

FILED

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**KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT**

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

12 **COUNTY OF MARIN**

13 **UNLIMITED CIVIL JURISDICTION**

14 JOHN MOORE,

15 Plaintiff,

16 v.

17 BLISS HAMMOCKS INC.; JANCO
18 DISTRIBUTORS INC.; and DOES 1-150,
19 inclusive,

20 Defendants.

Case No. CIV 1203539-

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

BY FAX

NATURE OF THE ACTION

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

6 2. By this Complaint, Plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about their exposure to DEHP, present in or on certain exercise balls
8 that BLISS HAMMOCKS INC. (“Bliss”) and JANCO DISTRIBUTORS INC. (“Janco”)
9 (collectively “Defendants”) manufacture, import, distribute, and/or offer for sale to consumers
10 throughout the state of California.

11 3. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
12 California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”), “No person in the course
13 of doing business shall knowingly and intentionally expose any individual to a chemical known
14 to the state to cause cancer or reproductive toxicity without first giving clear and reasonable
15 warning to such individual...” (*Cal. Health & Safety Code § 25249.6*)

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

21 5. Defendants manufacture, import, distribute, and/or sell exercise balls containing
22 DEHP including, but not limited to, *Maha Yoga Fitness Ball, Item #MY-104 (#0 14761 85104 7)*.

23 6. All such exercise balls containing DEHP shall hereinafter be collectively
24 referred to as the “Products.”

25 7. For Defendants’ violation of Proposition 65, Plaintiff seeks preliminary
26 injunctive and permanent injunctive relief to compel Defendants to provide purchasers or users
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1 of the Products with the required warning regarding the health hazards of DEHP. (*Cal. Health &*
2 *Safety Code § 25249.7(a).*)

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

5 **PARTIES**

6 9. Moore is a citizen of the state of California who is dedicated to protecting the
7 health of California citizens through the elimination or reduction of toxic exposures from
8 consumer and commercial products, and brings this action in the public interest pursuant to
9 California Health & Safety Code § 25249.7.

10 10. Bliss is a person doing business within the meaning of California Health &
11 Safety Code § 25249.11.

12 11. Bliss manufactures, imports, distributes, sells and/or offers the Products for sale
13 or use in the state of California or implies by its conduct that it manufactures, imports,
14 distributes, sells and/or offers the Products for sale or use in the state of California.

15 12. Janco is a person doing business within the meaning of California Health &
16 Safety Code § 25249.11.

17 13. Janco manufactures, imports, distributes, sells and/or offers the Products for sale
18 or use in the state of California or implies by its conduct that it manufactures, imports,
19 distributes, sells and/or offers the Products for sale or use in the state of California.

20 14. Defendants Does 1-50 ("Manufacturer Defendants") are each persons doing
21 business within the meaning of California Health & Safety Code § 25249.11.

22 15. Manufacturer Defendants engage in the process of research, testing, designing,
23 assembling, fabricating and/or manufacturing, or imply by their conduct that they engage in the
24 process of research, testing, designing, assembling, fabricating and/or manufacturing, one or
25 more of the Products for sale or use in the state of California.

26 16. Defendants Does 51-100 ("Distributor Defendants") are each persons doing
27 business within the meaning of California Health & Safety Code § 25249.11.

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1 the state of California, or otherwise purposefully avail themselves of the California market.
2 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California
3 courts consistent with traditional notions of fair play and substantial justice.

4 **FIRST CAUSE OF ACTION**

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

6 25. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
7 Paragraphs 1 through 24, inclusive.

8 26. The citizens of the state of California have expressly stated in Proposition 65
9 that they must be informed "about exposures to chemicals that cause cancer, birth defects and
10 other reproductive harm." (*Cal. Health & Safety Code § 25249.6.*)

11 27. Proposition 65 states, "[n]o person in the course of doing business shall
12 knowingly and intentionally expose any individual to a chemical known to the state to cause
13 cancer or reproductive toxicity without first giving clear and reasonable warning to such
14 individual..." (*Id.*)

15 28. On or about April 25, 2012, a 60-Day Notice of Violation, together with the
16 requisite Certificate of Merit (the "Notice"), was provided to Bliss, Janco and various public
17 enforcement agencies stating that as a result of DEFENDANTS' manufacture, distribution and/or
18 sale of the Products, purchasers and users in the state of California were being exposed to DEHP
19 resulting from the reasonably foreseeable uses of the Products, without the individual purchasers
20 and users first having been provided with a "clear and reasonable warning" regarding such toxic
21 exposures.

22 29. DEFENDANTS have engaged in the manufacture, importation, distribution,
23 and/or offering of the Products for sale or use, in violation of California Health & Safety Code §
24 25249.6, and DEFENDANTS' manufacture, importation, distribution, and/or offering of the
25 Products for sale or use, in violation of California Health & Safety Code § 25249.6, has
26 continued to occur beyond Bliss and Janco's receipt of the Notice. Plaintiff further alleges and
27 believes that such violations will continue to occur into the future.

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1 30. After receipt of the claims asserted in the Notice, the appropriate public
2 enforcement agencies have failed to commence and diligently prosecute a cause of action against
3 DEFENDANTS under Proposition 65.

4 31. The Products manufactured, imported, distributed, and/or offered for sale or use
5 in California by DEFENDANTS contained DEHP above the allowable state limits.

6 32. DEFENDANTS knew or should have known that the Products manufactured,
7 imported, distributed, and/or offered for sale or use by DEFENDANTS in California contained
8 DEHP.

9 33. DEHP was present in or on the Products in such a way as to expose individuals
10 to DEHP through dermal contact and ingestion during the reasonably foreseeable use of the
11 Products.

12 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use
13 of the Products would expose individuals to DEHP through dermal contact and ingestion.

14 35. DEFENDANTS intended that such exposures to DEHP from the reasonably
15 foreseeable use of the Products would occur by their deliberate, non-accidental participation in
16 the manufacture, importation, distribution and/or offer for sale or use of Products to individuals
17 in the state of California.

18 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
19 consumers and/or other individuals in the state of California who were or who could become
20 exposed to DEHP through dermal contact and ingestion during the reasonably foreseeable use of
21 the Products.

22 37. Contrary to the express policy and statutory prohibition of Proposition 65,
23 enacted directly by California voters, individuals exposed to DEHP through dermal contact and
24 ingestion resulting from the reasonably foreseeable use of the Products, sold by DEFENDANTS
25 without a "clear and reasonable warning," have suffered, and continue to suffer, irreparable
26 harm, for which harm they have no plain, speedy or adequate remedy at law.

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