

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Michelle Williams Court

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

8 Attorneys for Plaintiff,  
9 CONSUMER ADVOCACY GROUP, INC.

10  
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 HOMEGOODS, INC. a Delaware  
19 Corporation;  
20 THE TJX COMPANIES, INC, a Delaware  
21 Corporation; and  
22 TRADE LINES INC., a New Jersey  
23 Corporation;  
24 and DOES 1-20,

25 Defendants.

26 CASE NO. **22STCV38460**

27 COMPLAINT FOR PENALTY AND  
28 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)

29 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges two causes of action  
30 against defendants HOMEGOODS, INC.; THE TJX COMPANIES, INC; TRADE LINES INC.  
31 and DOES 1-20 as follows:

**THE PARTIES**

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

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

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

### 9 **JURISDICTION**

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

### 27 **BACKGROUND AND PRELIMINARY FACTS**

- 1 13. In 1986, California voters approved an initiative to address growing concerns about  
2 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to  
3 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,  
4 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
5 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections  
6 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources  
7 from contamination, to allow consumers to make informed choices about the products  
8 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
9 fit.
- 10 14. Proposition 65 requires the Governor of California to publish a list of chemicals known  
11 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*  
12 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over  
13 700 chemicals and chemical families. Proposition 65 imposes warning requirements and  
14 other controls that apply to Proposition 65-listed chemicals.
- 15 15. All businesses with ten (10) or more employees that operate or sell products in California  
16 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
17 from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
18 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and  
19 reasonable” warnings before exposing a person, knowingly and intentionally, to a  
20 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).
- 21 16. Proposition 65 provides that any person "violating or threatening to violate" the statute  
22 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §  
23 25249.7. "Threaten to violate" means "to create a condition in which there is a  
24 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).  
25 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
26 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

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

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

14 **SATISFACTION OF PRIOR NOTICE**

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

- 17 a. On or about July 6, 2022, Plaintiff gave notice of alleged violations of Health  
18 and Safety Code Section 25249.6, concerning consumer products exposures  
19 subject to a private action to HOMEGOODS, TJX, TRADE LINES, and to the  
20 California Attorney General, County District Attorneys, and City Attorneys for  
21 each city containing a population of at least 750,000 people in whose  
22 jurisdictions the violations allegedly occurred, concerning the Magazine Holder.
- 23 b. On or about August 3, 2022, Plaintiff gave notice of alleged violations of Health  
24 and Safety Code Section 25249.6, concerning consumer products exposures  
25 subject to a private action to TJX and to the California Attorney General,  
26 County District Attorneys, and City Attorneys for each city containing a  
27  
28

1 population of at least 750,000 people in whose jurisdictions the violations  
2 allegedly occurred, concerning the Cosmetic Bags.

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

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

15 22. 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 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
19 gave notice of the alleged violations to HOMEGOODS, TJX, TRADE LINES, and the  
20 public prosecutors referenced in Paragraph 19.

21 24. 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 HOMEGOODS, TJX,**  
26 **TRADE LINES, and DOES 1-10 for Violations of Proposition 65, The Safe**  
27 **Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§**  
28 **25249.5, *et seq.*))**

1 **Home Accessories**

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

4 26. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
5 distributor, promoter, or retailer of Magazine Holder, including but not limited to  
6 “Smartspace”; “Organization Meets Smart design”; “Brown Magazine Holder”; “Style  
7 149113”.

8 27. Magazine Holder contains DEHP.

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

14 29. Plaintiff's allegations regarding Magazine Holder 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)*. Magazine Holder is consumer products, and, as mentioned herein, exposures  
19 to DEHP took place as a result of such normal and foreseeable consumption and use. (

20 30. Plaintiff is informed, believes, and thereon alleges that between July 6, 2019 and the  
21 present, each of the Defendants knowingly and intentionally exposed California  
22 consumers and users of Magazine Holder, which Defendants manufactured, distributed,  
23 or sold as mentioned above, to DEHP, 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 Magazine Holder in California. Defendants know  
26 and intend that California consumers will use and consume Magazine Holder, thereby  
27 exposing them to DEHP. Further, Plaintiff is informed, believes, and thereon alleges that

28

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

- 10 31. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
11 Persons sustain exposures by handling Magazine Holder without wearing gloves or any  
12 other personal protective equipment, or by touching bare skin or mucous membranes  
13 with gloves after handling Magazine Holder, as well as through direct and indirect hand  
14 to mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed  
15 from Magazine Holder.
- 16 32. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
17 Proposition 65 as to Magazine Holder 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  
20 Magazine Holder, so that a separate and distinct violation of Proposition 65 occurred  
21 each and every time a person was exposed to DEHP by Magazine Holder as mentioned  
22 herein.
- 23 33. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
24 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
25 violations alleged herein will continue to occur into the future.
- 26  
27  
28



1 34. Based on the allegations herein, Defendants are liable for civil penalties of up to  
2 \$2,500.00 per day per individual exposure to DEHP from Magazine Holder, pursuant to  
3 Health and Safety Code Section 25249.7(b).

