

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Richard Fruin

1 Reuben Yeroushalmi (SBN 193981)
reuben@yeroshalmi.com
2 **YERUSHALMI & YERUSHALMI***
9100 Wilshire Boulevard, Suite 240W
3 Beverly Hills, California 90212
Telephone: (310) 623-1926
4 Facsimile: (310) 623-1930

5 Attorneys for Plaintiff,
6 CONSUMER ADVOCACY GROUP, INC.

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
8 **COUNTY OF LOS ANGELES**

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

12 Plaintiff,

14 v.

15 MYSTIC APPAREL, LLC, a New York
Limited Liability Company;
16 THE TJX COMPANIES, INC., a Delaware
corporation;
17 MARSHALLS OF CA, LLC, a Virginia
Limited Liability Company;
18 MARSHALLS OF MA, INC., a
Massachusetts Corporation;
19 HOMEGOODS, INC., a Delaware
20 Corporation;
21 and DOES 1-20,

22 Defendants.

CASE NO. 20STCV10456

COMPLAINT FOR PENALTY AND
INJUNCTION

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

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

24 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges two causes of action against
25 defendants MYSTIC APPAREL, LLC; THE TJX COMPANIES, INC.; MARSHALLS OF CA,
26 LLC; MARSHALLS OF MA, INC.; HOMEGOODS, INC; and DOES 1-20 as follows:
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THE PARTIES

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

- 1 8. At all times mentioned herein, the term “Defendants” includes MYSTIC, TJX,
2 MARSHALLS CA, MARSHALLS MA, HOMEGOODS, and DOES 1-20.
- 3 9. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
4 times mentioned herein have conducted business within the State of California.
- 5 10. Upon information and belief, at all times relevant to this action, each of the Defendants,
6 including DOES 1-20, was an agent, servant, or employee of each of the other
7 Defendants. In conducting the activities alleged in this Complaint, each of the Defendants
8 was acting within the course and scope of this agency, service, or employment, and was
9 acting with the consent, permission, and authorization of each of the other Defendants.
10 All actions of each of the Defendants alleged in this Complaint were ratified and
11 approved by every other Defendant or their officers or managing agents. Alternatively,
12 each of the Defendants aided, conspired with and/or facilitated the alleged wrongful
13 conduct of each of the other Defendants.
- 14 11. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
15 Defendants was a person doing business within the meaning of Health and Safety Code
16 Section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
17 employees at all relevant times.

18 **JURISDICTION**

- 19 12. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
20 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
21 those given by statute to other trial courts. This Court has jurisdiction over this action
22 pursuant to Health and Safety Code Section 25249.7, which allows enforcement of
23 violations of Proposition 65 in any Court of competent jurisdiction.
- 24 13. This Court has jurisdiction over Defendants named herein because Defendants either
25 reside or are located in this State or are foreign corporations authorized to do business in
26 California, are registered with the California Secretary of State, or who do sufficient
27 business in California, have sufficient minimum contacts with California, or otherwise
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1 intentionally avail themselves of the markets within California through their manufacture,
2 distribution, promotion, marketing, or sale of their products within California to render
3 the exercise of jurisdiction by the California courts permissible under traditional notions
4 of fair play and substantial justice.

5 14. Venue is proper in the County of Los Angeles because one or more of the instances of
6 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
7 because Defendants conducted, and continue to conduct, business in the County of Los
8 Angeles with respect to the consumer product that is the subject of this action.

9 **BACKGROUND AND PRELIMINARY FACTS**

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

19 16. Proposition 65 requires the Governor of California to publish a list of chemicals known to
20 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*
21 § 25249.8. The list, which the Governor updates at least once a year, contains over 700
22 chemicals and chemical families. Proposition 65 imposes warning requirements and
23 other controls that apply to Proposition 65-listed chemicals.

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

3 18. Proposition 65 provides that any person "violating or threatening to violate" the statute
4 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.
5 "Threaten to violate" means "to create a condition in which there is a substantial
6 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

7 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
8 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

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

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

20 21. On October 24, 2003, the Governor of California added DEHP to the list of chemicals
21 known to the State to cause developmental toxicity and male reproductive toxicity (*Cal.*
22 *Code Regs.* tit. 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9
23 and 25249.10, twenty (20) months after addition of DEHP to the list of chemicals known
24 to the State to cause cancer, DEHP became fully subject to Proposition 65 warning
25 requirements and discharge prohibitions.

26 22. On December 20, 2013, the Governor of California added DINP to the list of chemicals
27 known to the State to cause Cancer (*Cal. Code Regs.* tit. 27, § 27001(c)). Pursuant to
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1 Health and Safety Code Sections 25249.9 and 25249.10, twenty (20) months after
2 addition of DINP to the list of chemicals known to the State to cause reproductive
3 toxicity, DINP became fully subject to Proposition 65 warning requirements and
4 discharge prohibitions.

5 **SATISFACTION OF PRIOR NOTICE**

6 23. On or about October 2, 2019, Plaintiff gave notice of alleged violations of Health and
7 Safety Code Section 25249.6, concerning consumer products exposures, subject to a
8 private action to TJX, MARSHALLS CA, MARSHALLS MA, HOMEGOODS, and to
9 the California Attorney General, County District Attorneys, and City Attorneys for each
10 city containing a population of at least 750,000 people in whose jurisdictions the
11 violations allegedly occurred, concerning Duffel Bags with Polymer Components
12 Containing DINP.

13 24. On or about October 30, 2019, Plaintiff gave notice of alleged violations of Health and
14 Safety Code Section 25249.6, concerning consumer products exposures, subject to a
15 private action to MYSTIC, and to the California Attorney General, County District
16 Attorneys, and City Attorneys for each city containing a population of at least 750,000
17 people in whose jurisdictions the violations allegedly occurred, concerning Duffel Bags
18 with Polymer Components Containing DINP.

