
3 (2-ethylhexyl) phthalate, without first providing clear and reasonable warnings of such to
4 the exposed persons prior to the time of exposure. Plaintiff later discerned that
5 Defendants engaged in such practice.

6 18. On January 1, 1988, the Governor of California added Diethyl Hexyl Phthalate and Bis
7 (2-ethylhexyl) phthalate (“DEHP”) to the list of chemicals known to the State to cause
8 cancer, (*Cal. Code Regs.* tit. 27, § 27001(b)) and on October 24, 2003, the Governor
9 added DEHP to the list of chemicals known to the State to cause developmental male
10 reproductive toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)). Pursuant to Health and
11 Safety Code sections 25249.9 and 25249.10, twenty (20) months after addition of DEHP
12 to the list of chemicals known to the State to cause reproductive toxicity, DEHP became
13 fully subject to Proposition 65 warning requirements and discharge prohibitions.

14 **SATISFACTION OF PRIOR NOTICE**

15 19. Plaintiff served the following notices for alleged violations of Health and Safety Code
16 Section 25249.6, concerning consumer products exposures:

- 17 a. On or about May 28, 2020, Plaintiff gave notice of alleged violations of Health
18 and Safety Code Section 25249.6, concerning consumer products exposures
19 subject to a private action to MARSHALLS and to the California Attorney
20 General, County District Attorneys, and City Attorneys for each city containing
21 a population of at least 750,000 people in whose jurisdictions the violations
22 allegedly occurred, concerning Suction Cup Mirror.
- 23 b. On or about June 8, 2020, Plaintiff gave notice of alleged violations of Health
24 and Safety Code Section 25249.6, concerning consumer products exposures
25 subject to a private action to MARSHALLS and to the California Attorney
26 General, County District Attorneys, and City Attorneys for each city containing

1 a population of at least 750,000 people in whose jurisdictions the violations
2 allegedly occurred, concerning Suction Sponge Caddy with Plastic Components.

- 3 c. On or about September 2, 2020, Plaintiff gave notice of alleged violations of
4 Health and Safety Code Section 25249.6, concerning consumer products
5 exposures subject to a private action to MARSHALLS and to the California
6 Attorney General, County District Attorneys, and City Attorneys for each city
7 containing a population of at least 750,000 people in whose jurisdictions the
8 violations allegedly occurred, concerning Inflatable Unicorn Ring Toys.
- 9 d. On or about October 28, 2020, Plaintiff gave notice of alleged violations of
10 Health and Safety Code Section 25249.6, concerning consumer products
11 exposures subject to a private action to MARSHALLS, TJX, and to the
12 California Attorney General, County District Attorneys, and City Attorneys for
13 each city containing a population of at least 750,000 people in whose
14 jurisdictions the violations allegedly occurred, concerning Jump Rope with PVC
15 Components.
- 16 e. On or about November 5, 2020, Plaintiff gave notice of alleged violations of
17 Health and Safety Code Section 25249.6, concerning consumer products
18 exposures subject to a private action to HOMEGOODS and to the California
19 Attorney General, County District Attorneys, and City Attorneys for each city
20 containing a population of at least 750,000 people in whose jurisdictions the
21 violations allegedly occurred, concerning Metallic Placemats.
- 22 f. On or about November 20, 2020, Plaintiff gave notice of alleged violations of
23 Health and Safety Code Section 25249.6, concerning consumer products
24 exposures subject to a private action to TJX and to the California Attorney
25 General, County District Attorneys, and City Attorneys for each city containing
26 a population of at least 750,000 people in whose jurisdictions the violations
27 allegedly occurred, concerning Clutch with Polymer Components.

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

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

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

16 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
17 gave notice of the alleged violations to TJX, HOMEGOODS, MARSHALLS, and the
18 public prosecutors referenced in Paragraph 19.

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

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23 **FIRST CAUSE OF ACTION**

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

27 **Beauty Accessories**

28 25. Plaintiff repeats and incorporates by reference paragraphs 1 through 24 of this complaint
as though fully set forth herein.

