

Chad Finke, Executive Officer / Clerk of the Court  
By:           D. Drew           Deputy

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

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
12 **COUNTY OF ALAMEDA**

13 CONSUMER ADVOCACY GROUP, INC.,  
14 in the public interest,  
15  
16 Plaintiff,  
17  
18 v.  
19 THE TJX COMPANIES, INC., a Delaware  
20 Corporation;  
21 JAY IMPORT COMPANY, INC., a New  
22 York Corporation;  
23 WBM INTERNATIONAL, LLC DBA WBM  
24 LLC, a New Jersey Limited Liability  
25 Company;  
26 and DOES 1-30,  
27  
28 Defendants.

CASE NO. 24CV082561  
  
FIRST AMENDED 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)

Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges two causes of action  
against defendants THE TJX COMPANIES, INC., JAY IMPORT COMPANY, INC., WBM  
INTERNATIONAL, LLC DBA WBM LLC, and DOES 1-30 as follows:

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YEROUSHALMI &  
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\*An Independent  
Association of Law  
Corporations

**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 THE TJX COMPANIES, INC. (“TJX”) is a Delaware Corporation, qualified to do business in Delaware, and doing business in the State of California at all relevant times herein.
3. Defendant JAY IMPORT COMPANY, INC. (“JAY”) is a New York Corporation, qualified to do business in New York, and doing business in the State of California at all relevant times herein.
4. Defendant WBM INTERNATIONAL, LLC DBA WBM LLC (“WBM”) is a New Jersey Limited Liability Company, qualified to do business in New Jersey, and 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 1-30, 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 TJX, JAY, WBM, and DOES 1-30.
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 1-30, was an agent, servant, or employee of each of the other

1 Defendants. In conducting the activities alleged in this Complaint, each of the  
2 Defendants was acting within the course and scope of this agency, service, or  
3 employment, and was acting with the consent, permission, and authorization of each of  
4 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
5 were ratified and approved by every other Defendant or their officers or managing  
6 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the  
7 alleged wrongful conduct of each of the other Defendants.

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

#### 12 **JURISDICTION**

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

3 **BACKGROUND AND PRELIMINARY FACTS**

4 13. In 1986, California voters approved an initiative to address growing concerns about  
5 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to  
6 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,  
7 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
8 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections  
9 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources  
10 from contamination, to allow consumers to make informed choices about the products  
11 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
12 fit.

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

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

24 16. Proposition 65 provides that any person "violating or threatening to violate" the statute  
25 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §  
26 25249.7. "Threaten to violate" means "to create a condition in which there is a  
27 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

28

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

3 17. Plaintiff identified certain practices of manufacturers and distributors of Jewelry Boxes  
4 and Turmeric Powder of exposing, knowingly and intentionally, persons in California to  
5 Diethyl Hexyl Phthalate and Di (2-ethylhexyl) phthalate, Lead and Lead Compounds of  
6 such products without first providing clear and reasonable warnings of such to the  
7 exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants  
8 engaged in such practice.

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

17 19. On October 1, 1992 the Governor of California added Lead and Lead Compounds  
18 (“Lead”) to the list of chemicals known to the State to cause cancer (*Cal. Code Regs.* tit.  
19 27, § 27001(b)). Pursuant to Health and Safety Code Sections 25249.9 and 25249.10,  
20 twenty (20) months after addition of Lead to the list of chemicals known to the State to  
21 cause cancer, Lead became fully subject to Proposition 65 warning requirements and  
22 discharge prohibitions.

23 20. On February 27, 1987, the Governor of California added Lead to the list of chemicals  
24 known to the State to cause developmental and reproductive toxicity (*Cal. Code Regs.*  
25 tit. 27, § 27001(c)). Lead is known to the State to cause developmental, female, and  
26 male reproductive toxicity. Pursuant to Health and Safety Code Sections 25249.9 and  
27 25249.10, twenty (20) months after addition of Lead to the list of chemicals known to  
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1 the State to cause developmental and reproductive toxicity, Lead became fully subject to  
2 Proposition 65 warning requirements and discharge prohibitions.

