

1
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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 THE TJX COMPANIES, INC., a Delaware
18 Corporation;
19 WILDFARE INC., a New York Corporation;
20 and DOES 1-20
21 Defendants.

CASE NO. 22STCV01596

CONSENT JUDGMENT [PROPOSED]

Health & Safety Code § 25249.5 *et seq.*

22 **1. INTRODUCTION**

23 1.1 This Consent Judgment is entered into by and between Plaintiff, Consumer
24 Advocacy Group, Inc. (referred to as "CAG") acting on behalf of itself and in the interest of the
25 public, and defendant, The TJX Companies, Inc. (hereinafter referred to as "Defendant"), with
26 each a Party to the action collectively referred to as "Parties."

27 **1.2 Defendant and Covered Products**

28 1.2.1 CAG alleges that Defendant is a Delaware corporation which employs ten
or more persons. CAG further alleges that Defendant distributes, and sells the following to
consumers in California:

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(i) Yellow Polymer Purse, Style No. MAR- 921413 (“Purse”)

(ii) Smoked Sweet Paprika, Style No. MAR- 801899, TJMAXX-903156, TJMAXX-896137, HG-136817, HG-196593, HG-152924 (“Smoked Sweet Paprika”).

1.2.2 For purposes of this Consent Judgment only, Defendant is deemed a person in the course of doing business in California and are subject to the provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq. (“Proposition 65”).

1.3 Listed Chemicals

1.3.1 Di(2-ethylhexyl)phthalate (hereinafter “DEHP”) is known to the State of California to cause cancer and/or birth defects or other reproductive harm.

1.3.2 Inorganic Arsenic Oxides (hereinafter “Arsenic”) is known to the State of California to cause birth defects or other reproductive harm.

1.4 Notices of Violation

1.4.1 On or about August 12, 2021, CAG served a “60-Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (AG# 2021-02021) (“August 27, 2021 Notice”) that provided Defendant and various public enforcement agencies with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to DEHP contained in the Purse sold and/or distributed by Defendant. No public enforcer has commenced or diligently prosecuted the allegations set forth in the August 12, 2021 Notice.

1.4.2 On or about October 1, 2021, CAG served a “60-Day Notice of Intent to Sue for Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986” (AG# 2021-02456) (“August 27, 2021 Notice”) that provided Defendant and various public enforcement agencies with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to Arsenic contained in the Smoked Sweet Paprika sold

1 and/or distributed by Defendant. No public enforcer has commenced or diligently prosecuted the
2 allegations set forth in the October 1, 2021 Notice.

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4 **1.5 Complaint**

5 1.5.1 On January 13, 2022, CAG filed a complaint for civil penalties and
6 injunctive relief (“Complaint”) in Los Angeles Superior Court, Case No. 22STCV01596 against
7 Defendant. The Complaint alleges, among other things, that Defendant violated Proposition 65
8 by failing to give clear and reasonable warnings of exposure to Listed Chemicals from the
9 Covered Products.

10 **1.6 Consent to Jurisdiction**

11 1.6.1 For purposes of this Consent Judgment, the Parties stipulate that this Court
12 has jurisdiction over the allegations of violations contained in the Action and personal
13 jurisdiction over Defendant as to the acts alleged in the Action, that venue is proper in the
14 County of Los Angeles and that this Court has jurisdiction to enter this Consent Judgment as a
15 full settlement and resolution of the allegations contained in cause of action one of the Action
16 and of all claims which were or could have been raised by any person or entity based in whole or
17 in part, directly or indirectly, on the facts alleged therein or arising therefrom or related thereto.