1 26. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
2 distributor, promoter, or retailer of Suction Cup Mirror, including but not limited to: “Pro
3 Image 5x Suction Cup Mirror”; “Hot Tools Professional”; “Style #HT79”; “1059I”;
4 1287 090658844 00300 47; “Distributed by Helen of Troy”; “UPC 0 97954 51078 5”;
5 “Made in China” (“Mirrors”).

6 27. Mirrors contain DEHP.

7 28. Defendants knew or should have known that DEHP has been identified by the State of
8 California as a chemical known to cause cancer, and reproductive toxicity and therefore
9 was subject to Proposition 65 warning requirements. Defendants were also informed of
10 the presence of DEHP in Mirrors within Plaintiff’s notice of alleged violations further
11 discussed above at Paragraph 19a.

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

18 30. Plaintiff is informed, believes, and thereon alleges that between May 28, 2017 and the
19 present, each of the Defendants knowingly and intentionally exposed California
20 consumers and users of Mirrors, which Defendants manufactured, distributed, or sold as
21 mentioned above, to DEHP, without first providing any type of clear and reasonable
22 warning of such to the exposed persons before the time of exposure. Defendants have
23 distributed and sold Mirrors in California. Defendants know and intend that California
24 consumers will use Mirrors, thereby exposing them to DEHP. Defendants thereby
25 violated Proposition 65.

26 31. Plaintiff is informed, believes, and thereon alleges that MARSHALLS is selling Mirrors
27 under a brand or trademark that is owned or licensed by MARSHALLS or an entity
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1 affiliated thereto; has knowingly introduced DEHP into Mirrors or knowingly caused
2 DEHP to be created in Mirrors; have covered, obscured or altered a warning label that
3 has been affixed to Mirrors by the manufacturer, producer, packager, importer, supplier
4 or distributor of Mirrors; have received a notice and warning materials for exposure from
5 DEHP without conspicuously posting or displaying the warning materials; and/or have
6 actual knowledge of potential exposure to DEHP from Mirrors.

7 32. The principal routes of exposure are through dermal contact, ingestion and inhalation.
8 Persons sustain exposures by handling Mirrors without wearing gloves or any other
9 personal protective equipment, or by touching bare skin or mucous membranes with
10 gloves after handling Mirrors, as well as through direct and indirect hand to mouth
11 contact, hand to mucous membrane, or breathing in particulate matter emanating from
12 Mirrors during use, as well as through environmental mediums that carry the DEHP once
13 contained within the Mirrors.

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

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

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

26 36. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
27 filing this Complaint.

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1 **SECOND CAUSE OF ACTION**

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

5 **Suction Caddy**

6 37. Plaintiff repeats and incorporates by reference paragraphs 1 through 36 of this complaint
7 as though fully set forth herein.

8 38. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
9 distributor, promoter, or retailer of Suction Sponge Caddy with Plastic Components,
10 including but not limited to: (i) "Pure Care Suction Sponge Caddy"; " 8 40432 19195 8";
11 "Made In China"; "Marshalls 1282-053776763-000299-24-2"; "8257-5765-999394-81";
12 and (ii) "Pure Care Suction Sponge Caddy"; " 8 40432 19194 1"; "Made In China";
13 "Marshalls 1282-019403096-000299-24-2"; "8257-5765-999393-81" ("Caddies").

14 39. Caddies contain DEHP.

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

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

24 Caddies are consumer products, and, as mentioned herein, exposures to DEHP took
25 place as a result of such normal and foreseeable use.

26 42. Plaintiff is informed, believes, and thereon alleges that between June 8, 2017 and the
27 present, each of the Defendants knowingly and intentionally exposed California
28 consumers and users of Caddies, which Defendants manufactured, distributed, or sold as

1 mentioned above, to DEHP, without first providing any type of clear and reasonable
2 warning of such to the exposed persons before the time of exposure. Defendants have
3 distributed and sold Caddies in California. Defendants know and intend that California
4 consumers will use Caddies, thereby exposing them to DEHP. Defendants thereby
5 violated Proposition 65.