4 35. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
5 filing this Complaint.

6  
7 **SECOND CAUSE OF ACTION**

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

11 **Beauty Accessories**

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

14 37. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
15 distributor, promoter, or retailer of Cosmetic Bags, including but not limited to "Nikky®  
16 by Nicole Lee® U.S.A."; "Cosmetic Bag"; "Pop Generation"; "Style # NK20347L";  
17 "SKU# NK20347L-PGN"; "UPC 1 91680 09617 6".

18 38. Cosmetic Bags contains DEHP.

19 39. Defendants knew or should have known that DEHP has been identified by the State of  
20 California as a chemical known to cause cancer and toxicity and therefore was subject to  
21 Proposition 65 warning requirements. Defendants were also informed of the presence of  
22 DEHP in Cosmetic Bags within Plaintiff's notice of alleged violations further discussed  
23 above at Paragraph 19b.

24 40. Plaintiff's allegations regarding Cosmetic Bags concerns "[c]onsumer products  
25 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
26 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
27 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*  
28 *25602(b)*. Cosmetic Bags is consumer products, and, as mentioned herein, exposures to  
DEHP took place as a result of such normal and foreseeable consumption and use. (

- 1 41. Plaintiff is informed, believes, and thereon alleges that between August 3, 2019 and the  
2 present, each of the Defendants knowingly and intentionally exposed California  
3 consumers and users of Cosmetic Bags, which Defendants manufactured, distributed, or  
4 sold as mentioned above, to DEHP, without first providing any type of clear and  
5 reasonable warning of such to the exposed persons before the time of exposure.  
6 Defendants have distributed and sold Cosmetic Bags in California. Defendants know  
7 and intend that California consumers will use and consume Cosmetic Bags, thereby  
8 exposing them to DEHP. Further, Plaintiff is informed, believes, and thereon alleges that  
9 Defendants are selling Cosmetic Bags under a brand or trademark that is owned or  
10 licensed by the Defendants or an entity affiliated thereto; have knowingly introduced  
11 DEHP into Cosmetic Bags or knowingly caused DEHP to be created in Cosmetic Bags;  
12 have covered, obscured or altered a warning label that has been affixed to Cosmetic Bags  
13 by the manufacturer, producer, packager, importer, supplier or distributor of Cosmetic  
14 Bags; have received a notice and warning materials for exposure from Cosmetic Bags  
15 without conspicuously posting or displaying the warning materials; and/or have actual  
16 knowledge of potential exposure to DEHP from Cosmetic Bags. Defendants thereby  
17 violated Proposition 65.
- 18 42. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
19 Persons sustain exposures by handling Cosmetic Bags without wearing gloves or any  
20 other personal protective equipment, or by touching bare skin or mucous membranes  
21 with gloves after handling Cosmetic Bags, as well as through direct and indirect hand to  
22 mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed  
23 from Cosmetic Bags.
- 24 43. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
25 Proposition 65 as to Cosmetic Bags have been ongoing and continuous, as Defendants  
26 engaged and continue to engage in conduct which violates Health and Safety Code  
27 Section 25249.6, including the manufacture, distribution, promotion, and sale of  
28

1 Cosmetic Bags, so that a separate and distinct violation of Proposition 65 occurred each  
2 and every time a person was exposed to DEHP by Cosmetic Bags as mentioned herein.  
3 44. 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 45. 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 Cosmetic Bags, pursuant to  
8 Health and Safety Code Section 25249.7(b).  
9 46. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
10 filing this Complaint.

11  
12 **PRAYER FOR RELIEF**

13 Plaintiff demands against each of the Defendants as follows:

- 14 47. A permanent injunction mandating Proposition 65-compliant warnings;  
15 48. Penalties pursuant to Health and Safety Code Section 25249.7, subdivision (b);  
16 49. Costs of suit;  
17 50. Reasonable attorney fees and costs; and  
18 51. Any further relief that the court may deem just and equitable.

19  
20 Dated: December 9, 2022

YEROUSHALMI & YEROUSHALMI\*

21  
22  
23 \_\_\_\_\_  
24 Reuben Yeroushalmi  
25 Attorneys for Plaintiff,  
26 CONSUMER ADVOCACY GROUP, INC.  
27  
28