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ENDORSED
FILED
ALAMEDA COUNTY

MAY 14 2013

CLERK OF THE SUPERIOR COURT
By Kimel Dhillon Deputy

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 ALAMEDA COUNTY
14 UNLIMITED CIVIL JURISDICTION

RG13 679489

15 PETER ENGLANDER, LAURENCE
16 VINO CUR,

17 Plaintiffs,

18 v.

19 TAYMOR INDUSTRIES USA, INC.;
20 TAYMOR INDUSTRIES, LTD.; TJX
21 COMPANIES, INC.; and DOES 1-150,
22 inclusive,

23 Defendants.

Case No. _____

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

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BY FAX

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by Plaintiffs PETER
3 ENGLANDER and LAURENCE VINOCUR in the public interest of the citizens of the State of
4 California to enforce the People's right to be informed of the presence of tris(1,3-dichloro-2-
5 propyl) phosphate ("TDCPP") and di(2-ethylhexyl)phthalate ("DEHP"), toxic chemicals found
6 in products sold in California. TDCPP is a toxic chemical that is used to treat polyurethane
7 foam, which is used as padding or cushioning in a variety of products, including upholstered
8 furniture. DEHP is used in the manufacture of vinyl/PVC used in various products, including
9 furniture.

10 2. By this Complaint, Plaintiffs seek to remedy Defendants' continuing failure to
11 warn citizens, consumers, and other individuals throughout California about the health hazard
12 risks associated with exposures to DEHP and/or TDCPP present in and on the products
13 manufactured, distributed, sold, and offered for sale by Defendants.

14 3. Detectable levels of DEHP and/or TDCPP are commonly found in and on the
15 products Defendants manufacture, distribute, sell, and offer for sale or use without warning in
16 California. Citizens, consumers, and other individuals in California, including infants and
17 children, are exposed to TDCPP in the following ways: (i) by inhalation when they inhale
18 TDCPP present in ambient particles released from upholstered furniture and other products
19 containing TDCPP-treated foam; (ii) by dermal exposure when they touch TDCPP-treated foam
20 directly or contact ambient particles containing TDCPP that are released from upholstered
21 furniture and other products that use TDCPP-treated foam; and (iii) by route of ingestion as a
22 result of hand-to-mouth contact with TDCPP-treated foam or with ambient particles released
23 from upholstered furniture and other products that use TDCPP-treated foam. These same
24 individuals are exposed to DEHP via dermal contact directly with products containing DEHP
25 during use, and through ingestion via hand-to-mouth contact during and after use.

26 4. The Safe Drinking Water and Toxic Enforcement Act of 1986 codified at Health
27 and Safety Code Section 25249.5 et seq. ("Proposition 65), states "[n]o person in the course of
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1 doing business shall knowingly and intentionally expose any individual to a chemical known to
2 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
3 warning to such individual . . .”

4 5. TDCPP has been used in consumer products as an additive flame retardant since
5 the 1960s. In the late 1970s, based on findings that exposures to TDCPP could have mutagenic
6 effects, the United States Consumer Product Safety Commission banned the use of TDCPP in
7 children’s pajamas. DEHP is used as a plasticizer in the vinyl/PVC manufacturing process,
8 however, state and federal laws ban DEHP in quantities greater than 1,000 parts per million
9 (0.1%) in certain children’s and childcare products.

10 6. On October 24, 2003, California identified and listed DEHP pursuant to
11 Proposition 65 as a chemical known to cause birth defects and other reproductive harm. DEHP
12 became subject to the “clear and reasonable warning” requirements of the Act one year later on
13 October 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
14 25249.10(b).

15 7. On October 28, 2011, California identified and listed TDCPP, pursuant to
16 Proposition 65, as a chemical known to cause cancer. TDCPP became subject to the “clear and
17 reasonable warning” requirements of the Act one year later on October 28, 2012. Cal. Code
18 Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

19 8. Defendants manufacture, distribute, import, sell, and/or offer for sale in California
20 products containing DEHP and TDCPP as follows:

21 a. Defendants Taymor Industries USA, Inc., and Taymor Industries, Ltd.
22 manufacture, distribute, import, sell, and/or offer for sale without a warning in California,
23 padded upholstered benches and keyboard/piano benches with vinyl/PVC seats that
24 contain TDCPP and DEHP. Defendants’ products include, but are not limited to, the
25 *Urban Modern Vanity Bench, #02-DAS8094 (#0 63013 71189 9)*.

26 b. Defendant TJX Companies, Inc. manufactures, distributes, imports, sells,
27 and/or offers for sale without a warning in California, padded upholstered benches and
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1 keyboard/piano benches with vinyl/PVC seats that contain TDCPP and DEHP.
2 Defendants' products include, but are not limited to, the *Urban Modern Vanity Bench*,
3 #02-DAS8094 (#0 63013 71189 9).