18 **1.7 No Admission**

19 1.7.1 This Consent Judgment resolves claims that are denied and disputed. The
20 Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all
21 claims between the Parties for the purpose of avoiding prolonged litigation. Nothing in this
22 Consent Judgment shall be construed as an admission by the Parties of any material allegation of
23 the Action (each and every allegation of which Defendant denies), any fact, conclusion of law,
24 issue of law or violation of law, including without limitation, any admission concerning any
25 violation of Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine,
26 or the meaning of the terms “knowingly and intentionally expose” or “clear and reasonable
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1 warning” as used in Health and Safety Code section 25249.6. Nothing in this Consent Judgment,
2 nor compliance with its terms, shall constitute or be construed as an admission by the Parties of
3 any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability
4 by any Defendant, its officers, directors, employees, or parent, subsidiary or affiliated
5 corporations, or be offered or admitted as evidence in any administrative or judicial proceeding
6 or litigation in any court, agency, or forum. Furthermore, nothing in this Consent Judgment shall
7 prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in any
8 other or future legal proceeding, except as expressly provided in this Consent Judgment.

9 **2. DEFINITIONS**

10 2.1 “Covered Products” means Purse and Smoked Sweet Paprika identified in Section
11 1.2.1 of the consent judgment.

12 2.2 “Effective Date” means the date that this Consent Judgment is approved by the
13 Court.

14 2.3 “DEHP” means Di(2-ethylhexyl)phthalate.

15 2.4 “Arsenic” means Inorganic Arsenic Oxides.

16 2.5 “Listed Chemicals” shall mean DEHP as to Purse and Arsenic as to Smoked
17 Sweet Paprika.

18 2.7 “Notices” shall mean the February 25, 2021 Notice, the August 12, 2021 Notice,
19 and the October 1, 2021 Notice.

20 **3. INJUNCTIVE RELIEF / REFORMULATION / CLEAR AND REASONABLE**
21 **WARNINGS.**

22 3.1 After the Effective Date, Defendant shall not order the Purse for sale in California
23 unless it contains DEHP in concentrations less than 0.1% by weight (1,000 parts per million
24 “ppm”). For any Purse that is ordered for sale in California prior to the Effective Date that contains
25 DEHP in concentrations over than 0.1% by weight (1,000 parts per million “ppm”), Defendant
26 must provide a Proposition 65 compliant warning for the Purse as permitted by Proposition 65 and
27 its implementing regulations or as set forth below. The Parties agree that the following warning
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1 language shall constitute compliance with Proposition 65 with respect to the alleged DEHP in
2 Pursue ordered for manufacture by Defendant prior to the Effective Date:

3 **⚠ WARNING:** This product can expose you to chemicals including Di(2-
4 ethylhexyl)phthalate (DEHP), which is known to the State of California to
5 cancer and birth defects or other reproductive harm. For more information
6 go to www.P65Warnings.ca.gov.

6 3.2 After the Effective Date, Defendant shall not order Sweet Smoked Paprika for sale in
7 California unless the level of Arsenic does not exceed 20 parts per billion (“ppb”), unless
8 Proposition 65 compliant warnings are used as set forth below. For any Sweet Smoked Paprika
9 that exceeds 20ppb of Arsenic that are ordered for manufacture for sale into California after the
10 Effective Date, Defendant must provide a Proposition 65 compliant warning for the Sweet
11 Smoked Paprika as permitted by Proposition 65 and its implementing regulations or as set forth
12 below. The Parties agree that the following warning language shall constitute compliance with
13 Proposition 65 with respect to the alleged Arsenic in the Sweet Smoked Paprika that are ordered
14 for manufacture by Defendant after the Effective Date:

14 **⚠ WARNING:** Consuming this product can expose you to
15 chemicals including Inorganic Arsenic Oxides, which are known to
16 the State of California to cause birth defects or other reproductive
17 harm. For more information go to www.P65Warnings.ca.gov/food.

