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David W. Slayton,
Executive Officer/Clerk of Court,
By C. Cervantes, Deputy Clerk

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**

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

13 Plaintiff,

14 v.

15 TOMMY BAHAMA GROUP, INC., a
16 Delaware Corporation;
17 THE TJX COMPANIES, INC., a Delaware
18 Corporation;
19 and DOES 1-20,

20 Defendants.

CASE NO. **25STCV09962**

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 \$35,000)

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26 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges two causes of action
27 against defendants THE TJX COMPANIES, INC.; TOMMY BAHAMA GROUP, INC., and
28 DOES 1-20 as follows:

THE PARTIES

- 1
2 1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an
3 organization qualified to do business in the State of California. CAG is a person within
4 the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting
5 as a private attorney general, brings this action in the public interest as defined under
6 Health and Safety Code Section 25249.7, subdivision (d).
- 7 2. Defendant THE TJX COMPANIES, INC. (“TJX”) is a Delaware Corporation, qualified
8 to do business in Delaware, and doing business in the State of California at all relevant
9 times herein.
- 10 3. Defendant TOMMY BAHAMA GROUP, INC. (“TOMMY”) is a Delaware Corporation,
11 qualified to do business in California and doing business in the State of California at all
12 relevant times herein.
- 13 4. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20,
14 and therefore sues these defendants by such fictitious names. Plaintiff will amend this
15 Complaint to allege their true names and capacities when ascertained. Plaintiff is
16 informed, believes, and thereon alleges that each fictitiously named defendant is
17 responsible in some manner for the occurrences herein alleged and the damages caused
18 thereby.
- 19 5. At all times mentioned herein, the term “Defendants” includes TJX, TOMMY, and
20 DOES 1-20.
- 21 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all
22 times mentioned herein have conducted business within the State of California.
- 23 7. Upon information and belief, at all times relevant to this action, each of the Defendants,
24 including DOES 1-20, was an agent, servant, or employee of each of the other
25 Defendants. In conducting the activities alleged in this Complaint, each of the
26 Defendants was acting within the course and scope of this agency, service, or
27 employment, and was acting with the consent, permission, and authorization of each of
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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 8. 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 9. 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 10. 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 11. 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 12. 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 13. 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 14. 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 15. 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 16. Plaintiff identified certain practices of manufacturers and distributors of Backgammon
2 Sets and Handbags of exposing, knowingly and intentionally, persons in California to
3 Diethyl Hexyl Phthalate and Di (2-ethylhexyl) phthalate and Di-n-Butyl Phthalate of
4 such products without first providing clear and reasonable warnings of such to the
5 exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants
6 engaged in such practice.

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

15 18. On December 2, 2005, the Governor of California added Di-n-butyl Phthalate (“DBP”)
16 to the list of chemicals known to the State to cause developmental, and reproductive
17 toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)). DBP is known to the State to cause
18 developmental, female, and male reproductive toxicity. Pursuant to Health and Safety
19 Code Sections 25249.9 and 25249.10, twenty (20) months after addition of DBP to the
20 list of chemicals known to the State to cause reproductive toxicity, DBP became fully
21 subject to Proposition 65 warning requirements and discharge prohibitions.

22 **SATISFACTION OF PRIOR NOTICE**

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

- 25 a. On or about September 16, 2024, Plaintiff gave notice of alleged violations of
26 Health and Safety Code Section 25249.6, concerning consumer products
27 exposures subject to a private action to TJX, and to the California Attorney
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1 General, County District Attorneys, and City Attorneys for each city containing
2 a population of at least 750,000 people in whose jurisdictions the violations
3 allegedly occurred, concerning the Backgammon Set.

4 b. On or about September 23, 2024, Plaintiff gave notice of alleged violations of
5 Health and Safety Code Section 25249.6, concerning consumer products
6 exposures subject to a private action to TJX, and to the California Attorney
7 General, County District Attorneys, and City Attorneys for each city containing
8 a population of at least 750,000 people in whose jurisdictions the violations
9 allegedly occurred, concerning the Backgammon Set.

10 c. On or about October 4, 2024, Plaintiff gave notice of alleged violations of
11 Health and Safety Code Section 25249.6, concerning consumer products
12 exposures subject to a private action to TJX, TOMMY, and to the California
13 Attorney General, County District Attorneys, and City Attorneys for each city
14 containing a population of at least 750,000 people in whose jurisdictions the
15 violations allegedly occurred, concerning the Handbag.

16 d. On or about October 11, 2024, Plaintiff gave notice of alleged violations of
17 Health and Safety Code Section 25249.6, concerning consumer products
18 exposures subject to a private action to TJX, TOMMY, and to the California
19 Attorney General, County District Attorneys, and City Attorneys for each city
20 containing a population of at least 750,000 people in whose jurisdictions the
21 violations allegedly occurred, concerning the Handbag.

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

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

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

11 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
12 gave notice of the alleged violations to TJX, TOMMY, and the public prosecutors
13 referenced in Paragraph 19.

