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

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF LOS ANGELES**

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

15 Plaintiff,

16 v.

17 AHQ, LLC, a New York Limited Liability  
18 Company,

19 MARSHALLS OF CA, LLC, a Virginia  
20 Limited Liability Company;

21 MARSHALLS OF MA, INC., a  
22 Massachusetts Corporation;

23 MARSHALLS OF NEVADA, INC., a  
24 Nevada Corporation;

25 THE TJX COMPANIES, INC., a Delaware  
26 Corporation;

27 THE TJX OPERATING COMPANIES,  
28 INC., a Delaware Corporation;

HOMEGOODS, INC., a Delaware  
Corporation;

and DOES 1-80,

Defendants.

CASE NO. 19STCV40125

[Assigned for All Purposes to the Hon.  
Robert Broadbelt, Dept. 53]

**[PROPOSED] CONSENT JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Complaint Filed: November 7, 2019

1  
2 **1. INTRODUCTION**

3 1.1 This Consent Judgment is entered into by and between Plaintiff, Consumer  
4 Advocacy Group, Inc. (referred to as “CAG”) acting on behalf of itself and in the public interest,  
5 and Defendant AHQ, LLC (“Defendant”) with each a Party to the action and collectively  
6 referred to as “Parties.”

7 **1.2 Defendants and Covered Products**

8 1.2.1 CAG alleges that Defendant is a New York Corporation which employs ten or  
9 more persons. For purposes of this Consent Judgment only, Defendant is deemed a person in the  
10 course of doing business in California and subject to the provisions of the Safe Drinking Water  
11 and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq.  
12 (“Proposition 65”).

13 1.2.2 CAG alleges that Defendant manufactures, sells, or distributes Cosmetic Bags  
14 (“Cosmetic Bags”) in California.

15 **1.3 Listed Chemicals**

16 1.3.1 Diisononyl phthalate (“DINP”) has been listed by the State of California as a  
17 chemicals known to cause cancer.

18 **1.4 Notices of Violation**

19 1.4.1 On or about July 17, 2019, CAG served a “60-Day Notice of Intent to Sue for  
20 Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” that provided  
21 Defendant with notice of alleged violations of Health & Safety Code §25249.6 for failing to  
22 warn individuals in California of exposures to DINP contained in Cosmetic Bags sold by  
23 Defendant in California. No public enforcer has commenced or diligently prosecuted the  
24 allegations set forth in the Notice.

25 **1.5 Complaint**

26 1.5.1 On November 7, 2019 CAG filed a Complaint for civil penalties and injunctive  
27 relief (“Complaint”) in Los Angeles County Superior Court, Case No. 19STCV40125, against  
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1 Defendant. The Complaint alleges, among other things, that Defendant violated Proposition 65  
2 for allegedly failing to give clear and reasonable warnings of alleged exposure to DINP in  
3 Cosmetic Bag products that Defendant distributed and/or sold in California.

4 **1.6 Consent to Jurisdiction**

5 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
6 jurisdiction over the allegations of violations contained in the Complaint, personal jurisdiction  
7 over Defendant as to the acts alleged in the Complaint, that venue is proper in the County of Los  
8 Angeles, and that this Court has jurisdiction to enter this Consent Judgment as a full settlement  
9 and resolution of the allegations against Defendant contained in the Complaint, and of all claims  
10 which were or could have been raised by any person or entity based in whole or in part, directly  
11 or indirectly, on the facts alleged therein or arising therefrom or related thereto.

12 **1.7 No Admission**

13 This Consent Judgment resolves claims that are denied and disputed. The Parties enter into  
14 this Consent Judgment pursuant to a full and final settlement of any and all claims between the  
15 Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment shall  
16 be construed as an admission by the Parties of any material allegation in the Notice or the  
17 Complaint, or of any fact, conclusion of law, issue of law or violation of law of any kind, including  
18 without limitation, any admission concerning any alleged or actual violation of Proposition 65 or  
19 any other statutory, regulatory, common law, or equitable doctrine, including but not limited to the  
20 meaning of the terms “knowingly and intentionally expose” or “clear and reasonable warning” as  
21 used in Health and Safety Code section 25249.6. Nothing in this Consent Judgment, nor  
22 compliance with its terms, shall constitute or be construed as an admission by the Parties of any  
23 fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by  
24 Defendant, its officers, directors, employees, or parent, subsidiary or affiliated corporations, or be  
25 offered or admitted as evidence in any administrative or judicial proceeding or litigation in any  
26 court, agency, or forum. Furthermore, nothing in this Consent Judgment shall prejudice, waive or  
27 impair any right, remedy, argument, or defense the Parties may have in any other or future legal  
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1 proceeding, except as expressly provided in this Consent Judgment.