6 43. Plaintiff is informed, believes, and thereon alleges that MARSHALLS is selling Caddies
7 under a brand or trademark that is owned or licensed by MARSHALLS or an entity
8 affiliated thereto; has knowingly introduced DEHP into Caddies or knowingly caused
9 DEHP to be created in Caddies; have covered, obscured or altered a warning label that
10 has been affixed to Caddies by the manufacturer, producer, packager, importer, supplier
11 or distributor of Caddies; have received a notice and warning materials for exposure
12 from DEHP without conspicuously posting or displaying the warning materials; and/or
13 have actual knowledge of potential exposure to DEHP from Caddies.

14 44. The principal routes of exposure are through dermal contact, ingestion and inhalation.
15 Persons sustain exposures by handling Caddies without wearing gloves or any other
16 personal protective equipment, or by touching bare skin or mucous membranes with
17 gloves after handling Caddies, as well as through direct and indirect hand to mouth
18 contact, hand to mucous membrane, or breathing in particulate matter emanating from
19 Mirrors during use, as well as through environmental mediums that carry the DEHP once
20 contained within the Caddies.

21 45. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
22 Proposition 65 as to Caddies have been ongoing and continuous, as Defendants engaged
23 and continue to engage in conduct which violates Health and Safety Code Section
24 25249.6, including the manufacture, distribution, promotion, and sale of Caddies, so that
25 a separate and distinct violation of Proposition 65 occurred each and every time a person
26 was exposed to DEHP by Caddies as mentioned herein.

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

4 47. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to DEHP from Caddies, pursuant to Health
6 and Safety Code Section 25249.7(b).

7 48. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
8 filing this Complaint.

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10 **THIRD CAUSE OF ACTION**

11 **(By CONSUMER ADVOCACY GROUP, INC. and against MARSHALLS and**
12 **DOES 21-30 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
13 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

14 **Toys**

15 49. Plaintiff repeats and incorporates by reference paragraphs 1 through 48 of this complaint
16 as though fully set forth herein.

17 50. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
18 distributor, promoter, or retailer of Inflatable Unicorn Ring Toys, including but not
19 limited to: “Inflatable Unicorn Ring Toss”; “5 pc. Set, 3ft Tall”; “For ages 3 years &
20 up”; “UPC 0 84358 05228 7”; “Made in China”; “1245-0938831231-000999-06-2”;
21 “4576—7610—354950—81” (“Toys”).

22 51. Toys contain DEHP.

23 52. Defendants knew or should have known that DEHP has been identified by the State of
24 California as a chemical known to cause cancer, and reproductive toxicity and therefore
25 was subject to Proposition 65 warning requirements. Defendants were also informed of
26 the presence of DEHP in Toys within Plaintiff’s notice of alleged violations further
27 discussed above at Paragraph 19c.

28 53. Plaintiff’s allegations regarding Toys concerns “[c]onsumer products exposure[s],”
which “is an exposure that results from a person’s acquisition, purchase, storage,

1 consumption, or other reasonably foreseeable use of a consumer good, or any exposure
2 that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b)*.

3 Toys are consumer products, and, as mentioned herein, exposures to DEHP took place as
4 a result of such normal and foreseeable use.

5 54. Plaintiff is informed, believes, and thereon alleges that between September 2, 2017 and
6 the present, each of the Defendants knowingly and intentionally exposed California
7 consumers and users of Toys, which Defendants manufactured, distributed, or sold as
8 mentioned above, to DEHP, without first providing any type of clear and reasonable
9 warning of such to the exposed persons before the time of exposure. Defendants have
10 distributed and sold Toys in California. Defendants know and intend that California
11 consumers will use Toys, thereby exposing them to DEHP. Defendants thereby violated
12 Proposition 65.

