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ENDORSED
FILED
ALAMEDA COUNTY
NOV 30 2020
CLERK OF THE SUPERIOR COURT
By TANIA PIETROTTI

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

11 PRECILA BALABBO,

12 Plaintiff,

13 vs.

14 THE TJX COMPANIES, INC.,

Defendant.

Case No.: Rg20082625

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

15 Plaintiff Precila Balabbo ("Plaintiff"), by and through her attorneys, alleges the following
16 cause of action in the public interest of the citizens of the State of California.

17 **BACKGROUND OF THE CASE**

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

24 2. This complaint is a representative action brought by Plaintiff in the public interest
25 of the citizens of the State of California to enforce the People's right to be informed of the health
26 hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP) and/or diisononyl phthalate
27 (DINP), toxic chemicals found in kits/pouches/cases sold and/or distributed by defendant The TJX
28 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, and DINP is a harmful chemical known to the State of California to cause
3 cancer. On January 1, 1988 (DEHP) and on December 20, 2013 (DINP), the State of California
4 listed DEHP and DINP as chemicals known to the State to cause cancer and each chemical has
5 come under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, §
6 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On October 24, 2003, the State of
7 California listed DEHP as a chemical known to cause reproductive toxicity.

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

13 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
14 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
15 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
16 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
17 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
18 25249.7.

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

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

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

28

1 of California, and/or has otherwise purposefully availed itself of the California market. Such
2 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and
3 permissible with traditional notions of fair play and substantial justice.

4 **STATUTORY BACKGROUND**

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

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

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

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

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

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

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 (DEHP) and on December 20, 2013 (DINP), the State of
16 California listed DEHP and DINP as chemicals known to the State to cause cancer and each
17 chemical has come under the purview of Proposition 65 regulations since that time. Cal. Code
18 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On October 24, 2003,
19 the State of California listed DEHP as a chemical known to cause 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/DINP by dermal absorption through direct skin
22 contact with the Products during routine use when contacted with bare hands. If the Products are
23 contacted with wet hands or comes into contact with wet skin, DEHP/DINP skin permeation rates
24 from aqueous solutions are faster than neat DEHP/DINP permeation. Items placed inside the
25 Products can absorb DEHP/DINP that can be subsequently handled, held in direct contact with
26 skin, mouthed, or ingested by the user. DEHP from the Products can absorb to clothes, bedding
27 and assorted other items placed inside the Products and these items will become a source of
28 DEHP/DINP dermal exposure when worn, handled, or used. If the Products are stored or

1 transported in a carrier, DEHP/DINP that leaches from the Products may contaminate other articles
2 contained within these closed spaces are subsequently handled, worn, mouthed, or consumed.
3 Finally, while direct mouthing of the Products does not seem likely, some amount of exposure
4 through ingestion can occur by touching of the user's hand to mouth.

5 24. Defendant has marketed, distributed, offered to sell and/or sold the Products in
6 California since at least January of 2020. The Products continue to be distributed and sold in
7 California without the requisite warning information.

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

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

17 **SATISFACTION OF NOTICE REQUIREMENTS**

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

19 27. On January 20, 2020, Plaintiff gave notice of alleged violation of Health and Safety
20 Code § 25249.6 (a "Notice of Violation") to Defendant concerning the exposure of California
21 citizens to DEHP contained in the Rae Dunn Zippered Pouch with TJX identifying tag #s Item#
22 POL37, 1281-005652714-00999-23-1, 8192-9221-188051-FLS12 without proper warning,
23 subject to a private action to Defendant and to the California Attorney General's office and the
24 offices of the County District attorneys and City Attorneys for each city with a population greater
25 than 750,000 persons wherein the herein violations allegedly occurred. See attached at Exhibit "A"
26 a true and correct copy of the January 20, 2020 Notice of Violation.

27 28. On February 14, 2020, Plaintiff gave notice of alleged violation of Health and
28 Safety Code § 25249.6 to Defendant concerning the exposure of California citizens to DINP

1 contained in the Perry Ellis Travel Kit w/Bottles with TJX identifying tag #s 1259-091036409-
2 001499-23-2, 5987-8750-023779-81 without proper warning, subject to a private action to
3 Defendant and to the California Attorney General’s office and the offices of the County District
4 attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein
5 the herein violations allegedly occurred. See attached at Exhibit “B” a true and correct copy of the
6 February 14, 2020 Notice of Violation.