19 25. On or about October 30, 2019, Plaintiff gave notice of alleged violations of Health and
20 Safety Code Section 25249.6, concerning consumer products exposures, subject to a
21 private action to MYSTIC, and to the California Attorney General, County District
22 Attorneys, and City Attorneys for each city containing a population of at least 750,000
23 people in whose jurisdictions the violations allegedly occurred, concerning Dress for
24 Kids with Plastic Components Containing DEHP.

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

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

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

15 29. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
16 gave notice of the alleged violations to TJX, MARSHALLS CA, MARSHALLS MA,
17 HOMEGOODS, LTD2, TWEEN, MYSTIC, and the public prosecutors referenced in
18 Paragraphs 23-25.

19 30. 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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1 **FIRST CAUSE OF ACTION**

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

6 **Travel Gear**

7 31. Plaintiff repeats and incorporates by reference paragraphs 1 through 30 of this complaint
8 as though fully set forth herein.

9 32. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
10 distributor, promoter, or retailer of Duffel Bag with Polymer Components (“Duffel
11 Bags”), including but not limited to: “Blue Rolling Travel Duffel Bag with Patterned
12 Design and Reflective Handle. “Limited Too”; “A61724, AFH, RN#90737”; “7295-
13 9580-346101-81”; “Made in China”.

14 33. Duffel Bags contain DINP.

15 34. Defendants knew or should have known that DINP has been identified by the State of
16 California as a chemical known to cause cancer and therefore was subject to Proposition
17 65 warning requirements. Defendants were also informed of the presence of DINP in
18 Duffel Bags within Plaintiff’s notice of alleged violations further discussed above at
19 Paragraphs 23 and 24.

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

26 36. Plaintiff is informed, believes, and thereon alleges that between October 2, 2016 and the
27 present, each of the Defendants knowingly and intentionally exposed California
28 consumers and users of Duffel Bags, which Defendants manufactured, distributed, or sold
as mentioned above, to DINP, 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 Duffel Bags in California. Defendants know and intend that
3 California consumers will use Duffel Bags, thereby exposing them to DINP. Defendants
4 thereby violated Proposition 65.

5 37. The principal routes of exposure are through dermal contact, ingestion and inhalation.

6 Persons sustain exposures by handling Duffel Bags without wearing gloves or any other
7 personal protective equipment, or by touching bare skin or mucous membranes with
8 gloves after handling Duffel Bags, as well as through direct and indirect hand to mouth
9 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
10 Duffel Bags.

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

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

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

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

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1 **SECOND CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against MYSTIC, and DOES**
3 **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 **Kids Clothing**

6 42. Plaintiff repeats and incorporates by reference paragraphs 1 through 41 of this complaint
7 as though fully set forth herein.

8 43. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
9 distributor, promoter, or retailer of Dress for Kids with Plastic Components (“Kid’s
10 Dresses”), including but not limited to: “kooba kids;” “RN# 119132;” “MADE IN
11 CHINA;” “STYLE# FF178309K;” “MYSTICAPPAPPELLLC.NY;” “STYLE:
12 FF178309K;” “SIZE: 5/6;” “COLOR: BLACK;” “GIRLS FASHION DRESS;” “8 83332
13 42638 6”.

14 44. Kid’s Dresses contain DEHP.

15 45. Defendants knew or should have known that DEHP has been identified by the State of
16 California as a chemical known to cause cancer, developmental toxicity, and reproductive
17 toxicity and therefore was subject to Proposition 65 warning requirements. Defendants
18 were also informed of the presence of DEHP in Kid’s Dresses within Plaintiff’s notice of
19 alleged violations further discussed above at Paragraph 25.

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

26 47. Plaintiff is informed, believes, and thereon alleges that between October 30, 2016 and the
27 present, each of the Defendants knowingly and intentionally exposed California
28 consumers and users of Kid’s Dresses, which Defendants manufactured, distributed, or

1 sold as mentioned above, to DEHP, without first providing any type of clear and
2 reasonable warning of such to the exposed persons before the time of exposure.

3 Defendants have distributed and sold Kid's Dresses in California. Defendants know and
4 intend that California consumers will use Kid's Dresses, thereby exposing them to
5 DEHP. Defendants thereby violated Proposition 65.

6 48. The principal routes of exposure are through dermal contact, ingestion and inhalation.

7 Persons sustain exposures by handling Kid's Dresses without wearing gloves or any other
8 personal protective equipment, or by touching bare skin or mucous membranes with
9 gloves after handling Kid's Dresses, as well as through direct and indirect hand to mouth
10 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
11 Kid's Dresses.

12 49. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
13 Proposition 65 as to Kid's Dresses 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 Kid's
16 Dresses, so that a separate and distinct violation of Proposition 65 occurred each and
17 every time a person was exposed to DEHP by Kid's Dresses as mentioned herein.

18 50. 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 51. 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 Kid's Dresses, pursuant to
23 Health and Safety Code Section 25249.7(b).

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

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27 **PRAYER FOR RELIEF**

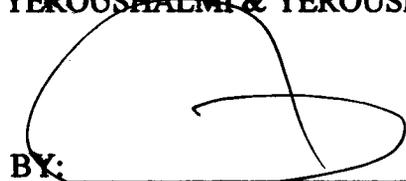
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Plaintiff demands against each of the Defendants as follows:

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

Dated: 7-16, 2020

YEROUSHALMI & YEROUSHALMI



BY: _____
Reuben Yeroushalmi
Attorneys for Plaintiff,
CONSUMER ADVOCACY GROUP, INC.