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ALAMEDA COUNTY

CLERK OF SUPERIOR COURT
By [Signature]

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF ALAMEDA
9 UNLIMITED CIVIL JURISDICTION

11 JOHN MOORE,

12 Plaintiff,

13 v.

14 THE TJX COMPANIES, INC.; MARMAXX
15 OPERATING CORP.; and DOES 1-150,
16 inclusive,

17 Defendants.

Case No. 11-595374

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code. § 25249.6 *et seq.*)

BY FAX

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff, JOHN MOORE, in
3 the public interest of the citizens of the State of California, to enforce the People’s right to be
4 informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical found in
5 ottomans sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about reproductive toxicity associated with their exposure to DEHP
8 present in or on certain ottomans that defendants manufacture, import, distribute, and/or offer
9 for sale to consumers throughout the State of California.

10 3. High levels of DEHP are commonly found in and on the ottomans that defendants
11 manufacture, distribute, and/or offer for sale to consumers throughout the State of California.

12 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
13 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the
14 course of doing business shall knowingly and intentionally expose any individual to a chemical
15 known to the state to cause cancer or reproductive toxicity without first giving clear and
16 reasonable warning to such individual ...” (Cal. Health & Safety Code, § 25249.6.)

17 5. On October 24, 2003, California identified and listed DEHP as a chemical known
18 to cause birth defects and other reproductive harm. DEHP became subject to the “clear and
19 reasonable warning” requirements of Proposition 65 one year later on October 24, 2004. (Tit.
20 27 Cal. Code Regs. (“CCR”) § 27001(c); Cal. Health & Safety Code §§ 25249.8 &
21 25249.10(b).)

22 6. Defendants manufacture, distribute, and/or offer sale of ottomans containing
23 excessive levels of DEHP including, but not limited to, *Ottoman, #025143641*. All such
24 ottomans containing DEHP shall hereinafter be referred to as the “PRODUCTS.”

25 7. Defendants’ failure to warn consumers and/or other individuals in the State of
26 California not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et*
27 *seq.* about their exposure to DEHP and its potential to cause birth defects and other reproductive
28 harm in conjunction with Defendants’ distribution, importation, manufacturing, and/or sale of

1 the PRODUCTS is a violation of Proposition 65 and subjects Defendants to enjoinder of such
2 conduct as well as civil penalties for each such violation.

3 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary injunctive
4 and permanent injunctive relief to compel defendants to provide purchasers or users of the
5 PRODUCTS with the required warning regarding the health hazards of DEHP. (Cal. Health &
6 Safety Code § 25249.7(a).)

7 9. Plaintiff also seeks civil penalties against defendants for their violations of
8 Proposition 65, as provided by California Health & Safety Code § 25249.7(b).

9 **PARTIES**

10 10. Plaintiff, JOHN MOORE, is a citizen of the State of California who is dedicated
11 to protecting the health of California citizens through the elimination or reduction of toxic
12 exposures from consumer products; he brings this action in the public interest pursuant to
13 California Health & Safety Code § 25249.7(d).

14 11. Defendant THE TJX COMPANIES, INC. ("TJX COMPANIES") is a person in
15 the course of doing business within the meaning of California Health & Safety Code §
16 25249.11.

17 12. Defendant TJX COMPANIES manufactures, distributes, and/or offers the
18 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
19 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of
20 California.

21 13. Defendant MARMAXX OPERATING CORP. ("MARMAXX") is a person in the
22 course of doing business within the meaning of California Health & Safety Code § 25249.11.

23 14. Defendant MARMAXX manufactures, distributes, and/or offers the PRODUCTS
24 for sale or use in the State of California, or implies by its conduct that it manufactures,
25 distributes, and/or offers the PRODUCTS for sale or use in the State of California.

26 15. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
27 persons in the course of doing business within the meaning of California Health & Safety Code
28 § 25249.11.

1 16. MANUFACTURER DEFENDANTS engage in the process of researching,
2 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that
3 they engage in the process of researching, testing, designing, assembling, fabricating, and/or
4 manufacturing, one or more of the PRODUCTS offered for sale or use in the State of California.

5 17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each persons
6 in the course of doing business within the meaning of California Health & Safety Code §
7 25249.11.

8 18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
9 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
10 in the State of California.

11 19. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each persons in
12 the course of doing business within the meaning of California Health & Safety Code §
13 25249.11.

14 20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
15 State of California.

16 21. At this time, the true names of Defendants DOES 1 through 150, inclusive, are
17 unknown to plaintiff, who therefore sues said defendants by their fictitious name pursuant to
18 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that
19 each of the fictitiously named defendants is responsible for the acts and occurrences alleged
20 herein. When ascertained, their true names shall be reflected in an amended complaint.

21 22. TJX COMPANIES, MARMAXX, MANUFACTURER DEFENDANTS,
22 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate,
23 collectively be referred to as “DEFENDANTS.”