2 **2. DEFINITIONS**

3 2.1 “Covered Products” means Cosmetic Bags, which includes but is not limited to:  
4 “CL” BY CHRISTIAN LACROIX”; “RN#137646”; “Style # CCXS9014”;  
5 “COLOR/COULEUR: GARDEN BEIGE – ON BLACK/JARDIN BEIGE-ON NOIR”; “UPC 8  
6 84239 00588 9”; “MADE IN CHINA” sold by or supplied by Defendant.

7 2.2 “Effective Date” means the date that this Consent Judgment is approved by the  
8 Court.

9 2.3 “DINP” means Diisononyl phthalate.


10 2.4 “Listed Chemical” means DINP.

11 2.5 “Notice” means the July 17, 2019 notice.

12 **3. INJUNCTIVE RELIEF/REFORMULATION**

13 3.1 After the Effective Date, Defendant shall not sell, offer for sale in California, or  
14 ship for sale in California any Covered Products unless the level of DINP in the Covered  
15 Products does not exceed more than 0.1% (1,000 parts per million) by weight.

16 3.2 For any Covered Products still existing in Defendant inventory as of the Effective  
17 Date, Defendant shall place a Proposition 65 compliant warning on them. Any warning provided  
18 pursuant to this section shall be affixed to the packaging of, or directly on, the Covered Products,  
19 and be prominently placed with such conspicuousness as compared with other words, statements,  
20 designs, or devices as to render it likely to be read and understood by an ordinary individual  
21 under customary conditions before purchase or use. The equilateral triangle pictogram shall be  
22 in yellow with a black exclamation mark; provided however, the pictogram may be in white  
23 instead of yellow if the Covered Product label does not contain the color yellow. The warning  
24 shall state:

25  **WARNING:** This product can expose you to chemicals including DINP, known to  
26 the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

27 **4. SETTLEMENT PAYMENT**

1           **4.1 Payment and Due Date:** Within thirty (30) days of the Effective Date,  
2 Defendant shall pay a total of ninety-five thousand dollars (\$95,000) in full and complete  
3 settlement of any and all claims for civil penalties, damages, attorney’s fees, expert fees or any  
4 other claim for costs, expenses or monetary relief of any kind for claims that were or could have  
5 been asserted in the Notice or Complaint, as follows:

6           **4.1.1 Civil Penalty:** Defendant shall issue two separate checks totaling twenty-two  
7 thousand eight hundred and sixty dollars (\$22,860) as follows for alleged civil penalties pursuant  
8 to Health & Safety Code § 25249.12:

9           (a) Defendant will issue one check made payable to the State of California’s Office of  
10 Environmental Health Hazard Assessment (“OEHHA”) in the amount of seventeen thousand one  
11 hundred and forty-five dollars (\$17,145) representing 75% of the total civil penalty and  
12 Defendant will issue a second check to CAG in the amount of five thousand seven hundred and  
13 fifteen dollars (\$5,715) representing 25% of the total civil penalty;

14           (b) Separate 1099s shall be issued for each of the above payments: Defendant will issue a  
15 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of  
16 \$17,145. Defendant will also issue a 1099 to CAG in the amount of \$5,715 and deliver it to  
17 CAG c/o Yeroushalmi & Yeroushalmi, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills,  
18 California 90212.

19           **4.1.2 Additional Settlement Payments:** Defendant shall issue one check for seventeen  
20 thousand one hundred and forty dollars (\$17,140) to “Consumer Advocacy Group, Inc.” pursuant  
21 to Health & Safety Code § 25249.7(b) and California Code of Regulations, Title 11 § 3203(d).  
22 CAG will use this portion of the Total Settlement Payment as follows, eighty five percent (85%)  
23 for fees of investigation, purchasing and testing for the Proposition 65 Listed Chemical in various  
24 products, and for expert fees for evaluating exposures through various mediums, including but not  
25 limited to consumer product, occupational, and environmental exposures to the Proposition 65  
26 Listed Chemical, and the cost of hiring consulting and retaining experts who assist with the  
27 extensive scientific analysis necessary for those files in litigation and to offset the costs of future  
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1 litigation enforcing Proposition 65 but excluding attorney fees; fifteen percent (15%) for  
2 administrative costs incurred during investigation and litigation to reduce the public's exposure to  
3 the Proposition 65 Listed Chemical by notifying those persons and/or entities believed to be  
4 responsible for such exposures and attempting to persuade those persons and/or entities to  
5 reformulate their products or the source of exposure to completely eliminate or lower the level of  
6 the Proposition 65 Listed Chemical including but not limited to costs of documentation and  
7 tracking of products investigated, storage of products, website enhancement and maintenance,  
8 computer and software maintenance, investigative equipment, CAG's member's time for work  
9 done on investigations, office supplies, mailing supplies and postage Within 30 days of a request  
10 from the Attorney General, CAG shall provide to the Attorney General copies of documentation  
11 demonstrating how the above funds have been spent. CAG shall be solely responsible for ensuring  
12 the proper expenditure of such additional settlement payment.