18 3.3 Any warning provided pursuant to this section shall be affixed to the packaging of,
19 or directly on, the Covered Product, and be prominently placed with such conspicuousness as
20 compared with other words, statements, designs, or devices as to render it likely to be read and
21 understood by an ordinary individual under customary conditions before purchase or use. The
22 warning must be set off from other surrounding information, enclosed in a box. Where the
23 packaging of the Covered Product or a sign referring to the Covered Product includes consumer
24 information as defined by California Code of Regulations title 27 §25600.1(c) in a language other
25 than English, the warning must also be provided in that language in addition to English. Should
26 Defendant sell or distribute any Covered Product through the internet, the warning will be posted
27 in the manner provided for with respect to internet sales, as provided for in 27 CCR sections 25601
28 and 25602, as they may be subsequently amended.

1 3.4 Changes in the law and regulations applicable to Prop 65, including changes
2 resulting from federal and/or state court rulings, occurring after this date may be incorporated into
3 the terms of this Consent Judgment, pursuant to the modification provisions set forth in Section 7.

4 3.5 Covered Products already distributed to Downstream Releasees prior to the
5 Effective Date may continue to be sold through as is.

6 **4. SETTLEMENT PAYMENT**

7 4.1 **Payment and Due Date:** Within fifteen (15) days of the Effective Date, or upon
8 receipt of W-9 Forms from the appropriate payees, whichever is later, Defendant shall pay a total
9 of seventy thousand dollars (\$70,000.00) in full and complete settlement of all monetary claims
10 by CAG related to the Notices, as follows:

11 4.1.1 **Civil Penalty:** Defendant shall issue separate checks totaling five
12 thousand seven hundred and twenty dollars (\$5,720.00) as penalties pursuant to Health & Safety
13 Code § 25249.12:

14 (a) Defendant will issue a check made payable to the State of California's
15 Office of Environmental Health Hazard Assessment ("OEHHA") in the amount of four thousand
16 two hundred and ninety dollars (\$4,290.00) representing 75% of the total penalty and Defendant
17 will issue a separate check to CAG in the amount of one thousand four hundred and thirty dollars
18 (\$1,430.00) representing 25% of the total penalty; and

19 (b) Separate 1099s shall be issued for each of the above payments:
20 Defendant will issue a 1099 to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-
21 0284486). Defendant will also issue a 1099 to CAG c/o Yeroushalmi & Yeroushalmi, 9100
22 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212.

23 4.1.2 **Additional Settlement Payments:** Defendant shall make a separate
24 payment, in the amount of four thousand two hundred and eighty dollars (\$4,280.00) as an
25 additional settlement payment to "Consumer Advocacy Group, Inc." pursuant to Health & Safety
26 Code § 25249.7(b) and California Code of Regulations, Title 11 § 3203(d). Defendant will issue
27 a separate check to CAG for the Additional Settlement Payment. CAG will use this payment as
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1 follows, eighty percent (80%) for fees of investigation, purchasing and testing for Proposition 65
2 listed chemicals in various products, and for expert fees for evaluating exposures through various
3 mediums, including but not limited to consumer product, occupational, and environmental
4 exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and retaining
5 experts who assist with the extensive scientific analysis necessary for those files in litigation and
6 to offset the costs of future litigation enforcing Proposition 65 but excluding attorney fees;
7 twenty percent (20%) for administrative costs incurred during investigation and litigation to
8 reduce the public's exposure to Proposition 65 listed chemicals by notifying those persons and/or
9 entities believed to be responsible for such exposures and attempting to persuade those persons
10 and/or entities to reformulate their products or the source of exposure to completely eliminate or
11 lower the level of Proposition 65 listed chemicals including but not limited to costs of
12 documentation and tracking of products investigated, storage of products, website enhancement
13 and maintenance, computer and software maintenance, investigative equipment, CAG's
14 member's time for work done on investigations, office supplies, mailing supplies and postage.
15 Within 30 days of a request from the Attorney General, CAG shall provide to the Attorney
16 General copies of documentation demonstrating how the above funds have been spent. CAG
17 shall be solely responsible for ensuring the proper expenditure of such additional settlement
18 payment.

