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8 *Attorneys for Plaintiff*

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**08/02/2023**  
Clerk of the Court  
BY: JEFFREY FLORES  
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 **CGC-23-608056**

12 EMA BELL,

13 Plaintiff,

14 vs.

15 THE TJX COMPANIES, INC.,

16 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

17 Plaintiff Ema Bell (“Plaintiff”), by and through her attorneys, alleges the following cause  
18 of action in the public interest of the citizens of the State of California.

19 **BACKGROUND OF THE CASE**

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

26 2. This complaint is a representative action brought by Plaintiff in the public interest  
27 of the citizens of the State of California to enforce the People’s right to be informed of the health  
28 hazards caused by exposure to lead, diethanolamine (DEA), and/or diisononyl phthalate (DINP),  
toxic chemicals found in products sold and/or distributed by defendant The TJX Companies, Inc.  
 (“TJX” or “Defendant”) in California.

1           3.       Lead<sup>1</sup> is a harmful chemical known to the State of California to cause cancer and  
2 birth defects or other reproductive harm. DEA<sup>2</sup> and DINP<sup>3</sup> are harmful chemicals known to the  
3 State of California to cause cancer.

4           4.       Proposition 65 requires all businesses with ten (10) or more employees that operate  
5 within California or sell products therein to comply with Proposition 65 regulations. Included in  
6 such regulations is the requirement that businesses must label any product containing a Proposition  
7 65-listed chemical that will create an exposure above safe harbor levels with a “clear and  
8 reasonable” warning before “knowingly and intentionally” exposing any person to any such listed  
9 chemical.

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

16          6.       Plaintiff alleges that Defendant distributes and/or offers for sale in California,  
17 without a requisite exposure warning, (a) *Nicole Miller*® heels, # 2518-1850-374452-01 (DINP),  
18 (b) Retinol facial essence masks, UPC # 4582419536982 (DEA), (c) *Cooksmart*® fine china mugs,  
19 # 2865-708246 (lead), and (d) *Heathcote & Ivory*® magical myth marvel mugs, # 9418-639010

20  
21  
22 <sup>1</sup> On October 1, 1992, the state of California listed lead as a chemical known to cause cancer and  
23 it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit.  
24 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On February 27, 1987, the State  
of California listed lead as a chemical known to cause birth defects or other reproductive harm.

25 <sup>2</sup> On June 22, 2012, the State of California listed DEA as a chemical known to the State to cause  
26 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code  
Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

27 <sup>3</sup> On December 20, 2013, the State of California listed DINP as a chemical known to the State to  
28 cause cancer and it has come under the purview of Proposition 65 regulations since that time. Cal.  
Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

1 (lead), (collectively, the “Products”) that expose persons to lead, DEA, and/or DINP when used  
2 for their intended purpose.

3 7. Defendant’s failure to warn consumers and other individuals in California of the  
4 health hazards associated with exposure to lead, DEA, and/or DINP in conjunction with the sale  
5 and/or distribution of the Products is a violation of Proposition 65 and subjects Defendant to the  
6 enjoinder and civil penalties described herein.

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

9 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
10 Defendant to provide purchasers or users of the Products with required warnings related to the  
11 dangers and health hazards associated with exposure to lead, DEA, and/or DINP pursuant to Health  
12 and Safety Code § 25249.7(a).

13 10. Plaintiff further seeks a reasonable award of attorney’s fees and costs.

14 **PARTIES**

15 11. Plaintiff is a citizen of the State of California acting in the interest of the general  
16 public to promote awareness of exposures to toxic chemicals in products sold in California and to  
17 improve human health by reducing hazardous substances contained in such items. She brings this  
18 action in the public interest pursuant to Health and Safety Code § 25249.7(d).

19 12. Defendant TJX, through its business, effectively imports, distributes, sells, and/or  
20 offers the Products for sale or use in the State of California, or it implies by its conduct that it  
21 imports, distributes, sells, and/or offers the Products for sale or use in the State of California.

22 13. Plaintiff alleges that defendant TJX is a “person” in the course of doing business  
23 within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

24 **VENUE AND JURISDICTION**

25 14. Venue is proper in the County of San Francisco because one or more of the  
26 instances of wrongful conduct occurred, and continue to occur in this county and/or because  
27 Defendant conducted, and continues to conduct, business in the County of San Francisco with  
28 respect to the Products.





