

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Christopher Lui

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9 CONSUMER ADVOCACY GROUP, INC.

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12
13 **COUNTY OF LOS ANGELES**

14 CONSUMER ADVOCACY GROUP, INC.,
15 in the public interest,

16 Plaintiff,

17 v.

18 THE TJX COMPANIES, INC., a Delaware
19 Corporation;
20 WILDFARE INC., a New York Corporation
21 and DOES 1-20,

22 Defendants.

CASE NO. **22STCV01596**

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)

23 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges four causes of action against
24 defendants THE TJX COMPANIES, INC., a Delaware Corporation; a California Corporation
25 and WILDFARE INC., a New York Corporation DOES 1-40 as follows:

26 **THE PARTIES**

- 27 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
28 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

1 as a private attorney general, brings this action in the public interest as defined under
2 Health and Safety Code Section 25249.7, subdivision (d).

3 2. Defendant THE TJX COMPANIES, INC. (“TJX”) is a Delaware Corporation doing
4 business in the State of California at all relevant times herein.

5 3. Defendant WILDFARE, INC (“WILDFARE ”) is a New York Corporation doing
6 business in the State of California at all relevant times herein.

7 4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-40,
8 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
9 Complaint to allege their true names and capacities when ascertained. Plaintiff is
10 informed, believes, and thereon alleges that each fictitiously named defendant is
11 responsible in some manner for the occurrences herein alleged and the damages caused
12 thereby.

13 5. At all times mentioned herein, the term “Defendants” includes TJX, WILDFARE, and
14 DOES 1-40.

15 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
16 times mentioned herein have conducted business within the State of California.

17 7. Upon information and belief, at all times relevant to this action, each of the Defendants,
18 including DOES 1-40, was an agent, servant, or employee of each of the other
19 Defendants. In conducting the activities alleged in this Complaint, each of the
20 Defendants was acting within the course and scope of this agency, service, or
21 employment, and was acting with the consent, permission, and authorization of each of
22 the other Defendants. All actions of each of the Defendants alleged in this Complaint
23 were ratified and approved by every other Defendant or their officers or managing
24 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the
25 alleged wrongful conduct of each of the other Defendants.

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

3 **JURISDICTION**

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

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

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

21 **BACKGROUND AND PRELIMINARY FACTS**

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

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

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

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

21 16. Plaintiff identified certain practices of manufacturers and distributors of exposing,
22 knowingly and intentionally, persons in California to Listed Chemicals of such products
23 without first providing clear and reasonable warnings of such to the exposed persons
24 prior to the time of exposure. Plaintiff later discerned that Defendants engaged in such
25 practice.

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

7 18. On December 20, 2013, the Governor of California added Diisononyl Phthalate
8 (“DINP”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.
9 27, § 27001(b)). Pursuant to Health and Safety Code sections 25249.9 and 25249.10,
10 twenty (20) months after addition of DINP to the list of chemicals known to the State to
11 cause cancer, DINP became fully subject to Proposition 65 warning requirements and
12 discharge prohibitions.

13 19. On May 1, 1997, the Governor of California added Inorganic Arsenic Oxides to the list
14 of chemicals known to the State to cause developmental toxicity (*Cal. Code Regs.* tit. 27,
15 § 27001(c)). Inorganic Arsenic Oxides is known to the State to cause developmental,
16 toxicity. Pursuant to Health and Safety Code Sections 25249.9 and 25249.10, twenty
17 (20) months after addition of Inorganic Arsenic Oxides to the list of chemicals known to
18 the State to cause developmental toxicity, Inorganic Arsenic Oxides became fully subject
19 to Proposition 65 warning requirements and discharge prohibitions. Inorganic Arsenic
20 Compounds and Inorganic Arsenic Oxides is hereinafter referred to as “Arsenic”.

21 **SATISFACTION OF PRIOR NOTICE**

22 20. Plaintiff served the following notices for alleged violations of Health and Safety Code
23 Section 25249.6, concerning consumer products exposures:

- 24 a. On or about February 25, 2021 Plaintiff gave notice of alleged violations of
25 Health and Safety Code Section 25249.6, concerning consumer products
26 exposures subject to a private action to TJX and to the California Attorney
27 General, County District Attorneys, and City Attorneys for each city containing
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1 a population of at least 750,000 people in whose jurisdictions the violations
2 allegedly occurred, concerning the Foam Floor Tiles.