13       **4.1.3 Reimbursement of Attorney Fees and Costs:** Defendant shall issue a check in  
14 the amount of fifty-five thousand dollars (\$55,000) payable to "Yeroushalmi & Yeroushalmi" as  
15 complete reimbursement for any and all reasonable investigation fees and costs, attorneys' fees,  
16 expert fees, and any and all other costs and expenses incurred as a result of investigating,  
17 bringing this matter to the Defendant's attention, litigating, negotiating a settlement in the public  
18 interest, and seeking and obtaining court approval of this Consent Judgment.

19       4.2 Other than the payment to OEHHA described above, all payments referenced in  
20 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi,  
21 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The  
22 payment to OEHHA shall be delivered directly to Office of Environmental Health Hazard  
23 Assessment, Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812.  
24 Defendant shall provide written confirmation to CAG concurrently with payment to OEHHA.

25 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT**

26       5.1 This Consent Judgment is a full, final, and binding resolution between CAG, on  
27 behalf of itself and in the public interest, and Defendant and their owners, officers, directors,  
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1 insurers, employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners,  
2 affiliates, sister companies, predecessors, and their successors and assigns (“Defendant  
3 Releasees”), and all entities to whom Defendant directly or indirectly distribute or sell Covered  
4 Products, including, but not limited to, downstream distributors, wholesalers, customers,  
5 retailers, marketplace hosts, franchisees, cooperative members, licensees, and the successors and  
6 assigns of any of them, who may use, maintain, distribute or sell Covered Products  
7 (“Downstream Defendant Releasees”), of all claims for alleged or actual violations of  
8 Proposition 65 for alleged exposures to the Listed Chemical from the Covered Products  
9 manufactured, distributed or sold by Defendant up through the Effective Date as set forth in the  
10 Notices and Complaint. Defendant and Defendant Releasees’ compliance with this Consent  
11 Judgment shall constitute compliance with Proposition 65 with respect to alleged exposures to  
12 the Listed Chemical from the Covered Products sold by Defendant Releasees or Downstream  
13 Defendant Releasees after the Effective Date. Nothing in this Section affects CAG’s right to  
14 commence or prosecute an action under Proposition 65 against any person other than Defendant,  
15 Defendant Releasees, or Downstream Defendant Releasees.

16           5.2     CAG on behalf of itself, its past and current agents, representatives, attorneys,  
17 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or  
18 indirectly, any form of legal action and releases all claims, including, without limitation, all  
19 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,  
20 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation  
21 fees, expert fees, and attorneys’ fees) of any nature whatsoever, whether known or unknown,  
22 fixed or contingent (collectively “Claims”), against the Released Parties arising from any actual  
23 or alleged violation of Proposition 65 or any other statutory or common law claim regarding the  
24 Covered Products manufactured, distributed or sold by the Released Parties through the Effective  
25 Date regarding any actual or alleged failure to warn about exposure to the Listed Chemical from  
26 the Covered Products. In furtherance of the foregoing, CAG on behalf of itself only, hereby  
27 waives any and all rights and benefits which it now has, or in the future may have, conferred  
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1 upon it with respect to Claims regarding the Covered Products manufactured, distributed or sold  
2 by the Released Parties through the Effective Date arising from any violation of Proposition 65  
3 or any other statutory or common law regarding the failure to warn about exposure to the Listed  
4 Chemical from the Covered Products by virtue of the provisions of section 1542 of the California  
5 Civil Code, which provides as follows:

6           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
7           CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
8           EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
9           RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
          MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
          DEBTOR OR RELEASED PARTY.

10 CAG understands and acknowledges that the significance and consequence of this waiver of  
11 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or  
12 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any  
13 violation of Proposition 65 or any other statutory or common law regarding the Covered  
14 Products manufactured, distributed or sold by the Released Parties through the Effective Date  
15 regarding the failure to warn about actual or alleged exposure to the Listed Chemical from the  
16 Covered Products, CAG will not be able to make any claim for those damages, penalties or other  
17 relief against the Released Parties. Furthermore, CAG acknowledges that it intends these  
18 consequences for any such Claims arising from any violation of Proposition 65 or any other  
19 statutory or common law regarding the failure to warn about exposure to the Listed Chemical  
20 from the Covered Products as may exist as of the date of this release but which CAG does not  
21 know exist, and which, if known, would materially affect their decision to enter into this Consent  
22 Judgment, regardless of whether their lack of knowledge is the result of ignorance, oversight,  
23 error, negligence, or any other cause.