14 24. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
15 any applicable district attorney or city attorney has commenced and is diligently
16 prosecuting an action against the Defendants.

FIRST CAUSE OF ACTION

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

Games

21
22 25. Plaintiff repeats and incorporates by reference paragraphs 1 through 24 of this complaint
23 as though fully set forth herein.

24 26. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
25 distributor, promoter, or retailer of Backgammon Set, including but not limited to:
26 "Brouk & CO"; "BACKGAMMON SET"; "CHINA"; "74-9799-512091-004999-3-2".

27 27. Backgammon Set contains DEHP.

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1 28. Defendants knew or should have known that DEHP has been identified by the State of
2 California as a chemical known to cause cancer, reproductive toxicity, and
3 developmental toxicity and therefore was subject to Proposition 65 warning
4 requirements. Defendants were also informed of the presence of DEHP in Backgammon
5 Set within Plaintiff's notice of alleged violations further discussed above at Paragraph
6 19a and 19b.

7 29. Plaintiff's allegations regarding Backgammon Set concerns "[c]onsumer products
8 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,
9 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
10 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*
11 *25602(b)*. Backgammon Sets are consumer products, and, as mentioned herein,
12 exposures to DEHP took place as a result of such normal and foreseeable consumption
13 and use.

14 30. Plaintiff is informed, believes, and thereon alleges that between September 16, 2021 and
15 the present, each of the Defendants knowingly and intentionally exposed California
16 consumers and users of Backgammon Set, which Defendants manufactured, distributed,
17 or sold as mentioned above, to DEHP, without first providing any type of clear and
18 reasonable warning of such to the exposed persons before the time of exposure.
19 Defendants have distributed and sold Backgammon Set in California. Defendants know
20 and intend that California consumers will use and consume Backgammon Set, thereby
21 exposing them to DEHP. Further, Plaintiff is informed, believes, and thereon alleges that
22 Defendants are selling Backgammon Set under a brand or trademark that is owned or
23 licensed by the Defendants or an entity affiliated thereto; have knowingly introduced
24 DEHP into Backgammon Set or knowingly caused DEHP to be created in Backgammon
25 Set; have covered, obscured or altered a warning label that has been affixed to
26 Backgammon Set by the manufacturer, producer, packager, importer, supplier or
27 distributor of Backgammon Set; have received a notice and warning materials for
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1 exposure from Backgammon Set without conspicuously posting or displaying the
2 warning materials; and/or have actual knowledge of potential exposure to DEHP from
3 Backgammon Set. Defendants thereby violated Proposition 65.

4 31. The principal routes of exposure are through dermal contact, ingestion and inhalation.
5 Persons sustain exposures by handling Backgammon Set without wearing gloves or any
6 other personal protective equipment, or by touching bare skin or mucous membranes
7 with gloves after handling Backgammon Set, as well as through direct and indirect hand
8 to mouth contact, hand to mucous membrane, or breathing in particulate matter dispersed
9 from Backgammon Set.

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

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

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

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

25 **SECOND CAUSE OF ACTION**

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

Fashion Accessories

36. Plaintiff repeats and incorporates by reference paragraphs 1 through 35 of this complaint as though fully set forth herein.

37. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of Handbag, including but not limited to: “Tommy Bahama”; “19-1822-341112-002499-04-1”.

38. Handbag contains DEHP and DBP.

39. Defendants knew or should have known that the State of California has identified DEHP as a chemical known to cause cancer, reproductive toxicity, and developmental toxicity and DBP as a chemical known to cause reproductive toxicity and developmental toxicity, and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of the presence of DEHP and DBP in Handbag within Plaintiff's notice of alleged violations further discussed above at Paragraph 19c and 19d.

40. Plaintiff's allegations regarding Handbag concerns “[c]onsumer products exposure[s],” which “is an exposure that results from a person's acquisition, purchase, storage, 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)*. Handbags are consumer products, and, as mentioned herein, exposures to DEHP and DBP took place as a result of such normal and foreseeable consumption and use.

41. Plaintiff is informed, believes, and thereon alleges that between October 4, 2021 and the present, each of the Defendants knowingly and intentionally exposed California consumers and users of Handbag, which Defendants manufactured, distributed, or sold as mentioned above, to DEHP and DBP, without first providing any type of clear and reasonable warning of such to the exposed persons before the time of exposure. Defendants have distributed and sold Handbag in California. Defendants know and intend that California consumers will use and consume Handbag, thereby exposing them to DEHP and DBP. Further, Plaintiff is informed, believes, and thereon alleges that

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

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

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

22 44. 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 45. Based on the allegations herein, Defendants are liable for civil penalties of up to
26 \$2,500.00 per day per individual exposure to DEHP and DBP from Handbag, pursuant to
27 Health and Safety Code Section 25249.7(b).

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

3 **PRAYER FOR RELIEF**

4 Plaintiff demands against each of the Defendants as follows:

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

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11 Dated: April 3, 2025

YEROUSHALMI & YEROUSHALMI*

12
13 /s/ Reuben Yeroushalmi

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