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Superior Court of California  
County of Los Angeles

MAR 15 2017

Shawn A. Carter, Executive Officer/Clerk  
Vanetta Robinson, Deputy

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **COUNTY OF LOS ANGELES**

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

16 Plaintiff,

17 v.

18 T.J. MAXX OF CA, LLC, a Delaware  
19 Limited Liability Company; THE TJX  
20 COMPANIES, INC., a business entity form  
21 unknown; MARMAXX OPERATING  
22 CORP., a Delaware Corporation; T.J.  
23 MAXX, a business entity form unknown;  
24 NBC FOURTH REALTY CORP., a Nevada  
25 Domestic Corporation; and DOES 1-20;

26 Defendants.

CASE NO.

BC 6 5 4 1 8 5

COMPLAINT FOR PENALTY AND  
INJUNCTION

Violation of Proposition 65, the Safe  
Drinking Water and Toxic Enforcement  
Act of 1986 (*Health & Safety Code*, §  
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL  
CASE (exceeds \$25,000)

27 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges a cause of action against  
28 Defendants T.J. MAXX OF CA, LLC, THE TJX COMPANIES, INC., MARMAXX  
OPERATING CORP., T.J. MAXX, NBC FOURTH REALTY CORP., and DOES 1-20 as  
follows:

**THE PARTIES**

1. Plaintiff CONSUMER ADVOCACY GROUP, INC. ("Plaintiff" or "CAG") is an organization qualified to do business in the State of California. CAG is a person within the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private attorney general, brings this action in the public interest as defined under Health and Safety Code section 25249.7, subdivision (d).
2. Defendant T.J. MAXX OF CA, LLC ("TJ MAXX CA") is a Delaware Limited Liability Company, doing business in the State of California at all relevant times herein.
3. Defendant THE TJX COMPANIES, INC. ("TJX") is a business entity form unknown, doing business in the State of California at all relevant times herein.
4. Defendant MARMAXX OPERATING CORP. ("MARMAXX") is a Delaware Corporation, doing business in the State of California at all relevant times herein.
5. Defendant T.J. MAXX ("TJ MAXX") is a business entity form unknown, doing business in the State of California at all relevant times herein.
6. Defendant NBC FOURTH REALTY CORP. ("NBC") is a Nevada Domestic Corporation, doing business in the State of California at all relevant times herein.
7. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
8. At all times mentioned herein, the term "Defendants" includes TJ MAXX CA, TJX, MARMAXX, TJ MAXX, NBC, and DOES 1-20.
9. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all times mentioned herein have conducted business within the State of California.
10. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-20, was an agent, servant, or employee of each of the other Defendants. In conducting the activities alleged in this Complaint, each of the

1 Defendants was acting within the course and scope of this agency, service, or  
2 employment, and was acting with the consent, permission, and authorization of each of  
3 the other Defendants. All actions of each of the Defendants alleged in this Complaint  
4 were ratified and approved by every other Defendant or their officers or managing  
5 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated  
6 the alleged wrongful conduct of each of the other Defendants.

7 11. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
8 Defendants was a person doing business within the meaning of Health and Safety Code  
9 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
10 employees at all relevant times.

11 **JURISDICTION**

12 12. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
13 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
14 those given by statute to other trial courts. This Court has jurisdiction over this action  
15 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
16 violations of Proposition 65 in any Court of competent jurisdiction.

17 13. This Court has jurisdiction over Defendants named herein because Defendants either  
18 reside or are located in this State or are foreign corporations authorized to do business in  
19 California, are registered with the California Secretary of State, or who do sufficient  
20 business in California, have sufficient minimum contacts with California, or otherwise  
21 intentionally avail themselves of the markets within California through their  
22 manufacture, distribution, promotion, marketing, or sale of their products within  
23 California to render the exercise of jurisdiction by the California courts permissible  
24 under traditional notions of fair play and substantial justice.

25 14. Venue is proper in the County of Los Angeles because one or more of the instances of  
26 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
27 because Defendants conducted, and continue to conduct, business in the County of Los  
28 Angeles with respect to the consumer product that is the subject of this action.

