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ENDORSED
FILED
ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT
By Stume Deputy

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF ALAMEDA
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10 GABRIEL ESPINOSA,
11 Plaintiff,
12 vs.
13 THE TJX COMPANIES, INC.,
14 Defendant.

Case No.: Re 18928304

COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF

(Violation of Health & Safety Code §25249.5 et
seq.)

15 Plaintiff Gabriel Espinosa ("Plaintiff"), by and through his attorneys, alleges the
16 following cause of action in the public interest of the citizens of the State of California.

17 BACKGROUND OF THE CASE

18 1. Plaintiff brings this representative action on behalf of all California citizens to
19 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified
20 at the Health and Safety Code § 25249.5 et seq ("Proposition 65"), which reads, in relevant part,
21 "[n]o person in the course of doing business shall knowingly and intentionally expose any
22 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
23 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

24 2. This complaint is a representative action brought by Plaintiff in the public interest
25 of the citizens of the State of California to enforce the People's right to be informed of the health
26 hazards caused by exposure di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in
27 CuTech headphones sold and/or distributed by defendant The TJX Companies, Inc. ("TJX" or
28 "Defendant") in California.

1 3. DEHP is a harmful chemical known to the State of California to cause cancer and
2 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical
3 known to the State to cause cancer and it has come under the purview of Proposition 65
4 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§
5 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical
6 known to cause reproductive toxicity.

7 4. Proposition 65 requires all businesses with ten (10) or more employees that
8 operate within California or sell products therein to comply with Proposition 65 regulations.
9 Included in such regulations is the requirement that businesses must label any product containing
10 a Proposition 65-listed chemical with a “clear and reasonable” warning before “knowingly and
11 intentionally” exposing any person to it.

12 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
13 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety
14 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin
15 the actions of a defendant which “violate or threaten to violate” the statute. Health & Safety
16 Code § 25249.7.

17 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,
18 without a requisite exposure warning, CuTech headphones (the “Products”) that expose persons
19 to DEHP.

20 7. Defendant’s failure to warn consumers and other individuals in California of the
21 health hazards associated with exposure to DEHP in conjunction with the sale and/or distribution
22 of the Products is a violation of Proposition 65 and subjects Defendant to the enjoinder and
23 civil penalties described herein.

24 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition
25 65 in accordance with Health and Safety Code § 25249.7(b).

26 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
27 Defendant to provide purchasers or users of the Products with required warnings related to the
28

1 dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety
2 Code § 25249.7(a).

3 **PARTIES**

4 10. Plaintiff is a citizen of the State of California acting in the interest of the general
5 public to promote awareness of exposures to toxic chemicals in products sold in California and
6 to improve human health by reducing hazardous substances contained in such items. He brings
7 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

8 11. Defendant TJX, through its business, effectively imports, distributes, sells, and/or
9 offers the Products for sale or use in the State of California, or it implies by its conduct that it
10 imports, distributes, sells, and/or offers the Products for sale or use in the State of California.

11 12. Plaintiff alleges that defendant TJX is a “person” in the course of doing business
12 within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

13 **VENUE AND JURISDICTION**

14 13. Venue is proper in the County of Alameda because one or more of the instances
15 of wrongful conduct occurred, and continue to occur in this county and/or because Defendant
16 conducted, and continues to conduct, business in the County of Alameda with respect to the
17 Products.

18 14. This Court has jurisdiction over this action pursuant to California Constitution
19 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
20 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the
21 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,
22 this Court has jurisdiction over this lawsuit.

23 15. This Court has jurisdiction over Defendant because Defendant is either a citizen
24 of the State of California, has sufficient minimum contacts with the State of California, is
25 registered with the California Secretary of State as foreign corporations authorized to do business
26 in the State of California, and/or has otherwise purposefully availed itself of the California
27 market. Such purposeful availment has rendered the exercise of jurisdiction by California courts
28 consistent and permissible with traditional notions of fair play and substantial justice.

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1 24. Plaintiff, based on his best information and belief, avers that at all relevant times
2 herein, and at least since September 26, 2017, continuing until the present, that Defendant has
3 continued to knowingly and intentionally expose California users and consumers of the Product
4 to DEHP without providing required warnings under Proposition 65.

5 25. The exposures that are the subject of the Notice result from the purchase,
6 acquisition, handling and recommended use of the Product. Consequently, the primary route of
7 exposure to these chemicals is through dermal exposure. The Product can be expected to emit
8 gas phase DEHP into the air over and accumulate DEHP at the surface over the lifetime of the
9 product. This gas phase DEHP can potentially be inhaled as the Product is used in the vicinity of
10 the user's facial area. Dermal exposure through direct contact with the user's hands is possible
11 during application, removal, and manipulation of the Product. Should the user manipulate the
12 Product with wet hands, or the headphones become wet, aqueous DEHP skin permeation rates
13 are faster than neat DEHP permeation. If the Product is stored or transported in a carrier, DEHP
14 that leaches from the Product may contaminate other articles contained within these closed
15 spaces are subsequently handled, worn, mouthed, or consumed. Finally, while mouthing of the
16 Product does not seem likely, some amount of exposure through ingestion can occur by handling
17 the product with subsequent touching of the user's hand to mouth.

18 26. Plaintiff, based on his best information and belief, avers that such exposures will
19 continue every day until clear and reasonable warnings are provided to Product purchasers and
20 users or until this known toxic chemical is removed from the Product.

21 27. Defendant has knowledge that the normal and reasonably foreseeable use of the
22 Product exposes individuals to DEHP, and Defendant intends that exposures to DEHP will occur
23 by its deliberate, non-accidental participation in the importation, distribution, sale and offering of
24 the Products to consumers in California

25 28. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
26 Complaint.

27 29. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
28 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

1 30. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
2 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff demands judgment against Defendant and requests the
5 following relief:

- 6 A. That the court assess civil penalties against Defendant in the amount of
7 \$2,500 per day for each violation in accordance with Health and Safety
8 Code § 25249.7(b);
- 9 B. That the court preliminarily and permanently enjoin Defendant mandating
10 Proposition 65 compliant warnings on the Product;
- 11 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 12 D. That the court grant any further relief as may be just and proper.

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14 Dated: November 8, 2018

BRODSKY & SMITH, LLC

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