7 29. On July 28, 2020, Plaintiff gave notice of alleged violation of Health and Safety
8 Code § 25249.6 to Defendant concerning the exposure of California citizens to DEHP contained
9 in the Queen Century Home Fashions Solutions Waterproof & Stain Resistant Mattress Pad – Clear
10 Plastic Case with TJX identifying tag #s UPC# 7 79386 23870 2, 60-0431-167638-002499-01-9,
11 FLS1 without proper warning, subject to a private action to Defendant and to the California
12 Attorney General’s office and the offices of the County District attorneys and City Attorneys for
13 each city with a population greater than 750,000 persons wherein the herein violations allegedly
14 occurred. See attached at Exhibit “C” a true and correct copy of the July 28, 2020 Notice of
15 Violation.

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

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

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

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

1 If the Products are stored or transported in a carrier, DEHP/DINP that leaches from the Products
2 may contaminate other articles contained within these closed spaces are subsequently handled,
3 worn, mouthed, or consumed. Finally, while direct mouthing of the Products does not seem likely,
4 some amount of exposure through ingestion can occur by touching of the user's hand to mouth.

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

8 42. Defendant has knowledge that the normal and reasonably foreseeable use of the
9 Products will expose individuals to DEHP/DINP, and Defendant intends that exposures to
10 DEHP/DINP will occur by its deliberate, non-accidental participation in the importation,
11 distribution, sale and offering of the Products to consumers in California

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

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

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

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PRAYER FOR RELIEF

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

- A. That the court assess civil penalties against each Defendant in the amount of \$2,500 per day for each violation for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);
- B. That the court preliminarily and permanently enjoin Defendant mandating Proposition 65 compliant warnings on the Products;
- C. That the court grant Plaintiff reasonable attorney’s fees and costs of suit, in the amount of \$50,000.00.
- D. That the court grant any further relief as may be just and proper.

Dated: November 25, 2020

BRODSKY & SMITH, LLC

By: 
Evan J. Smith (SBN242352)
Ryan P. Cardona (SBN302113)
9595 Wilshire Boulevard, Suite 900
Beverly Hills, CA 90212
Telephone: (877) 534-2590
Facsimile: (310) 247-0160

Attorneys for Plaintiff

EXHIBIT “A”

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January 20, 2020

esmith@brodskysmith.com

Member/Manager Shmom, LLC c/o Brian J. Mulhern 907 N. Elm St., Suite 305 Hinsdale, IL 60521	Member/Manager Shmom, LLC t/a Live Love Teach 536 Bentley Court Downers Grove, IL 60516
President/CEO/Owner OCS Designs 1339 Rocky Point Drive Oceanside, CA 92056	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 Precila Balabbo (“Balabbo”), 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, Balabbo 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 Balabbo 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:

Shmom, LLC
 Shmom, LLC t/a Live Love Teach
 OCS Designs
 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>
Rae Dunn Zippered Pouch Item# POL37 1281-005652714-00999-23-1 8192-9221-188051-FLS12	Marshalls of MA, Inc. The TJX Companies, Inc.	Shmom, LLC Shmom, LLC t/a Live Love Teach OCS Designs

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 Balabbo 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. Dermal absorption of DEHP can occur through

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 Balabbo’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.

direct skin contact when the plastic is contacted with bare hands. Concentrations of DEHP can be expected to build within the interior of the zippered pouch of the brush set. Articles placed in the zippered pouch, including but not limited to the manufacturer's makeup brushes, can absorb DEHP. When handled, these items can provide an indirect source of dermal transfer of DEHP to the user's hands. Dermal exposure to DEHP can occur when contaminated makeup brushes are applied to the user's facial area. If the brush set 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 item 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 December 17, 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, Balabbo is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation.

Balabbo 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 20, 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:

Member/Manager Shmom, LLC c/o Brian J. Mulhern 907 N. Elm St., Suite 305 Hinsdale, IL 60521	Member/Manager Shmom, LLC t/a Live Love Teach 536 Bentley Court Downers Grove, IL 60516
President/CEO/Owner OCS Designs 1339 Rocky Point Drive Oceanside, CA 92056	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	

On January 20, 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 20, 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, Precila Balabbo.
- (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 20, 2020



Evan J. Smith
Attorney for Precila Balabbo

EXHIBIT “B”

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February 14, 2020

esmith@brodskysmith.com

Member/Manager PEI Licensing, LLC c/o National Registered Agents, Inc. 160 Greentree Drive, Suite 101 Dover, DE 19904	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 Precila Balabbo (“Balabbo”), 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, Balabbo 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 Balabbo 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 company's covered by this notice that Violated Proposition 65 (hereinafter "the Violators") are:

PEI Licensing, LLC
Marshalls of MA, Inc.
The TJX Companies, Inc.