1 reproductive harm. In summary, lead was listed under Proposition 65 as a chemical known to the  
2 State to cause cancer and birth defects or other reproductive harm.

3 23. On December 20, 2013, the State of California listed DINP as a chemical known to  
4 the State to cause cancer and it has come under the purview of Proposition 65 regulations since  
5 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

6 24. On June 22, 2012, the State of California listed DEA as a chemical known to the  
7 State to cause cancer and it has come under the purview of Proposition 65 regulations since that  
8 time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

9 25. The exposures that are the subject of the Notices result from the purchase,  
10 acquisition, handling, and recommended use of the Products. The primary route of exposure to  
11 lead, DEA, and/or DINP is through dermal absorption directly through the skin when consumers  
12 use, touch, or handle the Products. Exposure through ingestion will occur by touching the Product  
13 with subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided  
14 with the Products regarding the health hazards of exposure.

15 26. Defendant has processed, marketed, distributed, offered to sell and/or sold the  
16 Products in California since at least August 3, 2022 with respect to the *Nicole Miller*® Product;  
17 since at least August 4, 2022 with respect to the Retinol facial essence masks; since at least August  
18 18, 2022 with respect to the *Cooksmart*® Product; and since at least February 3, 2023 with respect  
19 to the *Heathcote & Ivory*® Product. The Products continue to be distributed and sold in California  
20 without the requisite warning information.

21 27. At all times relevant to this action, Defendant has knowingly and intentionally  
22 exposed users and/or consumers of the Products to lead, DEA, and/or DINP without first giving a  
23 clear and reasonable exposure warning to such individuals.

24 28. As a proximate result of acts by Defendant, as a person in the course of doing  
25 business within the meaning of H&S Code § 25249.11, individuals throughout the State of  
26 California, including in San Francisco County, have been exposed to lead, DEA, and/or DINP  
27 without a clear and reasonable warning on the Products. The individuals subject to the violative  
28

1 exposures include normal and foreseeable users and consumers that use the Products, as well as  
2 all others exposed to the Products.

### 3 SATISFACTION OF NOTICE REQUIREMENTS

4 29. Plaintiff purchased the Products from TJX. At the time of purchase, TJX did not  
5 provide a Proposition 65 exposure warning for lead, DEA, DINP, or any other Proposition 65 listed  
6 chemical in a manner consistent with H&S Code § 25603.1 as described *supra*.

7 30. The *Cooksmart*® product and *Heathcote & Ivory*® product were sent to a testing  
8 laboratory to determine if, and what amount of lead would migrate and/or leach from the products;  
9 the *Nicole Miller*® product was sent to a testing laboratory for phthalate testing to determine the  
10 phthalate content of the product; and the Retinol facial essence masks were sent to a testing  
11 laboratory for diethanolamine testing to determine the diethanolamine content of the product.

12 31. For each Product that was sent to the laboratory, Plaintiff received a chemical test  
13 report (collectively, the “Chemical Test Reports”). The Chemical Test Report findings determined  
14 the *Cooksmart*® product and *Heathcote & Ivory*® product exposes users to lead; the *Nicole*  
15 *Miller*® product exposes users to DINP; and the Retinol facial essence masks exposes users to  
16 DEA.

17 32. Plaintiff provided each Chemical Test Report and each Product to an analytical  
18 chemist to determine if, based on the findings of the Chemical Test Reports and the reasonable  
19 and foreseeable use of the Products, exposure to lead, DEA, and/or DINP will occur at levels that  
20 require Proposition 65 warnings under the Clear and Reasonable Warnings section 25601 of Title  
21 27 of the California Code of Regulations.

22 33. On August 3, 2022, Plaintiff received from the analytical chemist an exposure  
23 assessment report for the *Nicole Miller*® product that concluded that persons in California who  
24 use the *Nicole Miller*® product will be exposed to levels of DINP that require a Proposition 65  
25 exposure warning. On August 4, 2022, Plaintiff received from the analytical chemist an exposure  
26 assessment report for the Retinol facial essence masks that concluded that persons in California  
27 who use the Retinol facial essence masks will be exposed to levels of DEA that require a  
28 Proposition 65 exposure warning. On August 18, 2022, Plaintiff received from the analytical

1 chemist an exposure assessment report for the *Cooksmart*® product that concluded that persons in  
2 California who use the *Cooksmart*® product will be exposed to levels of lead that require a  
3 Proposition 65 exposure warning. On February 3, 2023, Plaintiff received from the analytical  
4 chemist an exposure assessment report for the *Heathcote & Ivory*® product that concluded that  
5 persons in California who use the *Heathcote & Ivory*® product will be exposed to levels of lead  
6 that require a Proposition 65 exposure warning.