24 VENUE AND JURISDICTION

25 23. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
26 Procedure §§ 394, 395, & 395.5, because this Court is a court of competent jurisdiction, because
27 one or more instances of wrongful conduct occurred, and continue to occur, in the County of
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1 Alameda, and/or because DEFENDANTS conducted, and continue to conduct, business in this
2 County with respect to the PRODUCTS.

3 24. The California Superior Court has jurisdiction over this action pursuant to
4 California Constitution Article VI, § 10, which grants the Superior Court “original jurisdiction
5 in all causes except those given by statute to other trial courts.” The statute under which this
6 action is brought does not specify any other basis of subject matter jurisdiction.

7 25. The California Superior Court has jurisdiction over DEFENDANTS based on
8 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation,
9 or association that is a citizen of the State of California, has sufficient minimum contacts in the
10 State of California, or otherwise purposefully avails itself of the California market.
11 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
12 California courts consistent with traditional notions of fair play and substantial justice.

13 **FIRST CAUSE OF ACTION**

14 **(Violation of Proposition 65 - Against All Defendants)**

15 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
16 Paragraphs 1 through 25, inclusive.

17 27. The citizens of the State of California have expressly stated in the Safe Drinking
18 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.*
19 that they must be informed “about exposures to chemicals that cause cancer, birth defects and
20 other reproductive harm.” (Cal. Health & Safety Code, § 25249.6.)

21 28. Proposition 65 states, “[n]o person in the course of doing business shall
22 knowingly and intentionally expose any individual to a chemical known to the state to cause
23 cancer or reproductive toxicity without first giving clear and reasonable warning to such
24 individual....” (*Ibid.*)

25 29. On or about June 29, 2011, a sixty-day notice of violation, together with the
26 requisite certificate of merit, was provided to TJX COMPANIES, MARMAXX, and various
27 public enforcement agencies stating that, as a result of the DEFENDANTS’ sales of the
28 PRODUCTS, purchasers and users in the State of California were being exposed to DEHP

1 resulting from the reasonably foreseeable use of the PRODUCTS, without the individual
2 purchasers and users first having been provided with a “clear and reasonable warning”
3 regarding such toxic exposures.

4 30. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
5 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6, and
6 DEFENDANTS’ manufacture, distribution, and/or offering of the PRODUCTS for sale or use
7 in violation of California Health & Safety Code § 25249.6 has continued to occur beyond
8 DEFENDANTS’ receipt of plaintiff’s sixty-day notice of violation. Plaintiff further alleges and
9 believes that such violations will continue to occur into the future.

10 31. After receipt of the claims asserted in the sixty-day notice of violation, the
11 appropriate public enforcement agencies have failed to commence and diligently prosecute a
12 cause of action against DEFENDANTS under Proposition 65.

13 32. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
14 California by DEFENDANTS contained DEHP in an amount above the allowable state limits.

15 33. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
16 distributed, and/or offered for sale or use in California contained DEHP.

17 34. DEHP was present in or on the PRODUCTS in such a way as to expose
18 individuals to DEHP through dermal contact and/or ingestion and/or inhalation during the
19 reasonably foreseeable use of the PRODUCTS.

20 35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
21 continues to cause, consumer exposures to DEHP, as such exposure is defined by Title 27 CCR
22 § 25602(b).

23 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
24 the PRODUCTS would expose individuals to DEHP through dermal contact and/or ingestion
25 and/or inhalation.

26 37. DEFENDANTS intended that such exposures to DEHP from the reasonably
27 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation
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1 in the manufacture, distribution, and/or offering of the PRODUCTS for sale or use to
2 individuals in the State of California.

3 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
4 consumers and/or other individuals in the State of California who were, or who could become
5 exposed to DEHP through dermal contact and/or ingestion and/or inhalation during the
6 reasonably foreseeable use of the PRODUCTS.

7 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
8 directly by California voters, individuals exposed to DEHP through dermal contact and/or
9 ingestion and/or inhalation resulting from the reasonably foreseeable use of the PRODUCTS
10 sold by DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue
11 to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

12 40. As a consequence of the above-described acts, DEFENDANTS are liable for a
13 maximum civil penalty of \$2,500 per day for each violation pursuant to California Health &
14 Safety Code § 25249.7(b).

15 41. As a consequence of the above-described acts, California Health & Safety Code
16 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
17 DEFENDANTS.

18 **PRAYER FOR RELIEF**

19 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

20 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess
21 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation
22 alleged herein;

23 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),
24 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, and/or
25 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable
26 warnings” as defined by 27 CCR § 25601, as to the harms associated with exposure to DEHP;

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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: September 14, 2011

Respectfully Submitted,
THE CHANLER GROUP

By: 

Christopher Martin
Attorneys for Plaintiff
JOHN MOORE