4 9. All such padded upholstered benches and keyboard/piano benches with
5 vinyl/PVC seats that contain TDCPP and DEHP, described in Paragraphs 8(a) through (b)
6 above, shall hereinafter be collectively be referred to as "PRODUCTS." As to each specific
7 defendant, however, PRODUCTS shall refer only to those categories of products listed for the
8 defendant in Paragraphs 8(a) through (b) above.

9 10. Although Defendants expose infants, children, and other people to DEHP and
10 TDCPP in their PRODUCTS, Defendants provide no warnings about the carcinogenic or
11 teratogenic health hazards associated with exposures to these Proposition 65-listed chemicals.
12 Defendants' failure to warn consumers and other individuals in the State of California not
13 covered by California's Occupational Safety Health Act, Labor Code section 6300 et seq. about
14 their the health hazards associated with exposures to DEHP and TDCPP in conjunction with
15 Defendants' distribution, importation, manufacture, and/or sales of the PRODUCTS, are
16 violations of Proposition 65, and subject Defendants to enjoinder of such conduct as well as
17 civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

18 11. Pursuant to Health and Safety Code section 25249.7(a), Plaintiffs seek
19 preliminary and permanent injunctive relief to compel each of the Defendants to provide
20 purchasers or users of the PRODUCTS with the required health hazard warning regarding the
21 risks of exposures DEHP and TDCPP in the PRODUCTS.

22 12. Pursuant to Health and Safety Code Section 25249.7(b), Plaintiffs also seek civil
23 penalties against each Defendant for its violations of Proposition 65.

24 **PARTIES**

25 13. Plaintiffs PETER ENGLANDER and LAURENCE VINOUCUR are citizens of the
26 State of California who are dedicated to protecting the health of California citizens through the
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1 elimination or reduction of toxic exposures from consumer products; and they bring this action
2 in the public interest pursuant to Health and Safety Code section 25249.7(d).

3 14. Defendants Taymor Industries USA, Inc. ("TAYMOR USA") and Taymor
4 Industries, Ltd. ("TAYMOR LTD") and TJX Companies, Inc. ("TJX") is each a person in the
5 course of doing business within the meaning of Health and Safety Code sections 25249.6 and
6 25249.11.

7 15. TAYMOR USA, TAYMOR LTD, and TJX each manufacture, import, distribute,
8 sell, and/or offer the PRODUCTS for sale or use in the State of California, or implies by its
9 conduct that it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or
10 use in the State of California.

11 16. Defendants DOES 1-150 are each a person in the course of doing business within
12 the meaning of Health and Safety Code sections 25249.6 and 25249.11. DOES 1 – 150 import,
13 manufacture, distribute, sell, and/or offer the PRODUCTS for sale or use in the State of
14 California. At this time, the true names and capacities of defendants DOES 1 – 150, inclusive,
15 are unknown to Plaintiff, who, therefore, sues said defendants by their fictitious names pursuant
16 to Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
17 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
18 alleged herein. When ascertained, the true name and capacity of each such Defendant shall be
19 reflected in an amended complaint.

20 17. TAYMOR USA, TAYMOR LTD, and TJX, and Defendants DOES 1-150 are
21 collectively referred to hereinafter as "DEFENDANTS."

22 VENUE AND JURISDICTION

23 18. Venue is proper in Alameda County Superior Court, pursuant to Code of Civil
24 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
25 because Plaintiffs seek civil penalties against DEFENDANTS, because one or more instances of
26 wrongful conduct occurred, and continue to occur, in Alameda County, and/or because
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1 Defendants conducted, and continue to conduct, business in this county with respect to the
2 PRODUCTS.

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

7 20. The California Superior Court has jurisdiction over DEFENDANTS based on
8 Plaintiffs’ 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, and/or otherwise purposefully avails itself of the California market.
11 DEFENDANTS’ purposeful availing renders the exercise of personal jurisdiction by California
12 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 21. Plaintiffs re-allege and incorporate by reference, as if fully set forth herein,
16 Paragraphs 1 through 20, inclusive.

17 22. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
18 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
19 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
20 harm.”

21 23. Health and Safety Code section 25249.6 states, “[n]o person in the course of
22 doing business shall knowingly and intentionally expose any individual to a chemical known to
23 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
24 warning to such individual . . . ”

25 24. On March 4, 2013, PETER ENGLANDER provided a sixty-day notice of
26 violation of Proposition 65, together with the requisite certificate of merit, to TAYMOR USA
27 and certain required public enforcement agencies, stating that as a result of TAYMOR USA’s
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1 sales of the PRODUCTS, purchasers and users in California were being exposed to TDCPP
2 resulting from their reasonably foreseeable uses of the PRODUCTS, without the individual
3 purchasers and users first having been provided with a “clear and reasonable warning”
4 regarding the health hazards of such toxic exposures, as required by Proposition 65.