7 34. On August 3, 2022 (*Nicole Miller*® heels), August 4, 2022 (Retinol facial essence  
8 masks), August 18, 2022 (*Cooksmart*® fine china mugs), and February 3, 2023 (*Heathcote &*  
9 *Ivory*® magical myth marvel mugs), Plaintiff gave notice of alleged violation of Health and Safety  
10 Code § 25249.6 (collectively, the “Notices”) to Defendant concerning the exposure of California  
11 citizens to lead, DEA and/or DINP contained in the Products without proper warning, subject to a  
12 private action to Defendant and to the California Attorney General’s office and the offices of the  
13 County District attorneys and City Attorneys for each city with a population greater than 750,000  
14 persons wherein the herein violations allegedly occurred. See attached at Exhibits “A” – “D” a  
15 true and correct copy of the Notices.

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

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

25 37. Plaintiff is commencing this action more than sixty (60) days from the date of each  
26 Notice to Defendant, as required by law.



1 **FIRST CAUSE OF ACTION**

2 **(By Plaintiff against Defendant for the Violation of Proposition 65)**

3 38. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 37 of  
4 this Complaint as though fully set forth herein.

5 39. Defendant has, at all times mentioned herein, acted as distributor, and/or retailer of  
6 the Products.

7 40. Use of the Products will expose users to lead, DEA, and/or DINP, hazardous  
8 chemicals found on the Proposition 65 list of chemicals known to be hazardous to human health.

9 41. The Products do not comply with the Proposition 65 warning requirements.

10 42. Plaintiff, based on her best information and belief, avers that at all relevant times  
11 herein, and at least since at least August 3, 2022 with respect to the *Nicole Miller*® heels; since at  
12 least August 4, 2022 with respect to the Retinol facial essence masks; since at least August 18,  
13 2022 with respect to the *Cooksmart*® fine china mugs; and since at least February 3, 2023 with  
14 respect to the *Heathcote & Ivory*® magical myth marvel mugs, continuing until the present, that  
15 Defendant has continued to knowingly and intentionally expose California users and consumers  
16 of the Products to lead, DEA, and/or DINP without providing required warnings under Proposition  
17 65.

18 43. The exposures that are the subject of the Notices result from the purchase,  
19 acquisition, handling and recommended use of the Products. The primary route of exposure to the  
20 is through dermal absorption directly through the skin when consumers use, touch, or handle the  
21 Products. Exposure through ingestion will occur by touching the Product with subsequent touching  
22 of the user's hand to mouth. No clear and reasonable warning is provided with the Products  
23 regarding the health hazards of exposure.

24 44. Plaintiff, based on her best information and belief, avers that such exposures will  
25 continue every day until clear and reasonable warnings are provided to purchasers and users or  
26 until these known toxic chemicals are removed from the Products.

27 45. Defendant has knowledge that the normal and reasonably foreseeable use of the  
28 Products expose individuals to lead, DEA, and/or DINP, and Defendant intends that exposures to

1 lead, DEA, and/or DINP will occur by its deliberate, non-accidental participation in the  
2 importation, distribution, sale and offering of the Products to consumers in California

3 46. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
4 Complaint.

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

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

9 **PRAYER FOR RELIEF**

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

12 A. That the court assess civil penalties against each Defendant in the amount of \$2,500  
13 per day for each violation for up to 365 days (up to a maximum civil penalty amount per  
14 violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);

15 B. That the court preliminarily and permanently enjoin Defendant mandating  
16 Proposition 65 compliant warnings on the Products;

17 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the  
18 amount of \$50,000.00.