1 BACKGROUND AND PRELIMINARY FACTS

- 2 15. In 1986, California voters approved an initiative to address growing concerns about  
3 exposure to toxic chemicals and declared their right “[t]o be informed about exposures  
4 to chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,  
5 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
6 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
7 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources  
8 from contamination, to allow consumers to make informed choices about the products  
9 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
10 fit.
- 11 16. Proposition 65 requires the Governor of California to publish a list of chemicals known  
12 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*  
13 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains  
14 over 700 chemicals and chemical families. Proposition 65 imposes warning  
15 requirements and other controls that apply to Proposition 65-listed chemicals.
- 16 17. All businesses with ten (10) or more employees that operate or sell products in  
17 California must comply with Proposition 65. Under Proposition 65, businesses are: (1)  
18 prohibited from knowingly discharging Proposition 65-listed chemicals into sources of  
19 drinking water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and  
20 reasonable” warnings before exposing a person, knowingly and intentionally, to a  
21 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).
- 22 18. Proposition 65 provides that any person “violating or threatening to violate” the statute  
23 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §  
24 25249.7. “Threaten to violate” means “to create a condition in which there is a  
25 substantial probability that a violation will occur.” *Health & Safety Code* § 25249.11(e).  
26 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
27 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).
- 28

1 19. Plaintiff identified certain practices of manufacturers and distributors of products  
2 bearing Bis (2-ethylhexyl) phthalate (“DEHP”), also known as Di (2-ethylhexyl)  
3 phthalate, of exposing, knowingly and intentionally, persons in California to the  
4 Proposition 65-listed chemicals of such products without first providing clear and  
5 reasonable warnings of such to the exposed persons prior to the time of exposure.  
6 Plaintiff later discerned that Defendants engaged in such practice.

7 20. On January 1, 1988, the Governor of California added DEHP to the list of chemicals  
8 known to the State to cause cancer, and on October 24, 2003, the Governor added DEHP  
9 to the list of chemicals known to the State to cause developmental toxicity and male  
10 reproductive toxicity. DEHP is known to the State to cause cancer and reproductive  
11 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)  
12 months after addition of DEHP to the list of chemicals known to the State to cause  
13 reproductive toxicity, DEHP became fully subject to Proposition 65 warning  
14 requirements and discharge prohibitions.

15 **SATISFACTION OF PRIOR NOTICE**

16 21. On or about August 19, 2016, Plaintiff served notice of alleged violations of Health and  
17 Safety Code section 25249.6, concerning consumer products exposures, subject to a  
18 private action to TJ MAXX CA, TJX, MARMAXX, TJ MAXX, NBC, and to the  
19 California Attorney General, County District Attorneys, and City Attorneys for each city  
20 containing a population of at least 750,000 people in whose jurisdictions the violations  
21 allegedly occurred, concerning the product Sink Caddies with Polymer Suction Cups  
22 containing DEHP.

23 22. On or about September 16, 2016, Plaintiff served notice of alleged violations of Health  
24 and Safety Code section 25249.6, concerning consumer products exposures, subject to a  
25 private action to TJ MAXX CA, TJX, MARMAXX, TJ MAXX, NBC, and to the  
26 California Attorney General, County District Attorneys, and City Attorneys for each city  
27 containing a population of at least 750,000 people in whose jurisdictions the violations  
28



1 allegedly occurred, concerning the product Sponge Holders with Polymer Suction Cups  
2 containing DEHP.

3 23. Before sending the notice of alleged violations, Plaintiff investigated the consumer  
4 products involved, the likelihood that such products would cause users to suffer  
5 significant exposures to DEHP, and the corporate structure of each of the Defendants.

6 24. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
7 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney  
8 for Plaintiff who executed the certificate had consulted with at least one person with  
9 relevant and appropriate expertise who reviewed data regarding the exposures to DEHP,  
10 the subject Proposition 65-listed chemicals of this action. Based on that information, the  
11 attorney for Plaintiff who executed the Certificate of Merit believed there was a  
12 reasonable and meritorious case for this private action. The attorney for Plaintiff  
13 attached to the Certificate of Merit served on the Attorney General the confidential  
14 factual information sufficient to establish the basis of the Certificate of Merit.

15 25. Plaintiff's notices of alleged violations also included a Certificate of Service and a  
16 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
17 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

18 26. Plaintiff is commencing this action more than sixty (60) days from the dates that  
19 Plaintiff gave notices of the alleged violation to TJ MAXX CA, TJX, MARMAXX, TJ  
20 MAXX, NBC, and the public prosecutors referenced in Paragraphs 21-22.