24 **6. ENTRY OF CONSENT JUDGMENT**

25           6.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to  
26 California Health & Safety Code § 25249.7(f). The Parties agree to act in good faith to obtain  
27 Court approval of the Consent Judgment. Upon entry of the Consent Judgment, CAG and  
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1 Defendant waive their respective rights to a hearing and trial on the allegations in the Notices  
2 and Complaint.

3           6.2       If this Consent Judgment is not approved in full by the Court: (a) this Consent  
4 Judgment and any and all prior agreements between the Parties merged herein shall terminate  
5 and become null and void, and the actions shall revert to the status that existed prior to the  
6 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft  
7 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement  
8 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any  
9 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to  
10 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

11 **7.       MODIFICATION OF JUDGMENT**

12           7.1       This Consent Judgment may be modified only upon written agreement of the  
13 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of  
14 any Party as provided by law and upon entry of a modified Consent Judgment by the Court.

15           7.2       Any Party seeking to modify this Consent Judgment shall attempt in good faith to  
16 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

17 **8.       RETENTION OF JURISDICTION**

18           8.1       This Court shall retain jurisdiction of this matter to implement and enforce the  
19 terms of this Consent Judgment under Code of Civil Procedure section 664.6.

20           8.2       In any proceeding brought by either Party to enforce this Consent Judgment, the  
21 prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

22 **9.       SERVICE ON THE ATTORNEY GENERAL**

23           9.1       CAG shall serve a copy of this Consent Judgment, signed by both parties, on the  
24 California Attorney General so that the Attorney General may review this Consent Judgment  
25 prior to its submittal to the Court for approval. No sooner than forty-five (45) days after the  
26 Attorney General has received the aforementioned copy of this Consent Judgment, CAG may  
27 then submit it to the Court for approval.  
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1           **10. ENTIRE AGREEMENT**

2           10.1 This Consent Judgment contains the sole and entire agreement and understanding  
3 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,  
4 negotiations, commitments and understandings related hereto. No representations, oral or  
5 otherwise, express or implied, other than those contained herein have been made by any party  
6 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
7 deemed to exist or to bind any of the Parties.

8           **11. ATTORNEY FEES**

9           11.1 Except as specifically provided in Sections 4.1.3 and 8.2, each Party shall bear its  
10 own attorneys' fees and costs in connection with the claims resolved in this Consent Judgment.

11           **12. GOVERNING LAW**

12           12.1 The validity, construction, terms, and performance of this Consent Judgment shall  
13 be governed by the laws of the State of California, without reference to any conflicts of law  
14 provisions of California law.

15           12.2 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered  
16 inapplicable by reason of law generally, or if any of the provisions of this Consent Judgment are  
17 rendered inapplicable or are no longer required as a result of any such repeal or preemption, or  
18 rendered inapplicable by reason of law generally as to the Covered Products, then Defendant  
19 may provide written notice to CAG of any asserted change in the law, and shall have no further  
20 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered  
21 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve  
22 Defendant from any obligation to comply with any other pertinent state or federal law or  
23 regulation.

24           12.3 The Parties, including their counsel, have participated in the preparation of this  
25 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This  
26 Consent Judgment was subject to revision and modification by the Parties and has been accepted  
27 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty  
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1 or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a  
2 result of the manner of the preparation of this Consent Judgment. Each Party to this Consent  
3 Judgment agrees that any statute or rule of construction providing that ambiguities are to be  
4 resolved against the drafting Party should not be employed in the interpretation of this Consent  
5 Judgment and, in this regard, the Parties hereby waive California Civil Code section 1654.

6 **13. EXECUTION AND COUNTERPARTS**

7 13.1 This Consent Judgment may be executed in counterparts and by means of  
8 facsimile or portable document format (pdf), which taken together shall be deemed to constitute  
9 one document and have the same force and effect as original signatures.

10 **14. NOTICES**

11 14.1 Any notices under this Consent Judgment shall be by delivery of First-Class Mail.

12 If to CAG:

13 Reuben Yeroushalmi, Esq.  
14 Yeroushalmi & Yeroushalmi  
15 9100 Wilshire Boulevard, Suite 240W  
16 Beverly Hills, CA 90212

17 If to Defendant AHQ, LLC:

18 James G. Scadden  
19 Gordon & Rees Scully Mansukhani  
20 633 West Fifth Street, 52nd Floor,  
21 Los Angeles, CA 90071

22 **15. AUTHORITY TO STIPULATE**

23 15.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized  
24 by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf  
25 of the Party represented and legally to bind that party.  
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AGREED TO:

AGREED TO:

Date: April 20, 2021

Date: April 20, 2021

Michael Marcus

James Scadden

Name: Michael Marcus

Name: James Scadden

Title: Director

Title: Counsel for AHQ, LLC

CONSUMER ADVOCACY GROUP, INC.

AHQ, LLC

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

\_\_\_\_\_

JUDGE OF THE SUPERIOR COURT