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20 **4.1.3 Reimbursement of Attorneys Fees and Costs:** Defendant shall pay sixty
21 thousand dollars (\$60,000.00) to "Yeroushalmi & Yeroushalmi" as reimbursement for
22 reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of
23 investigating, bringing this matter to Defendant's attention, litigating, and negotiating a
24 settlement in the public interest.

25 **4.2** Other than the payment to OEHHA described above, all payments referenced in
26 paragraphs 4.1.1, 4.1.2, and 4.1.3 above, shall be delivered to: Reuben Yeroushalmi,
27 Yeroushalmi & Yeroushalmi, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212. The

1 payment to OEHHA shall be delivered to Office of Environmental Health Hazard Assessment,
2 Attn: Mike Gyurics, 1001 I Street, Mail Stop 12-B, Sacramento, California 95812. Concurrently
3 with payment to OEHHA, Defendant shall provide CAG with written confirmation that the
4 payment to OEHHA was delivered.

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

6 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
7 behalf of itself and in the public interest and Defendant for alleged failure to provide any
8 required Proposition 65 warning of exposure to Listed Chemicals from the Covered Products as
9 defined in Section 1.2, and fully resolves all claims that have been asserted against Defendant in
10 the Action up through the Effective Date. CAG, on behalf of itself and in the public interest,
11 hereby discharges Defendant, and their respective owners, officers, directors, insurers,
12 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
13 companies, predecessors, and their successors and assigns ("Defendant Releasees") and all
14 entities to whom Defendant directly or indirectly distributes or sells Covered Products, including,
15 but not limited to, downstream distributors, downstream wholesalers, customers, retailers,
16 marketplace hosts, franchisees, cooperative members, licensees, and other downstream entities in
17 the distribution chain of the Covered Products, and the predecessors, successors and assigns of
18 any of them, and all of their respective officers, directors, shareholders, members, managers,
19 employees, agents only as to Covered Products sold by the Defendant (collectively,
20 "Downstream Releasees"), for Covered Products placed into the stream of commerce up through
21 the Effective Date for any alleged violations of Proposition 65 based on alleged exposure to
22 Listed Chemicals from the Covered Products. Defendant's compliance with the terms of this
23 Consent Judgment shall be deemed to constitute compliance with Proposition 65 regarding
24 alleged exposures to Listed Chemicals from the Covered Products. Nothing in this Section
25 affects CAG's right to commence or prosecute an action under Proposition 65 against any person
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1 other than Defendant Releasees or Downstream Releasees after the Effective Date and against
2 Defendant for any products not identified as Covered Products.

3 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
4 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
5 indirectly, any form of legal action and releases all claims, including, without limitation, all
6 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations,
7 damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation
8 fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown,
9 fixed or contingent (collectively "Claims"), against the Released Parties arising from any alleged
10 violation of Proposition 65 or any other statutory or common law regarding any failure to warn
11 about alleged exposure to Listed Chemicals from the Covered Products. In furtherance of the
12 foregoing, as to alleged exposures to Listed Chemicals from the Covered Products, CAG on
13 behalf of itself only, hereby waives any and all rights and benefits which it now has, or in the
14 future may have, conferred upon it with respect to Claims arising from any alleged violation of
15 Proposition 65 or any other statutory or common law regarding any failure to warn about alleged
16 exposure to Listed Chemicals from the Covered Products by virtue of the provisions of section
17 1542 of the California Civil Code, which provides as follows:
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19 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
20 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
21 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
22 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
23 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
24 DEBTOR OR RELEASED PARTY.

25 CAG understands and acknowledges that the significance and consequence of this waiver of
26 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
27 resulting from, or related directly or indirectly to, in whole or in part, Claims arising from any
28 alleged violation of Proposition 65 or any other statutory or common law regarding any failure to
warn about alleged exposure to Listed Chemicals from the Covered Products, including but not
limited to any exposure to, or failure to warn with respect to alleged exposure to Listed

1 Chemicals from the Covered Products, CAG will not be able to make any claim for those
2 damages against Released Parties.