21 27. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
22 any applicable district attorney or city attorney has commenced and is diligently  
23 prosecuting an action against the Defendants.

24 **FIRST CAUSE OF ACTION**

25 **(By CONSUMER ADVOCACY GROUP, INC. and against TJ MAXX CA, TJX,**  
26 **MARMAXX, TJ MAXX, NBC, and DOES 1-10 for Violations of Proposition 65, The Safe**  
27 **Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code*, §§ 25249.5, et**  
28 **seq.))**

**Sink Caddies with Polymer Suction Cups**

1 28. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
2 reference paragraphs 1 through 27 of this complaint as though fully set forth herein.  
3 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
4 distributor, promoter, or retailer of Sink Caddies with Polymer Suction Cups, which  
5 includes but is not limited to, ““U Umbra®”; “Insynk Sink Caddy”; www.umbra.com;  
6 “MADE IN CHINA”; Manufactured for Umbra LLC Buffalo, NY 14212; 330492-806-  
7 M10; UPC:028295417051; “TJ Maxx® 82-5765-792787-000399-03-2”” (“SINK  
8 CADDIES”).

9 29. SINK CADDIES contain DEHP.

10 30. Defendants knew or should have known that DEHP has been identified by the State of  
11 California as a chemical known to cause cancer and reproductive toxicity and therefore  
12 was subject to Proposition 65 warning requirements. Defendants were also informed of  
13 the presence of DEHP in SINK CADDIES within Plaintiff’s notice of alleged violations  
14 further discussed above at Paragraph 27.

15 31. Plaintiff’s allegations regarding SINK CADDIES concerns “[c]onsumer products  
16 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,  
17 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
18 exposure that results from receiving a consumer service.” *Cal. Code Regs.* tit. 27, §  
19 25602(b). SINK CADDIES are consumer products, and, as mentioned herein,  
20 exposures to DEHP took place as a result of such normal and foreseeable use.

21 32. Plaintiff is informed, believes, and thereon alleges that between August 19, 2013 and the  
22 present, each of the Defendants knowingly and intentionally exposed California  
23 consumers and users of SINK CADDIES, which Defendants manufactured, distributed,  
24 or sold as mentioned above, to DEHP, without first providing any type of clear and  
25 reasonable warning of such to the exposed persons before the time of exposure.  
26 Defendants have distributed and sold SINK CADDIES in California. Defendants know  
27 and intend that California consumers will use SINK CADDIES, thereby exposing them  
28 to DEHP. Defendants thereby violated Proposition 65.

1 33. The principal routes of exposure were through trans-dermal absorption, ingestion,  
2 including hand to mouth pathways, and inhalation. Persons sustained exposures by  
3 handling SINK CADDIES without wearing gloves or by touching bare skin or mucus  
4 membranes with gloves after handling SINK CADDIES, or through direct and indirect  
5 hand to mouth contact, hand to food to mouth, direct contact to food then to mouth, hand  
6 to mucous membrane, or breathing in particulate matter emanating from SINK  
7 CADDIES, as well as through environmental mediums that carry the DEHP once  
8 contained within the SINK CADDIES.

9 34. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
10 Proposition 65 as to SINK CADDIES have been ongoing and continuous to the date of  
11 the signing of this complaint, as Defendants engaged and continue to engage in conduct  
12 which violates Health and Safety Code section 25249.6, including the manufacture,  
13 distribution, promotion, and sale of SINK CADDIES, so that a separate and distinct  
14 violation of Proposition 65 occurred each and every time a person was exposed to DEHP  
15 by SINK CADDIES as mentioned herein.

16 35. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
17 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
18 violations alleged herein will continue to occur into the future.

19 36. Based on the allegations herein, Defendants are liable for civil penalties of up to  
20 \$2,500.00 per day per individual exposure to DEHP from SINK CADDIES, pursuant to  
21 Health and Safety Code section 25249.7(b).

22 37. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
23 filing this Complaint.