19 D. That the court grant any further relief as may be just and proper.

20 Dated: August 2, 2023

BRODSKY SMITH

21 By:  \_\_\_\_\_

22 Evan J. Smith (SBN242352)  
23 Ryan P. Cardona (SBN302113)  
24 9595 Wilshire Boulevard, Suite 900  
25 Beverly Hills, CA 90212  
26 Telephone: (877) 534-2590  
27 Facsimile: (310) 247-0160

28 *Attorneys for Plaintiff*

# EXHIBIT "A"

LAW OFFICES  
**BRODSKY & SMITH**

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BEVERLY HILLS, CA 90212  
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**NEW JERSEY OFFICE**  
1310 NORTH KINGS HIGHWAY  
CHERRY HILL, NJ 08934  
856.795.7250

**NEW YORK OFFICE**  
240 MINEOLA BOULEVARD  
MINEOLA, NY 11501  
516.741.4977

**PENNSYLVANIA OFFICE**  
TWO BALA PLAZA, STE. 805  
BALA CYNWYD, PA 19004  
610.667.6200

August 3, 2022

|   |   |
|---|---|
| President/CEO<br>Kobra International, Ltd.<br>c/o CT Corporation System<br>28 Liberty Street<br>New York, NY 10005                                      | Kenneth S. Frieze, CEO<br>Kobra International, Ltd. dba Nicole Miller<br>800 Boylston Street, 27 <sup>th</sup> Floor<br>Boston, MA 02199                              |
| President/CEO<br>The TJX Companies, Inc.<br>c/o The Corporation Trust Company<br>Corporation Trust Center<br>1209 Orange Street<br>Wilmington, DE 19801 | President/CEO<br>The TJX Companies, Inc. dba Marshalls<br>c/o The Corporation Trust Company<br>Corporation Trust Center<br>1209 Orange Street<br>Wilmington, DE 19801 |

**60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act<sup>1</sup>**

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky & Smith ("Brodsky Smith") represents Ema Bell ("Bell"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Bell has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 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 the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

**I. DESCRIPTION OF THE VIOLATION**

<sup>1</sup> The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

1. **Enforcer:** Ema Bell, 222 S. Figueroa St. Apt. 1212, Los Angeles, CA 90012-2581; (Ph) 424-332-3817.
2. **Alleged Violator(s):** Kobra International, Ltd.; The TJX Companies, Inc.; TJX Companies, Inc. dba Marshalls
3. **Time Period of Exposure:** Violations have been occurring since at least August 3, 2022 and are continuing to this day.
4. **Listed Chemical:** Diisononyl phthalate (DINP). DINP is listed under Proposition 65 as a chemical known to the State to cause cancer.
5. **Product:**

| Product <sup>2</sup> | Non- Exclusive Examples of the Product     |
|----------------------|--|
| heels                | Nicole Miller Heels<br>2518-1850-374452-01 |

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

## **II. PROPOSITION 65 INFORMATION**

For the Violators' reference, enclosed is a copy of "Proposition 65: A Summary" that has been prepared by the Office of Environmental Health Hazard Assessment ("OEHHA"). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

## **III. RESOLUTION OF THE CLAIMS**

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Bell against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Bell is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

<sup>2</sup> The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Bell's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

**Bell has retained me as legal counsel in connection with this Notice. Please direct all communications regarding this Notice to my attention at Brodsky & Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.**

Sincerely,

  
\_\_\_\_\_  
Evan V. Smith

**Attachments**

**Certificate of Merit**

**Certificate of Service**

**The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary**

# EXHIBIT “B”

LAW OFFICES  
**BRODSKY & SMITH**

9595 WILSHIRE BLVD., STE. 900  
BEVERLY HILLS, CA 90212  
877.534.2590  
www.brodskysmith.com

**NEW JERSEY OFFICE**  
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CHERRY HILL, NJ 08934  
856.795.7250

**NEW YORK OFFICE**  
240 MINEOLA BOULEVARD  
MINEOLA, NY 11501  
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**PENNSYLVANIA OFFICE**  
TWO BALA PLAZA, STE. 805  
BALA CYNWYD, PA 19004  
610.667.6200

August 4, 2022

|   |   |
|---|---|
| President/CEO<br>Mitomo Co., Ltd.<br>3-3-9 Rinkaicho<br>Edogawa-Ku<br>Tokyo, JAPAN  | President/CEO<br>Mitomo Cosmetic Co., Ltd.<br>Kitahinata<br>Chosei Gun Shirako Machi<br>Chiba<br>JAPAN 2994206  |
| President/CEO<br>The TJX Companies, Inc.<br>c/o The Corporation Trust Company<br>Corporation Trust Center<br>1209 Orange Street<br>Wilmington, DE 19801 | President/CEO<br>The TJX Companies, Inc. dba TJ Maxx<br>c/o The Corporation Trust Company<br>Corporation Trust Center<br>1209 Orange Street<br>Wilmington, DE 19801 |

**60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act<sup>1</sup>**

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Brodsky & Smith ("Brodsky Smith") represents Ema Bell ("Bell"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Bell has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 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 without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

**I. DESCRIPTION OF THE VIOLATION**

<sup>1</sup> The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.