3 **SATISFACTION OF PRIOR NOTICE**

4 21. Plaintiff served the following notices for alleged violations of Health and Safety Code  
5 Section 25249.6, concerning consumer products exposures:

6 a. On or about December 1, 2023, Plaintiff gave notice of alleged violations of  
7 Health and Safety Code Section 25249.6, concerning consumer products  
8 exposures subject to a private action to TJX, JAY, and to the California  
9 Attorney General, County District Attorneys, and City Attorneys for each city  
10 containing a population of at least 750,000 people in whose jurisdictions the  
11 violations allegedly occurred, concerning the Jewelry Boxes.

12 b. On or about January 5, 2024, Plaintiff gave notice of alleged violations of  
13 Health and Safety Code Section 25249.6, concerning consumer products  
14 exposures subject to a private action to TJX, WBM, and to the California  
15 Attorney General, County District Attorneys, and City Attorneys for each city  
16 containing a population of at least 750,000 people in whose jurisdictions the  
17 violations allegedly occurred, concerning the Turmeric Powder.

18 22. Before sending the notice of alleged violations, Plaintiff investigated the consumer  
19 products involved, the likelihood that such products would cause users to suffer  
20 significant exposures to DEHP and Lead, and the corporate structure of each of the  
21 Defendants.

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

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

8 25. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
9 gave notice of the alleged violations to TJX, JAY, WBM, and the public prosecutors  
10 referenced in Paragraph 21.

11 26. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
12 any applicable district attorney or city attorney has commenced and is diligently  
13 prosecuting an action against the Defendants.

14 **FIRST CAUSE OF ACTION**

15 **(By CONSUMER ADVOCACY GROUP, INC. and against TJX, JAY, and DOES**  
16 **1-15 for Violations of Proposition 65, The Safe Drinking Water and Toxic**  
17 **Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

18 **Jewelry Accessories**

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

21 28. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
22 distributor, promoter, or retailer of Jewelry Boxes, including but not limited to  
23 "American Atelier"; "Made In China"; "ITEM#: 1630081"; "UPC 088235719256".

24 29. Jewelry Boxes contain DEHP.

25 30. Defendants knew or should have known that DEHP has been identified by the State of  
26 California as a chemical known to cause cancer, and reproductive toxicity and therefore  
27 was subject to Proposition 65 warning requirements. Defendants were also informed of  
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1 the presence of DEHP in Jewelry Boxes within Plaintiff's notice of alleged violations  
2 further discussed above at Paragraph 21 a.

3 31. Plaintiff's allegations regarding Jewelry Boxes concerns "[c]onsumer products  
4 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
5 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
6 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*  
7 *25602(b)*. Jewelry Boxes are consumer products, and, as mentioned herein, exposures to  
8 DEHP took place as a result of such normal and foreseeable consumption and use.

9 32. Plaintiff is informed, believes, and thereon alleges that between December 1, 2020 and  
10 the present, each of the Defendants knowingly and intentionally exposed California  
11 consumers and users of Jewelry Boxes, which Defendants manufactured, distributed, or  
12 sold as mentioned above, to DEHP, without first providing any type of clear and  
13 reasonable warning of such to the exposed persons before the time of exposure.  
14 Defendants have distributed and sold Jewelry Boxes in California. Defendants know and  
15 intend that California consumers will use and consume Jewelry Boxes, thereby exposing  
16 them to DEHP. Further, Plaintiff is informed, believes, and thereon alleges that  
17 Defendants are selling Jewelry Boxes under a brand or trademark that is owned or  
18 licensed by the Defendants or an entity affiliated thereto; have knowingly introduced  
19 DEHP into Jewelry Boxes or knowingly caused DEHP to be created in Jewelry Boxes;  
20 have covered, obscured or altered a warning label that has been affixed to Jewelry Boxes  
21 by the manufacturer, producer, packager, importer, supplier or distributor of Jewelry  
22 Boxes; have received a notice and warning materials for exposure from Jewelry Boxes  
23 without conspicuously posting or displaying the warning materials; and/or have actual  
24 knowledge of potential exposure to DEHP from Jewelry Boxes. Defendants thereby  
25 violated Proposition 65.

26 33. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
27 Persons sustain exposures by handling Jewelry Boxes without wearing gloves or any  
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1 other personal protective equipment, or by touching bare skin or mucous membranes  
2 with gloves after handling Jewelry Boxes, as well as through direct and indirect hand to  
3 mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed  
4 from Jewelry Boxes.

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

11 35. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
12 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
13 violations alleged herein will continue to occur into the future.