13 55. Plaintiff is informed, believes, and thereon alleges that MARSHALLS is selling Toys
14 under a brand or trademark that is owned or licensed by MARSHALLS or an entity
15 affiliated thereto; has knowingly introduced DEHP into Toys or knowingly caused
16 DEHP to be created in Toys; have covered, obscured or altered a warning label that has
17 been affixed to Toys by the manufacturer, producer, packager, importer, supplier or
18 distributor of Toys; have received a notice and warning materials for exposure from
19 DEHP without conspicuously posting or displaying the warning materials; and/or have
20 actual knowledge of potential exposure to DEHP from Toys.

21 56. The principal routes of exposure are through dermal contact, ingestion and inhalation.
22 Persons sustain exposures by handling Toys without wearing gloves or any other
23 personal protective equipment, or by touching bare skin or mucous membranes with
24 gloves after handling Toys, as well as through direct and indirect hand to mouth contact,
25 hand to mucous membrane, or breathing in particulate matter emanating from Toys
26 during use, as well as through environmental mediums that carry the DEHP once
27 contained within the Toys.

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1 57. Plaintiff is informed, believes, and thereon alleges that each of Defendants’ violations of
2 Proposition 65 as to Toys have been ongoing and continuous, as Defendants engaged and
3 continue to engage in conduct which violates Health and Safety Code Section 25249.6,
4 including the manufacture, distribution, promotion, and sale of Toys, so that a separate
5 and distinct violation of Proposition 65 occurred each and every time a person was
6 exposed to DEHP by Toys as mentioned herein.

7 58. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
8 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
9 violations alleged herein will continue to occur into the future.

10 59. Based on the allegations herein, Defendants are liable for civil penalties of up to
11 \$2,500.00 per day per individual exposure to DEHP from Toys, pursuant to Health and
12 Safety Code Section 25249.7(b).

13 60. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
14 filing this Complaint.

15 **FOURTH CAUSE OF ACTION**

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

19 **Workout Gear**

20 61. Plaintiff repeats and incorporates by reference paragraphs 1 through 60 of this complaint
21 as though fully set forth herein.

22 62. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
23 distributor, promoter, or retailer of Jump Rope with PVC Components, including but not
24 limited to: (i) “Form Fit ®”; “Weighted Jump Rope”; “1/2 Removable Weights”; “10
25 Foot Length, Burn Calories, Weighted Handles” ; “FFJR1002-PNK”; “UPC 8 40824
26 13205 7” ; “Designed in USA, Made in China”; “1287-091779847-000599-24-2”;
27 “8786—8615—385098—81”; and (ii) “Form Fit ®”; “Weighted Jump Rope”; “1/2
28 Removable Weights”; “10 Foot Length, Burn Calories, Weighted Handles” ;

1 “FFJR1002-BLU”; “UPC 8 40824 13203 3” ; ‘Designed in USA, Made in China’;
2 “1287-091779823-000599-24-2”; “8786—8615—385090—81” (“Jump Ropes”).

3 63. Jump Ropes contain DEHP.

4 64. Defendants knew or should have known that DEHP has been identified by the State of
5 California as a chemical known to cause cancer, and reproductive toxicity and therefore
6 was subject to Proposition 65 warning requirements. Defendants were also informed of
7 the presence of DEHP in Jump Ropes within Plaintiff’s notice of alleged violations
8 further discussed above at Paragraph 19d.

9 65. Plaintiff’s allegations regarding Jump Ropes concerns “[c]onsumer products
10 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
11 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
12 exposure that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, §
13 25602(b). Jump Ropes are consumer products, and, as mentioned herein, exposures to
14 DEHP took place as a result of such normal and foreseeable use.

15 66. Plaintiff is informed, believes, and thereon alleges that between October 28, 2017 and
16 the present, each of the Defendants knowingly and intentionally exposed California
17 consumers and users of Jump Ropes, which Defendants manufactured, distributed, or
18 sold as mentioned above, to DEHP, without first providing any type of clear and
19 reasonable warning of such to the exposed persons before the time of exposure.
20 Defendants have distributed and sold Jump Ropes in California. Defendants know and
21 intend that California consumers will use Jump Ropes, thereby exposing them to DEHP.
22 Defendants thereby violated Proposition 65.