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

<i>Product²</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Perry Ellis Travel Kit w/Bottles 1259-091036409-001499-23-2 5987-8750-023779-81	Marshalls of MA, Inc. The TJX Companies, Inc.	PEI Licensing, LLC

Listed Chemicals: This violation involves exposure to the chemical Diisononyl phthalate (DINP). On December 20, 2013, the State of California listed Diisononyl phthalate (DINP) as a chemical known to cause cancer. This addition took place more than twelve (12) months before Balabbo 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 Diisononyl phthalate (DINP) 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 cancer.

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 DINP by dermal absorption through direct skin contact with the clear plastic during routine use when handled with bare hands. Concentrations of DINP can be expected to build within the interior of the travel kit. This DINP can absorb to the surface of the interior contents that are subsequently handled, 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 December 17, 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.

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 Balabbo'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, Balabbo is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation.

Balabbo 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 February 14, 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:

Member/Manager PEI Licensing, LLC c/o National Registered Agents, Inc. 160 Greentree Drive, Suite 101 Dover, DE 19904	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	

On February 14, 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 February 14, 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, Precila Balabbo.
- (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: February 14, 2020



Evan J. Smith
Attorney for Precila Balabbo

EXHIBIT “C”

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July 28, 2020 esmith@brodskysmith.com

President/CEO Century Home Fashions, Inc. 76 Miranda Avenue Toronto, CANADA M6E 5A1	President/CEO/Owner Dumas of California, Inc. 818 S. Broadway Los Angeles, CA 90015
President/CEO The TJX Companies, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	President/CEO The TJX Operating Companies, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801
President/CEO The Chemours Company FC, LLC 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 Precila Balabbo (“Balabbo”), 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, Balabbo 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 Balabbo 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:

Century Home Fashions, Inc.
 Dumas of California, Inc.
 The TJX Companies, Inc.
 The TJX Operating Companies, Inc.
 The Chemours Company FC, LLC

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

<i>Product²</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Queen Century Home Fashions Solutions Waterproof & Stain Resistant Mattress Pad – Clear Plastic Case UPC# 7 79386 23870 2 60-0431-167638-002499-01-9 FLS1	The TJX Companies, Inc. The TJX Operating Companies, Inc.	Century Home Fashions, Inc. Dumas of California, Inc. The Chemours Company FC, 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 Balabbo 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. A male or female consumer shopper

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 Balabbo’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.

would contact the case of the Solutions Waterproof & Stain Resistant Mattress Set case while examining and comparing the product to the shapes, materials, colors, and sizes, then while waiting to checkout. If a bag was not provided by the store, the shopper may carry the product while walking to/from transportation, and during transport if not the driver, such as on a bus. After arriving home, the consumer would check the labeling for any special instructions, unzip the case, then remove and set up the mattress. These actions could reasonably total 45 minutes in a day. The average skin contact area is assumed to be 85% palm surface area of male or female adult hand. Given these considerations, the skin absorption of DEHP was calculated as 24.77 ug in a day. It is assumed the contacted skin area along with the migration rate of DEHP from the case, is sufficient to reload the fingertips with DEHP between hand to mouth events. Indirect oral exposure results from contact with the case and then intermediate objects before the fingers contact to the mouth, as well as contact of previously uncontaminated fingers with other case contaminated objects before the finger contact the mouth. The default of indirect hand to mouth frequency is 10 events per hr. The skin contact area and interaction time are assumed to be the same as in the direct hand to mouth mode. This result in an indirect hand to mouth oral exposure of 170.76 ug in a day. Although not assessed in the present scenario, setting the case across bare legs or tucked next to a bare arm, such as while sitting at a bus stop or in a vehicle, would increase the contact area and DEHP exposure. Also, after removing the mattress pad, the plastic case could be used to store the old mattress pad or something else that leads to increase contact time and DEHP exposure.

Duration of the Violations: Each of these ongoing violations has occurred on every day since at least February 21, 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, Balabbo is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation.

Balabbo 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 805, Bala Cynwyd, Pennsylvania. I am employed in Montgomery County where the mailing occurred.

On July 28, 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 Century Home Fashions, Inc. 76 Miranda Avenue Toronto, CANADA M6E 5A1	PresidentCEO Dumas of California, Inc. 818 S. Broadway Los Angeles, CA 90015
President/CEO The TJX Companies, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	President/CEO The TJX Operating Companies, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801
President/CEO The Chemours Company FC, LLC c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	

On July 28, 2020, I served the following documents: **Notice of Violation of California Health & Safety Code §2529.5, 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 July 28, 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 Precila Balabbo.
- (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: July 28, 2020



Evan J. Smith
Attorney for Precila Balabbo