14 36. Based on the allegations herein, Defendants are liable for civil penalties of up to  
15 \$2,500.00 per day per individual exposure to DEHP from Jewelry Boxes, pursuant to  
16 Health and Safety Code Section 25249.7(b).

17 37. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
18 filing this Complaint.

19  
20 **SECOND CAUSE OF ACTION**

21 **(By CONSUMER ADVOCACY GROUP, INC. and against TJX, WBM, and**  
22 **DOES 15-30 for Violations of Proposition 65, The Safe Drinking Water and Toxic**  
23 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*)**

24 **Spices**

25 38. Plaintiff repeats and incorporates by reference paragraphs 1 through 37 of this complaint  
26 as though fully set forth herein.

27 39. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
28 distributor, promoter, or retailer of Turmeric Powder, identified as "HIMALAYAN

1 CHEF”; “TURMERIC POWDER”; “NET WT 6.35 OZ (180 G)””; “Product of Pakistan”;  
2 “LOT: NO: 2442021”; “BEST: BY : SEP 2024”; “UPC 810921036374”.

3 a. The scope of this cause of action is limited to the specific lot number and/or  
4 batch number “LOT: NO: 2442021” of Turmeric Powder.

5 40. Turmeric Powder contains Lead.

6 41. Defendants knew or should have known that Lead has been identified by the State of  
7 California as a chemical known to cause cancer, and reproductive toxicity and therefore  
8 was subject to Proposition 65 warning requirements. Defendants were also informed of  
9 the presence of Lead in Turmeric Powder within Plaintiff’s notice of alleged violations  
10 further discussed above at Paragraph 21b.

11 42. Plaintiff’s allegations regarding Turmeric Powder concerns “[c]onsumer products  
12 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,  
13 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
14 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*  
15 *25602(b)*. Turmeric Powder is a consumer product, and, as mentioned herein, exposures  
16 to Lead took place as a result of such normal and foreseeable consumption and use.

17 43. Plaintiff is informed, believes, and thereon alleges that between January 5, 2021 and the  
18 present, each of the Defendants knowingly and intentionally exposed California  
19 consumers and users of Turmeric Powder, which Defendants manufactured, distributed,  
20 or sold as mentioned above, to Lead, without first providing any type of clear and  
21 reasonable warning of such to the exposed persons before the time of exposure.  
22 Defendants have distributed and sold Turmeric Powder in California. Defendants know  
23 and intend that California consumers will use and consume Turmeric Powder, thereby  
24 exposing them to Lead. Further, Plaintiff is informed, believes, and thereon alleges that  
25 Defendants are selling Turmeric Powder under a brand or trademark that is owned or  
26 licensed by the Defendants or an entity affiliated thereto; have knowingly introduced  
27 Lead into Turmeric Powder or knowingly caused Lead to be created in Turmeric  
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1 Powder; have covered, obscured or altered a warning label that has been affixed to  
2 Turmeric Powder by the manufacturer, producer, packager, importer, supplier or  
3 distributor of Turmeric Powder; have received a notice and warning materials for  
4 exposure from Turmeric Powder without conspicuously posting or displaying the  
5 warning materials; and/or have actual knowledge of potential exposure to Lead from  
6 Turmeric Powder. Defendants thereby violated Proposition 65.

7 44. The principal routes of exposure are through ingestion, especially direct (oral) ingestion,  
8 inhalation, and trans-dermal absorption. Persons sustain exposures primarily by eating  
9 and consuming Turmeric Powder, and additionally by handling Turmeric Powder  
10 without wearing gloves or any other personal protective equipment, or by touching bare  
11 skin or mucous membranes with gloves after handling Turmeric Powder, as well as  
12 through direct and indirect hand to mouth contact, hand to mucous membrane, or even  
13 breathing in particulate matter dispersed from Turmeric Powder.

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

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

24 47. Based on the allegations herein, Defendants are liable for civil penalties of up to  
25 \$2,500.00 per day per individual exposure to Lead from Turmeric Powder, pursuant to  
26 Health and Safety Code Section 25249.7(b).

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

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4 **PRAYER FOR RELIEF**

5 Plaintiff demands against each of the Defendants as follows:

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

11  
12 Dated: September 6, 2024

YEROUSHALMI & YEROUSHALMI\*

13  
14 */s/ Reuben Yeroushalmi*

15 Reuben Yeroushalmi  
16 Attorneys for Plaintiff,  
17 CONSUMER ADVOCACY GROUP, INC.  
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