23 67. Plaintiff is informed, believes, and thereon alleges that MARSHALLS and TJX are
24 selling Jump Ropes under a brand or trademark that is owned or licensed by
25 MARSHALLS and/or TJX or an entity affiliated thereto; have knowingly introduced
26 DEHP into Jump Ropes or knowingly caused DEHP to be created in Jump Ropes; have
27 covered, obscured or altered a warning label that has been affixed to Jump Ropes by the
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1 manufacturer, producer, packager, importer, supplier or distributor of Jump Ropes; have
2 received a notice and warning materials for exposure from DEHP without conspicuously
3 posting or displaying the warning materials; and/or have actual knowledge of potential
4 exposure to DEHP from Jump Ropes.

5 68. The principal routes of exposure are through dermal contact, ingestion and inhalation.
6 Persons sustain exposures by handling Jump Ropes without wearing gloves or any other
7 personal protective equipment, or by touching bare skin or mucous membranes with
8 gloves after handling Jump Ropes, as well as through direct and indirect hand to mouth
9 contact, hand to mucous membrane, or breathing in particulate matter emanating from
10 Jump Ropes during use, as well as through environmental mediums that carry the DEHP
11 once contained within the Jump Ropes.

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

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

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

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

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1 **FIFTH CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against HOMEGOODS and**
3 **DOES 41-50 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
4 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

5 **Home Accessories**

6 73. Plaintiff repeats and incorporates by reference paragraphs 1 through 72 of this complaint
7 as though fully set forth herein.

8 74. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
9 distributor, promoter, or retailer of Metallic Placemats, including but not limited to:
10 Silver Rectangular Placemats “Cambria Metallic Effect Placemats”; “For Indoor &
11 Outdoor 12’ x 18’ Set of 4”; “Table & Co”; “UPC 8 07709 83929 6”; “Dept 21 Style
12 442383 Type 2 CAT 2850” (“Placemats”).

13 75. Placemats contain DEHP.

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

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

25 78. Plaintiff is informed, believes, and thereon alleges that between November 5, 2017 and
26 the present, each of the Defendants knowingly and intentionally exposed California
27 consumers and users of Placemats which Defendants manufactured, distributed, or sold
28 as mentioned above, to DEHP, without first providing any type of clear and reasonable

1 warning of such to the exposed persons before the time of exposure. Defendants have
2 distributed and sold Placemats in California. Defendants know and intend that
3 California consumers will use Placemats, thereby exposing them to DEHP. Defendants
4 thereby violated Proposition 65.

5 79. Plaintiff is informed, believes, and thereon alleges that HOMEGOODS is selling
6 Placemats under a brand or trademark that is owned or licensed by HOMEGOODS or an
7 entity affiliated thereto; have knowingly introduced DEHP into HOMEGOODS or
8 knowingly caused DEHP to be created in HOMEGOODS; has covered, obscured or
9 altered a warning label that has been affixed to Placemats by the manufacturer, producer,
10 packager, importer, supplier or distributor of Placemats; have received a notice and
11 warning materials for exposure from DEHP without conspicuously posting or displaying
12 the warning materials; and/or have actual knowledge of potential exposure to DEHP
13 from Placemats.

14 80. The principal routes of exposure are through dermal contact, ingestion and inhalation.
15 Persons sustain exposures by handling Placemats without wearing gloves or any other
16 personal protective equipment, or by touching bare skin or mucous membranes with
17 gloves after handling Placemats, as well as through direct and indirect hand to mouth
18 contact, hand to mucous membrane, or breathing in particulate matter emanating from
19 Placemats during use, as well as through environmental mediums that carry the DEHP
20 once contained within the Placemats.

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

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

4 83. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to DEHP from Placemats, pursuant to Health
6 and Safety Code Section 25249.7(b).

7 84. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
8 filing this Complaint.