- 3 b. On or about May 14, 2021, Plaintiff gave notice of alleged violations of Health
4 and Safety Code Section 25249.6, concerning consumer products exposures
5 subject to a private action to WILDFARE and to the California Attorney
6 General, County District Attorneys, and City Attorneys for each city containing
7 a population of at least 750,000 people in whose jurisdictions the violations
8 allegedly occurred, concerning the Organic Sage
- 9 c. On or about August 27, 2021, 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 TJX and to the California Attorney
12 General, County District Attorneys, and City Attorneys for each city containing
13 a population of at least 750,000 people in whose jurisdictions the violations
14 allegedly occurred, concerning the Organic Sage
- 15 d. On or about August 12, 2021, Plaintiff gave notice of alleged violations of
16 Health and Safety Code Section 25249.6, concerning consumer products
17 exposures subject to a private action to TJX and to the California Attorney
18 General, County District Attorneys, and City Attorneys for each city containing
19 a population of at least 750,000 people in whose jurisdictions the violations
20 allegedly occurred, concerning the Purse
- 21 e. On or about October 1, 2021, Plaintiff gave notice of alleged violations of
22 Health and Safety Code Section 25249.6, concerning consumer products
23 exposures subject to a private action to TJX and to the California Attorney
24 General, County District Attorneys, and City Attorneys for each city containing
25 a population of at least 750,000 people in whose jurisdictions the violations
26 allegedly occurred, concerning the Smoked Sweet Paprika

1 21. Before sending the notice of alleged violations, Plaintiff investigated the consumer
2 products involved, the likelihood that such products would cause users to suffer
3 significant exposures to relevant chemicals, and the corporate structure of each of the
4 Defendants.

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

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

18 24. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
19 gave notice of the alleged violations to TJX, WILDFARE, and the public prosecutors
20 referenced in Paragraph 20.

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

24 **FIRST CAUSE OF ACTION**

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

28 **Children's Toys**

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

3 27. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
4 distributor, promoter, or retailer of Foam Floor Tiles including but not limited to: •
5 "Nuby"; "Foam Floor Tiles"; "0+m"; "20 Piece Set"; "Manufactured in China";
6 "120177"; "UPC 8 75376 00968 7"; "D110118C NM"; "SKU 1272-092270002-001999-
7 03-02"

8 28. Foam Floor Tiles contains DINP.

9 29. Defendants knew or should have known that DINP has been identified by the State of
10 California as a chemical known to cause cancer, and therefore was subject to Proposition
11 65 warning requirements. Defendants were also informed of the presence of DINP in
12 Foam Floor Tiles within Plaintiff's notice of alleged violations further discussed above at
13 Paragraph 20a.

14 30. Plaintiff's allegations regarding Foam Floor Tiles concerns "[c]onsumer products
15 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
16 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
17 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
18 *25602(b)*. Foam Floor Tiles is a consumer product, and, as mentioned herein, exposures
19 to DINP took place as a result of such normal and foreseeable consumption and use.

20 31. Plaintiff is informed, believes, and thereon alleges that between February 25, 2018 and
21 the present, each of the Defendants knowingly and intentionally exposed California
22 consumers and users of Foam Floor Tiles, which Defendants manufactured, distributed,
23 or sold as mentioned above, to DINP, without first providing any type of clear and
24 reasonable warning of such to the exposed persons before the time of exposure.

25 Defendants have distributed and sold Foam Floor Tiles in California. Defendants know
26 and intend that California consumers will use and consume Foam Floor Tiles, thereby
27 exposing them to DINP. Further, Plaintiff is

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1 informed, believes, and thereon alleges that Defendants are selling Foam Floor Tiles
2 under a brand or trademark that is owned or licensed by the Defendants or an entity
3 affiliated thereto; have knowingly introduced DINP into Foam Floor Tiles or knowingly
4 caused DINP to be created in Foam Floor Tiles; have covered, obscured or altered a
5 warning label that has been affixed to Foam Floor Tiles by the manufacturer, producer,
6 packager, importer, supplier or distributor of Foam Floor Tiles; have received a notice
7 and warning materials for exposure from Foam Floor Tiles without conspicuously
8 posting or displaying the warning materials; and/or have actual knowledge of potential
9 exposure to DINP from Foam Floor Tiles. Defendants thereby violated Proposition 65.

10 32. The principal routes of exposure are through using Foam Floor Tiles and by dermal
11 contact and inhalation. Persons sustain exposures by using Foam Floor Tiles, by
12 handling Foam Floor Tiles without wearing gloves or any other personal protective
13 equipment, or by touching bare skin or mucous membranes with gloves after handling
14 Foam Floor Tiles, as well as through direct and indirect hand to mouth contact, hand to
15 mucous membrane, or breathing in particulate matter dispersed from Foam Floor Tiles.

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

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

25 35. Based on the allegations herein, Defendants are liable for civil penalties of up to
26 \$2,500.00 per day per individual exposure to DINP from Foam Floor Tiles, pursuant to
27 Health and Safety Code Section 25249.7(b).

