

FILED

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JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy

1 Gregory M. Sheffer, State Bar No. 173124
2 SHEFFER LAW FIRM
3 81 Throckmorton Ave., Suite 202
4 Mill Valley, CA 94941
5 Telephone: 415.388.0911
6 Facsimile: 415.388.9911

Attorneys for Plaintiff
SUSAN DAVIA

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

11 SUSAN DAVIA,

12 Plaintiff,

13 v.

14 ENVOGUE INTERNATIONAL, LLC, THE
15 TJX COMPANIES, INC. DBA HOME GOODS
and DOES 1-150,

16 Defendants.

Case No. CIV

1704672

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff SUSAN DAVIA, in the
3 public interest of the citizens of the State of California, to enforce the People’s right to be informed
4 of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical found in certain vinyl/PVC
5 packaging and storage cases for textile bedding products manufactured, distributed and/or
6 otherwise sold by defendants in California.

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

12 3. On October 24, 2003, the State listed di(2-ethylhexyl)phthalate as a chemical known to
13 cause birth defects and other reproductive harm. DEHP became subject to the warning
14 requirement one year later and was therefore subject to the “clear and reasonable warning”
15 requirements of Proposition 65, beginning on October 24, 2004. (*27 CCR § 27001(c); Cal. Health &*
16 *Safety Code § 25249.8.*)

17 4. DEHP shall hereinafter be referred to as the “LISTED CHEMICAL.”

18 5. Significant levels of the LISTED CHEMICAL have been discovered in or on
19 vinyl/PVC components of packaging and storage cases for EnVogue International, LLC textile
20 bedding products that defendants manufacture, distribute, and/or offer for sale to consumers
21 throughout the State of California including, but not limited to, those for Nicole Miller Home
22 comforter sets, all sizes (such as 097906). All such packaging and storage cases comprised of
23 vinyl/PVC materials containing any LISTED CHEMICAL shall hereinafter be referred to as the
24 “PRODUCTS.”

25 6. Defendants’ failure to warn consumers and/or other individuals in the State of
26 California about their exposures to the LISTED CHEMICAL in conjunction with defendants’ sale of
27 the PRODUCTS is a violation of Proposition 65.

28

1 plaintiff is informed and believes that DEFENDANTS' manufacture, distribution, and/or offering
2 of the PRODUCTS for sale or use in violation of California Health & Safety Code Section 25249.6
3 has continued to occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice. Plaintiff further
4 alleges and believes that such violations will continue to occur into the future.

5 28. After receipt of the claims asserted in the 60-Day Notice, the appropriate public
6 enforcement agencies have failed to commence and diligently prosecute a cause of action against
7 DEFENDANTS under Proposition 65.

8 29. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
9 California by DEFENDANTS, contain one or more LISTED CHEMICAL.

10 30. DEFENDANTS knew or should have known that the PRODUCTS contained such
11 LISTED CHEMICAL.

12 31. A LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to expose
13 individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section 25602(b),
14 through dermal contact and/or ingestion and/or inhalation during or as a consequence of the
15 packing, shipping, unpacking, display and daily organization and movement of PRODUCTS as
16 well as the reasonably foreseeable use of the PRODUCTS.

17 32. DEFENDANTS knew or should have known that the packing, shipping, unpacking,
18 display and daily organization and movement of PRODUCTS as well as the reasonably foreseeable
19 use of the PRODUCTS exposes individuals to a LISTED CHEMICAL through dermal contact
20 and/or ingestion and/or inhalation.

21 33. DEFENDANTS' participation in the manufacture, distribution and/or offer for sale or
22 use of PRODUCTS to individuals in the State of California was deliberate and non-accidental.

23 34. DEFENDANTS failed to provide a "clear and reasonable warning" to those
24 employees, consumers and/or other individuals in the State of California who were or who could
25 become exposed to a LISTED CHEMICAL during the reasonably foreseeable retail receipt, display
26 and organization of PRODUCTS as well as the reasonably foreseeable use of the PRODUCTS.

27 35. Contrary to the express policy and statutory prohibition of Proposition 65, employees
28 and individuals exposed to a LISTED CHEMICAL through dermal contact and/or ingestion

1 and/or inhalation resulting from the reasonably foreseeable use of the PRODUCTS, sold by
2 DEFENDANTS without a "clear and reasonable warning", have suffered, and continue to suffer,
3 irreparable harm, for which harm they have no other plain, speedy or adequate remedy at law.

4 36. As a consequence of the above-described acts, DEFENDANTS are liable for a
5 maximum civil penalty of \$2,500 per day for each violation of Proposition 65 pursuant to California
6 Health & Safety Code Section 25249.7(b).

7 37. As a consequence of the above-described acts, California Health & Safety Code
8 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
9 DEFENDANTS.

10 **PRAYER FOR RELIEF**

11 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as
12 follows:

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

16 2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a),
17 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering
18 the PRODUCTS for sale or use in California, without providing "clear and reasonable warnings" as
19 defined by 27 CCR Section 25601, as to the harms associated with exposures to the LISTED
20 CHEMICAL;

21 3. That the Court grant plaintiff her reasonable attorneys' fees and costs of suit; and

22 4. That the Court grant such other and further relief as may be just and proper.

23 Dated: December 19, 2017

Respectfully submitted,

24 SHEFFER LAW FIRM

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26 By: 

Gregory M. Sheffer
Attorneys for Plaintiff
SUSAN DAVIA