24  
25 **SECOND CAUSE OF ACTION**

26 **(By CONSUMER ADVOCACY GROUP, INC. and against TJ MAXX CA, TJX,**  
27 **MARMAXX, TJ MAXX, NBC, and DOES 11-20 for Violations of Proposition 65, The Safe**  
28 **Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et***  
***seq.*))**

**Sponge Holders with Polymer Suction Cups**



1 38. Plaintiff CONSUMER ADVOCACY GROUP, INC. repeats and incorporates by  
2 reference paragraphs 1 through 37 of this complaint as though fully set forth herein.  
3 Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
4 distributor, promoter, or retailer of Sponge Holders with Polymer Suction Cups, which  
5 includes but is not limited to, “U Umbra®”; “Foliage Sponge Holder”;  
6 www.umbra.com; “MADE IN CHINA”; Manufactured for Umbra LLC Buffalo, NY,  
7 14212; 330855-220-M10; UPC:028295417105; “TJ Maxx® 82-5760-792778-000249-  
8 03-2” (“SPONGE HOLDERS”).

9 39. SPONGE HOLDERS contain DEHP.

10 40. Defendants knew or should have known that DEHP has been identified by the State of  
11 California as a chemical known to cause cancer and reproductive toxicity and therefore  
12 was subject to Proposition 65 warning requirements. Defendants were also informed of  
13 the presence of DEHP in SPONGE HOLDERS within Plaintiff’s notice of alleged  
14 violations further discussed above at Paragraph 28.

15 41. Plaintiff’s allegations regarding SPONGE HOLDERS concerns “[c]onsumer products  
16 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,  
17 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
18 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*  
19 *25602(b)*. SPONGE HOLDERS are consumer products, and, as mentioned herein,  
20 exposures to DEHP took place as a result of such normal and foreseeable use.

21 42. Plaintiff is informed, believes, and thereon alleges that between September 16, 2013 and  
22 the present, each of the Defendants knowingly and intentionally exposed California  
23 consumers and users of SPONGE HOLDERS, which Defendants manufactured,  
24 distributed, or sold as mentioned above, to DEHP, without first providing any type of  
25 clear and reasonable warning of such to the exposed persons before the time of  
26 exposure. Defendants have distributed and sold SPONGE HOLDERS in California.  
27 Defendants know and intend that California consumers will use SPONGE HOLDERS,  
28 thereby exposing them to DEHP. Defendants thereby violated Proposition 65.

1 43. The principal routes of exposure were through trans-dermal absorption, ingestion,  
2 including hand to mouth pathways, and inhalation. Persons sustained exposures by  
3 handling SPONGE HOLDERS without wearing gloves or by touching bare skin or  
4 mucus membranes with gloves after handling SPONGE HOLDERS, or through direct  
5 and indirect hand to mouth contact, hand to food to mouth, direct contact to food then to  
6 mouth, hand to mucous membrane, or breathing in particulate matter emanating from  
7 SPONGE HOLDERS, as well as through environmental mediums that carry the DEHP  
8 once contained within the SPONGE HOLDERS.

9 44. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
10 Proposition 65 as to SPONGE HOLDERS have been ongoing and continuous to the date  
11 of the signing of this complaint, as Defendants engaged and continue to engage in  
12 conduct which violates Health and Safety Code section 25249.6, including the  
13 manufacture, distribution, promotion, and sale of SPONGE HOLDERS, so that a  
14 separate and distinct violation of Proposition 65 occurred each and every time a person  
15 was exposed to DEHP by SPONGE HOLDERS as mentioned herein.

16 45. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
17 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
18 violations alleged herein will continue to occur into the future.

19 46. Based on the allegations herein, Defendants are liable for civil penalties of up to  
20 \$2,500.00 per day per individual exposure to DEHP from SPONGE HOLDERS,  
21 pursuant to Health and Safety Code section 25249.7(b).

22 47. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
23 filing this Complaint.

24 **PRAYER FOR RELIEF**

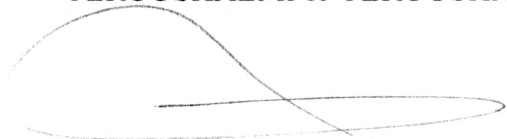
25 Plaintiff demands against each of the Defendants as follows:

- 26 1. A permanent injunction mandating Proposition 65-compliant warnings;  
27 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);  
28 3. Costs of suit;

- 1 4. Reasonable attorney fees and costs; and
- 2 5. Any further relief that the court may deem just and equitable.

3  
4  
5 Dated: March 14, 2017

YEROUSHALMI & YEROUSHALMI



6  
7  
8 BY: \_\_\_\_\_  
9 Reuben Yeroushalmi  
10 Attorneys for Plaintiff,  
11 Consumer Advocacy Group, Inc.