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

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4 **SECOND CAUSE OF ACTION**

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

8 **Spices**

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

11 38. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
12 distributor, promoter, or retailer of Organic Sage, identified as •“Wild Fare”; “Organic
13 Sage”; “Ground Spices”; “Net Wt. 35g (1.23 oz)”; “UPC 8 10030 14063 4”; “Product of
14 Turkey”; “D54 S113244 C1250 T2 S0121.” The scope of this cause of action is limited
15 to the UPC and Lot Number of Organic Sage.

16 39. Organic Sage contains ARSENIC.

17 40. Defendants knew or should have known that ARSENIC has been identified by the State
18 of California as a chemical known to cause reproductive toxicity and therefore was
19 subject to Proposition 65 warning requirements. Defendants were also informed of the
20 presence of ARSENIC in Organic Sage within Plaintiff’s notice of alleged violations
21 further discussed above at Paragraph 20b and 20c.

22 41. Plaintiff’s allegations regarding Organic Sage concerns “[c]onsumer products
23 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
24 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
25 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
26 *25602(b)*. Organic Sage is a consumer product, and, as mentioned herein, exposures to
27 ARSENIC took place as a result of such normal and foreseeable consumption and use.

28 42. Plaintiff is informed, believes, and thereon alleges that between May 14, 2018 and the
present, each of the Defendants knowingly and intentionally exposed California

1 consumers and users of Organic Sages, which Defendants manufactured, distributed, or
2 sold as mentioned above, without first providing any type of clear and reasonable
3 warning of such to the exposed persons before the time of exposure. Defendants have
4 distributed and sold Organic Sage in California. Defendants know and intend that
5 California consumers will use and consume Organic Sage, thereby exposing them to
6 ARSENIC. Further, Plaintiff is
7 informed, believes, and thereon alleges that Defendants are selling Organic Sage under a
8 brand or trademark that is owned or licensed by the Defendants or an entity affiliated
9 thereto; have knowingly introduced ARSENIC into Organic Sage or knowingly caused
10 ARSENIC to be created in Organic Sage; have covered, obscured or altered a warning
11 label that has been affixed to Organic Sage by the manufacturer, producer, packager,
12 importer, supplier or distributor of Organic Sage; have received a notice and warning
13 materials for exposure from Organic Sage without conspicuously posting or displaying
14 the warning materials; and/or have actual knowledge of potential exposure to ARSENIC
15 from Organic Sage. Defendants thereby violated Proposition 65.

16 43. The principal routes of exposure are through ingestion and inhalation. Persons sustain
17 exposures by eating and consuming and by handling Organic Sage without wearing
18 gloves or any other personal protective equipment, or by touching bare skin or mucous
19 membranes with gloves after handling Organic Sage, as well as through direct and
20 indirect hand to mouth contact, hand to mucous membrane, or breathing in particulate
21 matter dispersed from Organic Sage.

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

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1 45. 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 46. Based on the allegations herein, Defendants are liable for civil penalties of up to
5 \$2,500.00 per day per individual exposure to ARSENIC from Organic Sage, pursuant to
6 Health and Safety Code Section 25249.7(b).

7 47. 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 TJX, and DOES 21-30**
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 48. Plaintiff repeats and incorporates by reference paragraphs 1 through 47 of this complaint
16 as though fully set forth herein.

17 49. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
18 distributor, promoter, or retailer of Purse, including but not limited to: Yellow Polymer
19 Purse; "HD3624YL YELLOW"; "Made in China"; "SKU 1924-2408-921413-83"

20 50. Purse contains DEHP.

21 51. Defendants knew or should have known that DEHP has been identified by the State of
22 California as a chemical known to cause cancer, and reproductive toxicity and therefore
23 was subject to Proposition 65 warning requirements. Defendants were also informed of
24 the presence of DEHP in Purse within Plaintiff's notice of alleged violations further
25 discussed above at Paragraph 20d.

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

1 Purse are consumer products, and, as mentioned herein, exposures to DEHP took place
2 as a result of such normal and foreseeable consumption and use.

3 53. Plaintiff is informed, believes, and thereon alleges that between August 12, 2018 and the
4 present, each of the Defendants knowingly and intentionally exposed California
5 consumers and users of Purses, which Defendants manufactured, distributed, or sold as
6 mentioned above, to DEHP, without first providing any type of clear and reasonable
7 warning of such to the exposed persons before the time of exposure. Defendants have
8 distributed and sold Purse in California. Defendants know and intend that California
9 consumers will use and consume Purse, thereby exposing them to DEHP. Further,
10 Plaintiff is
11 informed, believes, and thereon alleges that Defendants are selling Purse under a brand
12 or trademark that is owned or licensed by the Defendants or an entity affiliated thereto;
13 have knowingly introduced DEHP into Purse or knowingly caused DEHP to be created
14 in Purse; have covered, obscured or altered a warning label that has been affixed to Purse
15 by the manufacturer, producer, packager, importer, supplier or distributor of Purse; have
16 received a notice and warning materials for exposure from Purse without conspicuously
17 posting or displaying the warning materials; and/or have actual knowledge of potential
18 exposure to DEHP from Purse. Defendants thereby violated Proposition 65.