9
10 **SIXTH CAUSE OF ACTION**

11 **(By CONSUMER ADVOCACY GROUP, INC. and against TJX and DOES 51-60**
12 **for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement**
13 **Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

14 **Fashion Accessories**

15 85. Plaintiff repeats and incorporates by reference paragraphs 1 through 84 of this complaint
16 as though fully set forth herein.

17 86. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
18 distributor, promoter, or retailer of Clutch with Polymer Components, including but not
19 limited to: “Gold Carry-All Clutch” ; “Macbeth Collection by Margaret Josephs 11.5in x
20 7.5in x5in” “Style 87-6003-429779-001499-01-2” “Compare at \$19.00 \$14.99” “UPC 0
21 91141 38835 5” “Manufactured and distributed by Advantus Corp under the license from
22 Macbeth Collection by Margaret Josephs 38835” “Made in China” (“Clutch”).

23 87. Clutch contains DEHP.

24 88. Defendants knew or should have known that DEHP has been identified by the State of
25 California as a chemical known to cause cancer, and reproductive toxicity and therefore
26 was subject to Proposition 65 warning requirements. Defendants were also informed of
27 the presence of DEHP in Clutch within Plaintiff's notice of alleged violations further
28 discussed above at Paragraph 19f.

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

5 Clutch are consumer products, and, as mentioned herein, exposures to DEHP took place
6 as a result of such normal and foreseeable use.

7 90. Plaintiff is informed, believes, and thereon alleges that between November 20, 2017 and
8 the present, each of the Defendants knowingly and intentionally exposed California
9 consumers and users of Clutch which Defendants manufactured, distributed, or sold as
10 mentioned above, to DEHP, without first providing any type of clear and reasonable
11 warning of such to the exposed persons before the time of exposure. Defendants have
12 distributed and sold Clutch in California. Defendants know and intend that California
13 consumers will use Placemats, thereby exposing them to DEHP. Defendants thereby
14 violated Proposition 65.

15 91. Plaintiff is informed, believes, and thereon alleges that TJX is selling Clutch under a
16 brand or trademark that is owned or licensed by TJX or an entity affiliated thereto; have
17 knowingly introduced DEHP into TJX or knowingly caused DEHP to be created in
18 HOMEGOODS; has covered, obscured or altered a warning label that has been affixed
19 to Clutch by the manufacturer, producer, packager, importer, supplier or distributor of
20 Clutch; have received a notice and warning materials for exposure from DEHP without
21 conspicuously posting or displaying the warning materials; and/or have actual
22 knowledge of potential exposure to DEHP from Clutch.

23 92. The principal routes of exposure are through dermal contact, ingestion and inhalation.
24 Persons sustain exposures by handling Clutch without wearing gloves or any other
25 personal protective equipment, or by touching bare skin or mucous membranes with
26 gloves after handling Clutch, as well as through direct and indirect hand to mouth
27 contact, hand to mucous membrane, or breathing in particulate matter emanating from
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1 Clutch during use, as well as through environmental mediums that carry the DEHP once
2 contained within the Clutch.

3 93. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
4 Proposition 65 as to Placemats have been ongoing and continuous, as Defendants
5 engaged and continue to engage in conduct which violates Health and Safety Code
6 Section 25249.6, including the manufacture, distribution, promotion, and sale of
7 Placemats, so that a separate and distinct violation of Proposition 65 occurred each and
8 every time a person was exposed to DEHP by Clutch as mentioned herein.

9 94. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
10 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
11 violations alleged herein will continue to occur into the future.

12 95. Based on the allegations herein, Defendants are liable for civil penalties of up to
13 \$2,500.00 per day per individual exposure to DEHP from Clutch, pursuant to Health and
14 Safety Code Section 25249.7(b).

15 96. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
16 filing this Complaint.

17 **PRAYER FOR RELIEF**

18 Plaintiff demands against each of the Defendants as follows:

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

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1 Dated: February 9, 2021

YEROUSHALMI & YEROUSHALMI*

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4 _____
5 Reuben Yeroushalmi
6 Attorneys for Plaintiff,
7 CONSUMER ADVOCACY GROUP, INC.
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