3 **6. ENTRY OF CONSENT JUDGMENT**

4 6.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
5 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
6 Defendant waive their respective rights to a hearing or trial on the allegations of the Action.

7 6.2 The Parties shall make all reasonable efforts to have the Consent Judgment
8 approved by the Court.

9 6.3 If this Consent Judgment is not approved in full by the Court, (a) this Consent
10 Judgment and any and all prior agreements between the Parties merged herein shall terminate
11 and become null and void, and the actions shall revert to the status that existed prior to the
12 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft
13 thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement
14 discussions, shall have any effect, nor shall any such matter be admissible in evidence for any
15 purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to
16 determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

17 **7. MODIFICATION OF JUDGMENT**

18 7.1 This Consent Judgment may be modified only upon written agreement of the
19 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
20 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

21 7.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
22 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

23 **8. RETENTION OF JURISDICTION**

24 8.1 This Court shall retain jurisdiction of this matter to implement and enforce the
25 terms of this Consent Judgment under Code of Civil Procedure § 664.6.
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1 8.2 In any proceeding brought by either Party to enforce this Consent Judgment, the
2 prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

3 **10. DUTIES LIMITED TO CALIFORNIA**

4 9.1 This Consent Judgment shall have no effect on Covered Products sold by
5 Defendant outside the State of California.

6 **10. SERVICE ON THE ATTORNEY GENERAL**

7 10.1 CAG shall serve a copy of this Consent Judgment, signed by the Parties, on the
8 California Attorney General so that the Attorney General may review this Consent Judgment
9 prior to its approval by the Court. No sooner than forty-five (45) days after the Attorney General
10 has received the aforementioned copy of this Consent Judgment, and in the absence of any
11 written objection by the Attorney General to the terms of this Consent Judgment, may the Court
12 approve this Consent Judgment.

13 **11. ENTIRE AGREEMENT**

14 11.1 This Consent Judgment contains the sole and entire agreement and understanding
15 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
16 negotiations, commitments and understandings related hereto. No representations, oral or
17 otherwise, express or implied, other than those contained herein have been made by any party
18 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
19 to exist or to bind any of the Parties.

20 **12. ATTORNEY FEES**

21 12.1 Except as specifically provided in Section 4.1.3 and 8.2, each Party shall bear its
22 own costs and attorney fees in connection with this action.

23 **13. GOVERNING LAW**

24 13.1 The validity, construction and performance of this Consent Judgment shall be
25 governed by the laws of the State of California, without reference to any conflicts of law
26 provisions of California law.
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1 Reuben Yeroushalmi
2 YEROUSHALMI & YEROUSHALMI
3 9100 Wilshire Boulevard, Suite 240W
4 Beverly Hills, CA 90212
5 (310) 623-1926
6 Email: lawfirm@yecroushalmi.com


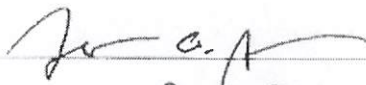
7 If to Defendant:

8 The TJX Companies, Inc.
9 770 Cochituate Road
10 Framingham, MA 01701

11 Jeffrey Margulies
12 NORTON ROSE FULBRIGHT US LLP
13 555 South Flower Street, 41st Floor
14 Los Angeles, CA 90071
15 (213) 892-9311
16 Email:

17 **16. AUTHORITY TO STIPULATE**

18 16.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
19 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
20 the party represented and legally to bind that party.

AGREED TO:	AGREED TO:
Date: <u>January 15th</u> , 2025	Date: <u>January 14th</u> , 2025
	
Name: <u>Willard Bayer</u>	Name: <u>Jennifer A. Peoples</u>
Title: <u>President</u>	Title: <u>VP, Legal - Litigation & Regulatory Counsel</u>
CONSUMER ADVOCACY GROUP, INC.	THE TJX COMPANIES, INC.

26 **IT IS SO ORDERED.**

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JUDGE OF THE SUPERIOR COURT