1. **Enforcer:** Ema Bell, 222 S. Figueroa St. Apt. 1212, Los Angeles, CA 90012-2581; (Ph) 424-332-3817.
2. **Alleged Violator(s):** Mitomo Co., Ltd.; Mitomo Cosmetic Co., Ltd.; The TJX Companies, Inc.; The TJX Companies dba TJ Maxx
3. **Time Period of Exposure:** Violations have been occurring since at least August 4, 2022 and are continuing to this day.
4. **Listed Chemical:** Diethanolamine (DEA) is listed under Proposition 65 as a chemical known to the State to cause cancer.
5. **Product:**

| Product <sup>2</sup> | Non- Exclusive Examples of the Product            |
|----------------------|---|
| Facial Mask          | Retinol Facial Essence Mask<br>UPC# 4582419536982 |

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical is through dermal exposure. Some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

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Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Bell against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Bell is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

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<sup>2</sup> The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Bell's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

**Bell has retained me as legal counsel in connection with this Notice. Please direct all communications regarding this Notice to my attention at Brodsky & Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, [esmith@brodskysmith.com](mailto:esmith@brodskysmith.com).**

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**

# EXHIBIT "C"

LAW OFFICES  
**BRODSKY & SMITH, LLC**

9595 WILSHIRE BLVD., STE. 900  
BEVERLY HILLS, CA 90212  
877.534.2590  
www.brodskysmith.com

**NEW JERSEY OFFICE**  
1310 NORTH KINGS HIGHWAY  
CHERRY HILL, NJ 08934  
856.795.7250

**NEW YORK OFFICE**  
240 MINEOLA BOULEVARD  
MINEOLA, NY 11501  
516.741.4977

**PENNSYLVANIA OFFICE**  
TWO BALA PLAZA, STE. 805  
BALA CYNWYD, PA 19004  
610.667.6200

August 18, 2022

|   |   |
|---|---|
| President/CEO<br>Citylook Imports Ltd.<br>Harrison Trading Estate<br>Longworth Street<br>Preston<br>Lancashire<br>UNITED KINGDOM PR 15DL                            | President/CEO<br>The TJX Companies, Inc.<br>c/o The Corporation Trust Company<br>Corporation Trust Center<br>1209 Orange Street<br>Wilmington, DE 19801           |
| President/CEO<br>The TJX Companies, Inc. dba TJ Maxx<br>c/o The Corporation Trust Company<br>Corporation Trust Center<br>1209 Orange Street<br>Wilmington, DE 19801 | President/CEO<br>The TJX Operating Companies, Inc.<br>c/o The Corporation Trust Company<br>Corporation Trust Center<br>1209 Orange Street<br>Wilmington, DE 19801 |

**60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act<sup>1</sup>**

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky & Smith, LLC ("Brodsky Smith") represents Ema Bell ("Bell"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Bell has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 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 the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

**I. DESCRIPTION OF THE VIOLATION**

<sup>1</sup> The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

1. **Enforcer:** Ema Bell, 222 S. Figueroa St. Apt. 1212, Los Angeles, CA 90012-2581; (Ph) 424-332-3817.
2. **Alleged Violator(s):** Citylook Imports Ltd.; The TJX Companies, Inc.; The TJX Companies, Inc. dba TJ Maxx; The TJX Operating Companies, Inc.
3. **Time Period of Exposure:** Violations have been occurring since at least August 18, 2022 and are continuing to this day.
4. **Listed Chemical:** Lead. Lead is listed under Proposition 65 as a chemical known to the State to cause cancer and reproductive toxicity.
5. **Product:**

| Product <sup>2</sup> | Non- Exclusive Examples of the Product |
|----------------------|--|
| Mug                  | Cooksmart Fine China Mug               |