5 25. On March 4 2013, PETER ENGLANDER provided a sixty-day notice of
6 violation of Proposition 65, together with the requisite certificate of merit, to TAYMOR LTD
7 and the required public enforcement agencies, stating that as a result of TAYMOR LTD’s sales
8 of the PRODUCTS, purchasers and users in California were being exposed to TDCPP resulting
9 from their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers
10 and users first having been provided with a “clear and reasonable warning” regarding the health
11 hazards of such toxic exposures, as required by Proposition 65.

12 26. On March 4 2013, PETER ENGLANDER served a sixty-day notice of violation
13 of Proposition 65, together with the requisite certificate of merit, to TJX and the required public
14 enforcement agencies, stating that as a result of TJX’s sales of the PRODUCTS, purchasers and
15 users in California were being exposed to TDCPP resulting from reasonably foreseeable uses of
16 the PRODUCTS, without the individual purchasers and users first having been provided with a
17 “clear and reasonable warning” regarding the health hazards of such toxic exposures, as
18 required by Proposition 65.

19 27. On March 4, 2013, LAURENCE VINO CUR served a sixty-day notice of
20 violation of Proposition 65, together with the requisite certificate of merit, to TAYMOR USA
21 and the required public enforcement agencies, stating that as a result of TAYMOR USA’s sales
22 of the PRODUCTS, purchasers and users in California were being exposed to DEHP as a result
23 of their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and
24 users first having been provided with a “clear and reasonable warning” regarding the health
25 hazards of such toxic exposures, as required by Proposition 65.

26 28. On March 4, 2013, LAURENCE VINO CUR served a sixty-day notice of
27 violation of Proposition 65, together with the requisite certificate of merit, to TAYMOR LTD
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1 and the required public enforcement agencies, stating that as a result of TAYMOR LTD's sales
2 of the PRODUCTS, purchasers and users in California were being exposed to DEHP as a result
3 of their reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and
4 users first having been provided with a "clear and reasonable warning" regarding the health
5 hazards of such toxic exposures, as required by Proposition 65.

6 29. On March 4, 2013, LAURENCE VINO CUR served a sixty-day notice of
7 violation of Proposition 65, together with the requisite certificate of merit, to TJX and the
8 required public enforcement agencies, stating that as a result of TJX's sales of the PRODUCTS,
9 purchasers and users in California were being exposed to DEHP as a result of their reasonably
10 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
11 been provided with a "clear and reasonable warning" regarding the health hazards of such toxic
12 exposures, as required by Proposition 65.

13 30. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
14 and offering of the PRODUCTS for sale or use in California in violation of Health and Safety
15 Code section 25249.6, and DEFENDANTS' violations have continued to occur beyond their
16 receipt of Plaintiffs' sixty-day notices of violation. As such, DEFENDANTS' violations are
17 ongoing and continuous in nature, such that they will continue to occur in the future.

18 31. After receiving Plaintiffs' sixty-day notices of violation, the appropriate public
19 enforcement agencies have failed to commence and diligently prosecute a cause of action
20 against DEFENDANTS under Proposition 65.

21 32. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell and offer
22 for sale or use in California contain DEHP and TDCPP such that they require a "clear and
23 reasonable" warning under Proposition 65.

24 33. DEFENDANTS knew or should have known that the PRODUCTS they
25 manufacture, import, distribute, sell, and offer for sale or use in California contain DEHP and
26 TDCPP.

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1 34. DEHP and TDCPP are present in or on the PRODUCTS in such a way as to
2 expose individuals to DEHP and TDCPP through dermal contact, ingestion, and/or inhalation
3 during reasonably foreseeable uses of the PRODUCTS.

4 35. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
5 continue to cause, consumer products exposures and occupational exposures to DEHP and
6 TDCPP, as such exposures are defined by California Code of Regulations title 27, section
7 25602(b).

8 36. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
9 of the PRODUCTS expose individuals to DEHP and TDCPP through dermal contact, ingestion,
10 and/or inhalation.

11 37. DEFENDANTS intended that such exposures to DEHP and TDCPP from the
12 reasonably foreseeable uses of the PRODUCTS would occur by DEFENDANTS' deliberate,
13 non-accidental participation in the manufacture, importation, distribution, sale, and offering of
14 the PRODUCTS for sale or use to individuals in the State of California.

15 38. DEFENDANTS failed to provide a "clear and reasonable warning" to those
16 consumers and other individuals in the State of California who were or who would become
17 exposed to DEHP and TDCPP through dermal contact, ingestion, and/or inhalation during the
18 reasonably foreseeable uses of the PRODUCTS.

19 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
20 directly by California voters, individuals exposed to DEHP and TDCPP through dermal contact,
21 ingestion, and/or inhalation, resulting from the reasonably foreseeable uses of the PRODUCTS
22 sold by DEFENDANTS without a "clear and reasonable warning," have suffered, and continue
23 to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

24 40. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
25 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day
26 for each violation.
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