19 54. The principal routes of exposure are through ingestion and inhalation. Persons sustain
20 exposures by using, carrying and handling Purse without wearing gloves or any other
21 personal protective equipment, or by touching bare skin or mucous membranes with
22 gloves after handling Purse, as well as through direct and indirect hand to mouth contact,
23 hand to mucous membrane, or breathing in particulate matter dispersed from Purse.

24 55. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
25 Proposition 65 as to Purse have been ongoing and continuous, as Defendants engaged
26 and continue to engage in conduct which violates Health and Safety Code Section
27 25249.6, including the manufacture, distribution, promotion, and sale of Purse, so that a
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1 separate and distinct violation of Proposition 65 occurred each and every time a person
2 was exposed to DEHP by Purse as mentioned herein.

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

6 57. Based on the allegations herein, Defendants are liable for civil penalties of up to
7 \$2,500.00 per day per individual exposure to DEHP from Purse, pursuant to Health and
8 Safety Code Section 25249.7(b).

9 58. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
10 filing this Complaint.

11 **FOURTH CAUSE OF ACTION**

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

15 **Spices II**

16 59. Plaintiff repeats and incorporates by reference paragraphs 1 through 36 of this complaint
17 as though fully set forth herein.

18 60. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
19 distributor, promoter, or retailer of Smoked Sweet Paprika ("Paprika"), identified as •
20 "Laybe"; "Smoked Sweet Paprika"; "Net Weight: 80g 2,82 oz"; "UPC 8 437015
21 854083"; "Made in Spain" "C1277 T8 NUK17"." The scope of this cause of action is
22 limited to the UPC and Lot Number of Paprika.

23 61. Paprika contains ARSENIC.

24 62. Defendants knew or should have known that ARSENIC has been identified by the State
25 of California as a chemical known to cause reproductive toxicity and therefore was
26 subject to Proposition 65 warning requirements. Defendants were also informed of the
27 presence of ARSENIC in Paprika within Plaintiff's notice of alleged violations further
28 discussed above at Paragraph 20e.

1 63. Plaintiff's allegations regarding Paprika 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 Paprika is a consumer product, and, as mentioned herein, exposures to ARSENIC took
6 place as a result of such normal and foreseeable consumption and use.

7 64. Plaintiff is informed, believes, and thereon alleges that between October 1, 2018 and the
8 present, each of the Defendants knowingly and intentionally exposed California
9 consumers and users of Paprikas, which Defendants manufactured, distributed, or sold as
10 mentioned above, without first providing any type of clear and reasonable warning of
11 such to the exposed persons before the time of exposure. Defendants have distributed
12 and sold Paprika in California. Defendants know and intend that California consumers
13 will use and consume Paprika, thereby exposing them to ARSENIC. Further, Plaintiff is
14 informed, believes, and thereon alleges that Defendants are selling Paprika under a brand
15 or trademark that is owned or licensed by the Defendants or an entity affiliated thereto;
16 have knowingly introduced ARSENIC into Paprika or knowingly caused ARSENIC to
17 be created in Paprika; have covered, obscured or altered a warning label that has been
18 affixed to Paprika by the manufacturer, producer, packager, importer, supplier or
19 distributor of Paprika; have received a notice and warning materials for exposure from
20 Paprika without conspicuously posting or displaying the warning materials; and/or have
21 actual knowledge of potential exposure to ARSENIC from Paprika. Defendants thereby
22 violated Proposition 65.

23 65. The principal routes of exposure are through ingestion and inhalation. Persons sustain
24 exposures by eating and consuming and by handling Paprika without wearing gloves or
25 any other personal protective equipment, or by touching bare skin or mucous membranes
26 with gloves after handling Paprika, as well as through direct and indirect hand to mouth
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1 contact, hand to mucous membrane, or breathing in particulate matter dispersed from
2 Paprika.

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

9 67. 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 68. Based on the allegations herein, Defendants are liable for civil penalties of up to
13 \$2,500.00 per day per individual exposure to ARSENIC from Paprika, pursuant to
14 Health and Safety Code Section 25249.7(b).

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

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18 **PRAYER FOR RELIEF**

19 Plaintiff demands against each of the Defendants as follows:

20 70. A permanent injunction mandating Proposition 65-compliant warnings;

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

22 72. Costs of suit;

23 73. Reasonable attorney fees and costs; and

24 74. Any further relief that the court may deem just and equitable.
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1 Dated: January 13, 2022

YEROUSHALMI & YEROUSHALMI*

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