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase and recommended use of the Product. The primary route of exposure to the Listed Chemical is through ingestion and dermal absorption exposure. When used for its intended purpose, the Product will be in contact with foods. The Listed Chemical will leach into the foods it comes into contact with. When foods contaminated with the Listed Chemical are consumed, ingestion of the Listed Chemical will occur which will increase BLLs. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

## **II. PROPOSITION 65 INFORMATION**

For the Violators' reference, enclosed is a copy of "Proposition 65: A Summary" that has been prepared by the Office of Environmental Health Hazard Assessment ("OEHHA"). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

## **III. RESOLUTION OF THE CLAIMS**

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Bell against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Bell is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

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<sup>2</sup> The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Bell's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

Bell has retained me as legal counsel in connection with this Notice. Please direct all communications regarding this Notice to my attention at Brodsky & Smith, LLC, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.

Sincerely,



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Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

# EXHIBIT “D”

LAW OFFICES  
**BRODSKY & SMITH, LLC<sup>1</sup>**

9595 WILSHIRE BLVD., STE. 900  
BEVERLY HILLS, CA 90212  
877.534.2590  
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**PENNSYLVANIA OFFICE**  
TWO BALA PLAZA, STE. 805  
BALA CYNWYD, PA 19004  
610.667.6200

February 3, 2023

|  |  |
|--|--|
| President/CEO<br>Heathcote & Ivory Limited<br>2 Lonsdale Road<br>London, NW6 6RD<br>GREAT BRITAIN  | President/CEO<br>Heathcote & Ivory Limited<br>7 Chalcot Road<br>London NW6 6RD<br>GREAT BRITAIN  |
| President/CEO<br>Heathcote & Ivory Limited<br>Rm 1701-02A 17/F<br>625 King's Road,<br>North Point, Hong Kong                               | President/CEO<br>Heathcote & Ivory (Asia Pacific) PTY LTD<br>12 Illawara Cres, North Ballajura<br>Western Australia, 6066 Australia    |
| President/CEO<br>Heathcote & Ivory Ireland Limited<br>RBK House,<br>Irishtown,<br>Athlone Co. Westmeath,<br>Athlone, Westmeath<br>N37 XP52 | President/CEO<br>H & I Toiletries Ltd.<br>25 Oldbury Place,<br>London, W1U 5PN<br>GREAT BRITAIN  |
| The TJX Companies, Inc. dba TJ Maxx<br>c/o CT Corporation System<br>101 Federal Street<br>Boston, MA 02110                                 | The TJX Companies, Inc.<br>c/o The Corporation Trust Company<br>Corporation Trust Center<br>1209 Orange Street<br>Wilmington, DE 19801 |

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<sup>1</sup> The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.



provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 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 the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

**I. DESCRIPTION OF THE VIOLATION**

1. **Enforcer:** Ema Bell, 222 S. Figueroa St. Apt. 1212, Los Angeles, CA 90012-2581; (Ph) 424-332-3817.
2. **Alleged Violator(s):** Heathcote & Ivory Limited; Heathcote & Ivory (Asia Pacific) PTY LTD; Heathcote & Ivory Ireland Limited; H & I Toiletries Ltd.; The TJX Companies, Inc.; The TJX Companies, Inc. dba TJ Maxx
3. **Time Period of Exposure:** Violations have been occurring since at least February 3, 2023 and are continuing to this day.
4. **Listed Chemical:** Lead. Lead is listed under Proposition 65 as a chemical known to the State to cause cancer and reproductive toxicity.
5. **Product:**

| Product <sup>2</sup> | Non- Exclusive Examples of the Product                         |
|----------------------|--|
| Mug                  | Heathcote & Ivory Magic Myth Marvel Mug<br>UPC# 5 015632102782 |

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase and recommended use of the Product. The primary route of exposure to the Listed Chemical is through ingestion and dermal absorption exposure. When used for its intended purpose, the Product will be in contact with foods. The Listed Chemical will leach into the foods it comes into contact with. When foods contaminated with the Listed Chemical are consumed, ingestion of the Listed Chemical will occur which will increase BLLs. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

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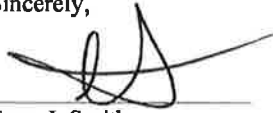
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Sincerely,



Evan J. Smith

#### **Attachments**

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Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary