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ENDORSED  
FILED  
ALAMEDA COUNTY  
NOV 30 2020  
CLERK OF THE SUPERIOR COURT  
By TANIA PIERCE

9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF ALAMEDA

12 GABRIEL ESPINOZA,

13 Plaintiff,

14 vs.

15 THE TJX COMPANIES, INC.,

16 Defendant.

Case No.: RG20082616

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

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

19 **BACKGROUND OF THE CASE**

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

26 2. This complaint is a representative action brought by Plaintiff in the public interest  
27 of the citizens of the State of California to enforce the People's right to be informed of the health  
28 hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in cases  
/bags sold and/or distributed by defendant The TJX Companies, Inc. ("TJX" or the "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 known  
3 to the State to cause cancer and it has come under the purview of Proposition 65 regulations since  
4 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).  
5 On October 24, 2003, the State of California listed DEHP as a chemical known to cause  
6 reproductive toxicity.

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

12           5.       Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
13 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be  
14 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code  
15 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the  
16 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §  
17 25249.7.

18           6.       Plaintiff alleges that Defendant distributes and/or offers for sale in California,  
19 without a requisite exposure warning, cases/bags (the “Products”) that expose persons 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 civil  
23 penalties described herein.

24           8.       Plaintiff seeks civil penalties against Defendant for its violations of Proposition 65  
25 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 Code  
2 § 25249.7(a).

3 10. Plaintiff further seeks a reasonable award of attorney’s fees and costs.

4 **PARTIES**

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

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

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

14 **VENUE AND JURISDICTION**

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

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

24 16. This Court has jurisdiction over Defendant because Defendant is either a citizen of  
25 the State of California, has sufficient minimum contacts with the State of California, is registered  
26 with the California Secretary of State as foreign corporations authorized to do business in the State  
27 of California, and/or has otherwise purposefully availed itself of the California market. Such  
28

1 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and  
2 permissible with traditional notions of fair play and substantial justice.

3 **STATUTORY BACKGROUND**

4 17. The people of the State of California declared in Proposition 65 their right “[t]o be  
5 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
6 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

7 18. To effect this goal, Proposition 65 requires that individuals be provided with a  
8 “clear and reasonable warning” before being exposed to substances listed by the State of California  
9 as causing cancer or reproductive toxicity. H&S Code § 25249.6 states, in pertinent part:

10 No person in the course of doing business shall knowingly and intentionally expose any  
11 individual to a chemical known to the state to cause cancer or reproductive toxicity without  
12 first giving clear and reasonable warning to such individual...

13 19. An exposure to a chemical in a consumer product is one “which results from a  
14 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a  
15 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §  
16 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...  
17 shall provide a warning to any person to whom the product is sold or transferred unless the product  
18 is packaged or labeled with a clear and reasonable warning.”

19 20. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or  
20 more of the following methods individually or in combination:<sup>1</sup>

- 21 a. A warning that appears on a product’s label or other labeling.
- 22 b. Identification of the product at the retail outlet in a manner which provides  
23 a warning. Identification may be through shelf labeling, signs, menus, or a combination  
24 thereof.

25  
26  
27 <sup>1</sup> Alternatively, a person in the course of doing business may elect to comply with the warning  
28 requirements set out in the amended version of 27 CCR 25601, *et.seq.*, as amended on August 30,  
2016, and operative on August 30, 2018.

1 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be  
2 prominently placed upon a product's labels or other labeling or displayed at the retail outlet  
3 with such conspicuousness, as compared with other words, statements, designs, or devices  
4 in the label, labeling or display as to render it likely to be read and understood by an  
5 ordinary individual under customary conditions of purchase or use.

6 d. A system of signs, public advertising identifying the system and toll-free  
7 information services, or any other system that provides clear and reasonable warnings.

8 21. Proposition 65 provides that any "person who violates or threatens to violate" the  
9 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase  
10 "threaten to violate" is defined to mean creating "a condition in which there is a substantial  
11 probability that a violation will occur." (H&S Code § 25249.11(e).) Violators are liable for civil  
12 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to  
13 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

14 **FACTUAL BACKGROUND**

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

20 23. The consumer exposures that are the subject of this Complaint result primarily from  
21 dermal absorption. Users can be exposed to DEHP by dermal absorption through direct skin  
22 contact with the Products when handled with bare hands. DEHP from the Products can absorb to  
23 the surface of contents placed in the Products that are subsequently handled, held in direct contact  
24 with skin, mouthed, or ingested by the user. If the Products are stored or transported in a carrier,  
25 DEHP that leaches from the Products may contaminate other articles contained within these closed  
26 spaces that are subsequently handled, worn, mouthed or ingested by the user. Finally, while  
27 mouthing of the Products does not seem likely, some amount of exposure through ingestion can  
28 occur by touching the Products with subsequent touching of the user's hand to mouth.

1 24. Defendant has marketed, distributed, offered to sell and/or sold the Products in  
2 California since at least December of 2019. The Products continue to be distributed and sold in  
3 California without the requisite warning information.

4 25. At all times relevant to this action, Defendant has knowingly and intentionally  
5 exposed users and/or consumers of the Products to DEHP without first giving a clear and  
6 reasonable exposure warning to such individuals.

7 26. As a proximate result of acts by Defendant, as a person in the course of doing  
8 business within the meaning of H&S Code § 25249.11, individuals throughout the State of  
9 California, including in Alameda County, have been exposed to DEHP without a clear and  
10 reasonable warning on the Products. The individuals subject to the violative exposures include  
11 normal and foreseeable users and consumers that use the Products, as well as all others exposed to  
12 the Products.

13 **SATISFACTION OF NOTICE REQUIREMENTS**

14 ***The Alleged Violations of Health and Safety Code § 25249.6 to TJX***

15 27. On December 12, 2019, Plaintiff gave notice of alleged violation of Health and  
16 Safety Code § 25249.6 (a “Notice of Violation”) to Defendant concerning the exposure of  
17 California citizens to DEHP contained in the The Pure Collection by Indigo 2 King Pillowcases –  
18 Case with TJX identifying tag #s RN# 104905, 6002-0255-976144-81, 1260-089543931-000999-  
19 20-2 without proper warning, subject to a private action to Defendant and to the California  
20 Attorney General’s office and the offices of the County District attorneys and City Attorneys for  
21 each city with a population greater than 750,000 persons wherein the herein violations allegedly  
22 occurred. See attached at Exhibit “A” a true and correct copy of the December 12, 2019 Notice of  
23 Violation.

24 28. On March 18, 2020, Plaintiff gave notice of alleged violation of Health and Safety  
25 Code § 25249.6 to Defendant concerning the exposure of California citizens to DEHP contained  
26 in the Spring Air It Doesn’t Go Flat Mattress Pad – Case, UPC# 081806482672, with TJX  
27 identifying tag #s 1ZS025VTWWHT, 1260-091918071-001999-24-2, 6004-0411-995037-81,  
28 without proper warning, subject to a private action to Defendant and to the California Attorney

1 General's office and the offices of the County District attorneys and City Attorneys for each city  
2 with a population greater than 750,000 persons wherein the herein violations allegedly occurred.  
3 See attached at Exhibit "B" a true and correct copy of the March 18, 2020 Notice of Violation.

4 29. On March 25, 2020, Plaintiff gave notice of alleged violation of Health and Safety  
5 Code § 25249.6 to Defendant concerning the exposure of California citizens to DEHP contained  
6 in the Plymouth Collection 4 pc. Sheet Set – Case, UPC#885359788492, with TJX identifying tag  
7 #s 1260-091030694-001999-22-2, 6023-2300-988078-81, RN# 158639, without proper warning,  
8 subject to a private action to Defendant and to the California Attorney General's office and the  
9 offices of the County District attorneys and City Attorneys for each city with a population greater  
10 than 750,000 persons wherein the herein violations allegedly occurred. See attached at Exhibit "C"  
11 a true and correct copy of the March 25, 2020 Notice of Violation.

12 30. On March 25, 2020, Plaintiff gave notice of alleged violation of Health and Safety  
13 Code § 25249.6 to Defendant concerning the exposure of California citizens to DEHP contained  
14 in the Park Avenue Hotel Collection 2 Pack King Pillowcases – Case, UPC# 8 171070 296562,  
15 with TJX identifying tag #s 1260-091773735-000599-24-2, 6002-0250-993712-81, without proper  
16 warning, subject to a private action to Defendant and to the California Attorney General's office  
17 and the offices of the County District attorneys and City Attorneys for each city with a population  
18 greater than 750,000 persons wherein the herein violations allegedly occurred. See attached at  
19 Exhibit "D" a true and correct copy of the March 25, 2020 Notice of Violation.

20 31. The Notices of Violation described herein are collectively referred to as, the  
21 "Notices."

22 32. The Notices complied with all procedural requirements of Proposition 65 including  
23 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at  
24 least one person with relevant and appropriate expertise who reviewed relevant data regarding  
25 DEHP exposure, and that counsel believed there was meritorious and reasonable cause for a private  
26 action.

27 33. After receiving the Notices, and to Plaintiff's best information and belief, none of  
28 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a

1 cause of action against Defendant under Proposition 65 to enforce the alleged violations which are  
2 the subject of the Notices.

3 34. Plaintiff is commencing this action more than sixty (60) days from the date of the  
4 Notices to Defendant, as required by law.

5 35. On April 6, the Judicial Council first adopted emergency rule 9 to suspend statutes  
6 of limitation on all civil cases until 90 days after Governor Newsom lifts the state of emergency  
7 related to the COVID-19 pandemic. On May 29, 2020 the Judicial Council approved a revision to  
8 emergency rule 9 regarding the statutes of limitations for filing civil cases during the COVID-19  
9 pandemic. The Council amended emergency rule 9 by circulating order so that it is no longer tied  
10 to the state of emergency declaration. The new rule suspends from April 6, 2020 to October 1,  
11 2020 the statutes of limitations and repose for civil causes of action that exceed 180 days. The rule  
12 is broad in scope and applies to all civil causes of action.

13 **FIRST CAUSE OF ACTION**

14 **(By Plaintiff against Defendant for the Violation of Proposition 65)**

15 36. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 35 of  
16 this Complaint as though fully set forth herein.

17 37. Defendant has, at all times mentioned herein, acted as distributor and/or retailer of  
18 the Product.

19 38. The Products contain DEHP, a hazardous chemical found on the Proposition 65 list  
20 of chemicals known to be hazardous to human health.

21 39. The Products do not comply with the Proposition 65 warning requirements.

22 40. Plaintiff, based on his best information and belief, avers that at all relevant times  
23 herein, and at least since December 12, 2019, continuing until the present, that Defendant has  
24 continued to knowingly and intentionally expose California users and consumers of the Product to  
25 DEHP without providing required warnings under Proposition 65.

26 41. The exposures that are the subject of the Notices result from the purchase,  
27 acquisition, handling and recommended use of the Products. Consequently, the primary route of  
28 exposure to these chemicals is through dermal absorption. Users can be exposed to DEHP by



1 dermal absorption through direct skin contact with the Products when handled with bare hands.  
2 DEHP from the Products can absorb to the surface of contents placed in the Products that are  
3 subsequently handled, held in direct contact with skin, mouthed, or ingested by the user. If the  
4 Products are stored or transported in a carrier, DEHP that leaches from the Products may  
5 contaminate other articles contained within these closed spaces that are subsequently handled,  
6 worn, mouthed or ingested by the user. Finally, while mouthing of the Products does not seem  
7 likely, some amount of exposure through ingestion can occur by touching the Products with  
8 subsequent touching of the user's hand to mouth.

9 42. Plaintiff, based on his best information and belief, avers that such exposures will  
10 continue every day until clear and reasonable warnings are provided to purchasers and users of the  
11 Products or until this known toxic chemical is removed from the Products.

12 43. Defendant has knowledge that the normal and reasonably foreseeable use of the  
13 Products will expose individuals to DEHP, and Defendant intends that exposures to DEHP will  
14 occur by its deliberate, non-accidental participation in the importation, distribution, sale and  
15 offering of the Products to consumers in California

16 44. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
17 Complaint.

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

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

**PRAYER FOR RELIEF**

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

- A. That the court assess civil penalties against each Defendant in the amount of \$2,500 per day for each violation for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);
- B. That the court preliminarily and permanently enjoin Defendant mandating Proposition 65 compliant warnings on the Products;
- C. That the court grant Plaintiff reasonable attorney’s fees and costs of suit, in the amount of \$50,000.00.
- D. That the court grant any further relief as may be just and proper.

Dated: November 25, 2020

BRODSKY & SMITH, LLC

By: \_\_\_\_\_  
Evan J. Smith (SBN242352)  
Ryan P. Cardona (SBN302113)  
9595 Wilshire Boulevard, Suite 900  
Beverly Hills, CA 90212  
Telephone: (877) 534-2590  
Facsimile: (310) 247-0160

*Attorneys for Plaintiff*

# EXHIBIT “A”

## LAW OFFICES

**BRODSKY & SMITH, LLC**

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December 12, 2019

esmith@brodskysmith.com

President/CEO Indo Count Industries, Ltd. 301, "ARCADIA" 3 <sup>rd</sup> Floor Nariman Point, Mumbai – 400 021 Maharashtra, India	President/CEO Indo Count Industries, Ltd. 2 <sup>nd</sup> Floor, 1-9, Shoppe Imperia Dosti Imperia, Manpada Ghodbunder Road, Opp. R Mall Thane (West) 400607
President/CEO Indo Count Global, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	President/CEO Marshalls of MA, Inc. c/o CT Corporation System 155 Federal Street, Suite 700 Boston, MA 02110
President/CEO The TJX Companies, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING  
THE ATTACHED CERTIFICATE OF SERVICE

Re: Notice of Violation of California Health & Safety Code §25249.6, *et seq.*

To Whom It May Concern:

Brodsky & Smith, LLC ("Brodsky Smith") represents Gabriel Espinoza ("Espinoza"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items.

With respect to the product identified below, Espinoza has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at Cal. Health & Safety Code §25249.5, *et seq.* This violation has occurred and continues to occur because the alleged Violator(s) identified below failed to provide required clear and reasonable warnings with this product. Section 25249.6 of the statute provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to this listed chemical that results from contact with this product, California citizens lack the information necessary to make an informed decision on

whether and/or how to eliminate (or reduce) their risk of exposure to the listed chemical from the reasonably foreseeable use of the product.

Please allow this letter to serve as notice of this violation to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Brodsky Smith intends to file a private enforcement action on behalf of Espinoza sixty (60) days after effective service of this notice unless the public enforcement agencies<sup>1</sup> have commenced and are earnestly prosecuting an action to redress these violations.

**Alleged Violator(s):** The name of the companies covered by this notice that Violated Proposition 65 (hereinafter “the Violators”) are:

Indo Count Industries, Ltd.  
Indo Count Global, Inc.  
Marshalls of MA, Inc.  
The TJX Companies, Inc.

**Product Category/Type:** The type of product causing this violation is:

<i><b>Product<sup>2</sup></b></i>	<i><b>Retailer(s)</b></i>	<i><b>Manufacturer(s)/Distributor(s)</b></i>
The Pure Collection by Indigo 2 King Pillowcases – Case RN# 104905 6002-0255-976144-81 1260-089543931-000999-20-2	Marshalls of MA, Inc. The TJX Companies, Inc.	Indo Count Industries, Ltd. Indo Count Global, Inc.

**Listed Chemicals:** This violation involves exposure to the chemical Di(2-ethylhexyl) phthalate (DEHP). On January 1, 1988, the State of California listed DEHP as a chemical known to the State to cause cancer. On October 24, 2003, the State of California listed Di(2-ethylhexyl) phthalate (DEHP) as a chemical known to cause developmental male reproductive toxicity. Both additions took place more than twenty (20) months before Espinoza served this Notice.

**Violations:** The alleged Violators knowingly and intentionally have exposed and continue to knowingly and intentionally expose consumers within the State of California to Di(2-ethylhexyl) phthalate (DEHP) at levels that, upon reasonable use of the product, exceed the No Significant Risk Level and the Maximum Allowable Dose Level without providing clear and reasonable warning of this exposure. In particular, the product does not warn that it contains chemicals known to the State of California to cause both cancer and reproductive toxicity, developmental, male.

**Route of Exposure:** The exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of the product. Consequently, the primary route of

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<sup>1</sup> The public enforcement agencies that have been served with copies of this notice of violations are identified in the attached distribution list accompanying the Certificate of Service.

<sup>2</sup> The specifically identified example of the type of product that is subject to this Notice is for the recipient’s benefit to assist in its investigation of, among other things, the magnitude of potential exposures to the listed chemical from other items within the product category. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under “Product.” Further, it is Espinoza’s position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient’s custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

exposure to these chemicals is through dermal absorption. Dermal absorption of DEHP can occur through direct skin contact when the clear plastic is contacted with bare hands. Concentrations of DEHP can be expected to build within the interior of the case. Articles placed in the case, including but not limited to pillowcases, can absorb DEHP. A DEHP contaminated pillowcase can be subsequently handled or placed in direct contact with exposed skin resulting in dermal exposure to DEHP. Finally, while mouthing of the item does not seem likely, some amount of exposure through ingestion can occur by touching the product with subsequent touching of the user's hand to mouth.

**Duration of the Violations:** Each of these ongoing violations has occurred on every day since at least August 24, 2019; as well as every day since the product was introduced to the California marketplace and following the one-year anniversary date of the listing at issue; and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is removed from the product.

Pursuant to Title 11, C.C.R. §3100, a certificate of merit is attached hereto. Pursuant to Title 27, C.C.R. §25903(b), a copy of "The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary" is also enclosed.

Consistent with the public interest goals of Proposition 65 and desire to have these ongoing violations of California law quickly rectified, Espinoza is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation.

Espinoza has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



\_\_\_\_\_  
Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action. My business address is 2 Bala Plaza, Suite 510, Bala Cynwyd, Pennsylvania. I am employed in Montgomery County where the mailing occurred.

On December 12, 2019, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on the following entities and individuals listed below by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Certified Mail:

President/CEO Indo Count Industries, Ltd. 301, "ARCADIA" 3 <sup>rd</sup> Floor Nariman Point, Mumbai – 400 021 Maharashtra, India	President/CEO Indo Count Industries, Ltd. 2 <sup>nd</sup> Floor, 1-9, Shoppe Imperia Dosti Imperia, Manpada Ghodbunder Road, Opp. R Mall Thane (West) 400607
President/CEO Indo Count Global, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	President/CEO Marshalls of MA, Inc. c/o CT Corporation System 155 Federal Street, Suite 700 Boston, MA 02110
President/CEO The TJX Companies, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	

On December 12, 2019, I served the following documents: **Notice of Violation of California Health & Safety Code §2529.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on each of the individuals on the service list attached hereto as Appendix B by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Priority Mail.

Executed on December 12, 2019, in Bala Cynwyd, Pennsylvania.

  
\_\_\_\_\_  
Evan J. Smith

**CERTIFICATE OF MERIT**  
Health & Safety Code Section 25249.7(d)

I, Evan J. Smith, hereby declare:

- (1) This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice have violated Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
- (2) I am the attorney for the noticing party, Gabriel Espinoza.
- (3) I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies or other data regarding the alleged exposure to the listed chemicals that are the subject of the action.
- (4) Based on the information obtained through these consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator(s) will be able to establish any of the affirmative defenses set forth in the statute.
- (5) The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health & Safety Code Section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: December 12, 2019



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Evan J. Smith  
Attorney for Gabriel Espinoza



# EXHIBIT “B”

LAW OFFICES  
**BRODSKY & SMITH, LLC**

TWO BALA PLAZA, SUITE 510  
BALA CYNWYD, PA 19004

610.667.6200  
FAX 610.667.9029  
www.brodskysmith.com

NEW JERSEY OFFICE  
1040 Kings Highway North, Suite 650  
CHERRY HILL, NJ 08034  
856.795.7250

NEW YORK OFFICE  
240 MINEOLA BOULEVARD  
MINEOLA, NY 11501  
516.741.4977

CALIFORNIA OFFICE  
9595 WILSHIRE BLVD., SUITE 900  
BEVERLY HILLS, CA 90212  
877.534.2590

March 18, 2020

esmith@brodskysmith.com

Member/Manager Spring Air IP Holding, LLC c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	Member/Manager Spring Air International, LLC c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801
Member/Manager Spring Air International, LLC 70 Everett Avenue, Suite 507 Chelsea, MA 02150	President/CEO Marshalls of MA, Inc. c/o CT Corporation System 155 Federal Street, Suite 700 Boston, MA 02110
President/CEO The TJX Companies, Inc, c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING  
THE ATTACHED CERTIFICATE OF SERVICE

Re: Notice of Violation of California Health & Safety Code §25249.6, *et seq.*

To Whom It May Concern:

Brodsky & Smith, LLC (“Brodsky Smith”) represents Gabriel Espinoza (“Expinoza”), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items.

With respect to the product identified below, Espinoza has identified a violation of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at Cal. Health & Safety Code §25249.5, *et seq.* This violation has occurred and continues to occur because the alleged Violator(s) identified below failed to provide required clear and reasonable warnings with this product. Section 25249.6 of the statute provides that “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ...” Without proper warnings regarding the toxic effects of exposures to this listed chemical that results from contact with this product, California citizens lack the information necessary to make an informed decision on

whether and/or how to eliminate (or reduce) their risk of exposure to the listed chemical from the reasonably foreseeable use of the product.

Please allow this letter to serve as notice of this violation to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Brodsky Smith intends to file a private enforcement action on behalf of Espinoza sixty (60) days after effective service of this notice unless the public enforcement agencies<sup>1</sup> have commenced and are earnestly prosecuting an action to redress these violations.

**Alleged Violator(s):** The name of the companies covered by this notice that Violated Proposition 65 (hereinafter “the Violators”) are:

Spring Air IP Holding, LLC  
Spring Air International, LLC  
Marshalls of MA, Inc.  
The TJX Companies, Inc.

**Product Category/Type:** The type of product causing this violation is:

<b><i>Product<sup>2</sup></i></b>	<b><i>Retailer(s)</i></b>	<b><i>Manufacturer(s)/Distributor(s)</i></b>
Spring Air It Doesn't Go Flat Mattress Pad – Case UPC# 081806482672 1ZS025VTWWHT 1260-091918071-001999-24-2 6004-0411-995037-81	Marshalls of MA, Inc. The TJX Companies, Inc.	Spring Air IP Holding, LLC Spring Air International, LLC

**Listed Chemicals:** This violation involves exposure to the chemical Di(2-ethylhexyl) phthalate (DEHP). On January 1, 1988, the State of California listed DEHP as a chemical known to the State to cause cancer. On October 24, 2003, the State of California listed Di(2-ethylhexyl) phthalate (DEHP) as a chemical known to cause developmental male reproductive toxicity. Both additions took place more than twenty (20) months before Espinoza served this Notice.

**Violations:** The alleged Violators knowingly and intentionally have exposed and continue to knowingly and intentionally expose consumers within the State of California to Di(2-ethylhexyl) phthalate (DEHP) at levels that, upon reasonable use of the product, exceed the No Significant Risk Level and the Maximum Allowable Dose Level without providing clear and reasonable warning of this exposure. In particular, the product does not warn that it contains chemicals known to the State of California to cause both cancer and reproductive toxicity, developmental, male.

**Route of Exposure:** The exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of the product. Consequently, the primary route of

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<sup>1</sup> The public enforcement agencies that have been served with copies of this notice of violations are identified in the attached distribution list accompanying the Certificate of Service.

<sup>2</sup> The specifically identified example of the type of product that is subject to this Notice is for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposures to the listed chemical from other items within the product category. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under “Product.” Further, it is Espinoza's position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

exposure to these chemicals is through dermal absorption. Initial exposure would result from directly touching or holding the item during normal use. For example, the user would be expected to touch the plastic when removing or replacing items from the bag. Ingestion would occur from hand to mouth contact, for example, from eating after having handled the item.

**Duration of the Violations:** Each of these ongoing violations has occurred on every day since at least January 7, 2020; as well as every day since the product was introduced to the California marketplace and following the one-year anniversary date of the listing at issue; and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is removed from the product.

Pursuant to Title 11, C.C.R. §3100, a certificate of merit is attached hereto. Pursuant to Title 27, C.C.R. §25903(b), a copy of "The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary" is also enclosed.

Consistent with the public interest goals of Proposition 65 and desire to have these ongoing violations of California law quickly rectified, Espinoza is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation.

Espinoza has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



---

Evan J. Smith

Attachments

- Certificate of Merit
- Certificate of Service
- The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action. My business address is 2 Bala Plaza, Suite 510, Bala Cynwyd, Pennsylvania. I am employed in Montgomery County where the mailing occurred.

On March 18, 2020, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on the following entities and individuals listed below by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Certified Mail:

Member/Manager Spring Air IP Holding, LLC c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	Member/Manager Spring Air International, LLC c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801
President/CEO Spring Air International, LLC 70 Everett Avenue, Suite 507 Chelsea, MA 02150	President/CEO Marshalls of MA, Inc. c/o CT Corporation System 155 Federal Street, Suite 700 Boston, MA 02110
President/CEO The TJX Companies, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	

On March 18, 2020, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on each of the individuals on the service list attached hereto as Appendix B by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Priority Mail.

Executed on March 18, 2020, in Bala Cynwyd, Pennsylvania.

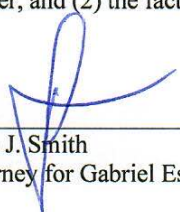
  
\_\_\_\_\_  
Evan J. Smith

**CERTIFICATE OF MERIT**  
Health & Safety Code Section 25249.7(d)

I, Evan J. Smith, hereby declare:

- (1) This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice have violated Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
- (2) I am the attorney for the noticing party Gabriel Espinoza.
- (3) I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies or other data regarding the alleged exposure to the listed chemicals that are the subject of the action.
- (4) Based on the information obtained through these consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator(s) will be able to establish any of the affirmative defenses set forth in the statute.
- (5) The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health & Safety Code Section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: March 18, 2020

  
\_\_\_\_\_  
Evan J. Smith  
Attorney for Gabriel Espinoza

# EXHIBIT “C”



LAW OFFICES  
**BRODSKY & SMITH, LLC**

TWO BALA PLAZA, SUITE 510  
BALA CYNWYD, PA 19004

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CHERRY HILL, NJ 08034  
856.795.7250

NEW YORK OFFICE  
240 MINEOLA BOULEVARD  
MINEOLA, NY 11501  
516.741.4977

CALIFORNIA OFFICE  
9595 WILSHIRE BLVD., SUITE 900  
BEVERLY HILLS, CA 90212  
877.534.2590

March 25, 2020

esmith@brodskysmith.com

Member/Manager Cindy Home Fashions, LLC c/o Corporation Filings of New York 90 State Street Suite 700, Office 40 Albany, NY 12207	Member/Manager Cindy Home Fashions, LLC 1407 Broadway Suite 3407 New York, NY 10018
President/CEO The TJX Companies, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	President/CEO Marshalls of MA, Inc. c/o CT Corporation System 155 Federal Street, Suite 700 Boston, MA 02110

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING  
THE ATTACHED CERTIFICATE OF SERVICE

Re: Notice of Violation of California Health & Safety Code §25249.6, *et seq.*

To Whom It May Concern:

Brodsky & Smith, LLC (“Brodsky Smith”) represents Gabriel Espinoza (“Espinoza”), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items.

With respect to the product identified below, Espinoza has identified a violation of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at Cal. Health & Safety Code §25249.5, *et seq.* This violation has occurred and continues to occur because the alleged Violator(s) identified below failed to provide required clear and reasonable warnings with this product. Section 25249.6 of the statute provides that “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ...” Without proper warnings regarding the toxic effects of exposures to this listed chemical that results from contact with this product, California citizens lack the information necessary to make an informed decision on whether and/or how to eliminate (or reduce) their risk of exposure to the listed chemical from the reasonably foreseeable use of the product.

Please allow this letter to serve as notice of this violation to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Brodsky Smith intends to file a private enforcement action on behalf of Espinoza sixty (60) days after effective service of



this notice unless the public enforcement agencies<sup>1</sup> have commenced and are earnestly prosecuting an action to redress these violations.

**Alleged Violator(s):** The name of the companies covered by this notice that Violated Proposition 65 (hereinafter “the Violators”) are:

Cindy Home Fashions, LLC  
Marshalls of MA, Inc.  
The TJX Companies, Inc.

**Product Category/Type:** The type of product causing this violation is:

<b><i>Product<sup>2</sup></i></b>	<b><i>Retailer(s)</i></b>	<b><i>Manufacturer(s)/Distributor(s)</i></b>
Plymouth Collection 4 pc. Sheet Set – Case UPC#885359788492 1260-091030694-001999-22-2 6023-2300-988078-81 RN# 158639	Marshalls of MA, Inc. The TJX Companies, Inc.	Cindy Home Fashions, LLC

**Listed Chemicals:** This violation involves exposure to the chemical Di(2-ethylhexyl) phthalate (DEHP). On January 1, 1988, the State of California listed DEHP as a chemical known to the State to cause cancer. On October 24, 2003, the State of California listed Di(2-ethylhexyl) phthalate (DEHP) as a chemical known to cause developmental male reproductive toxicity. Both additions took place more than twenty (20) months before Espinoza served this Notice.

**Violations:** The alleged Violators knowingly and intentionally have exposed and continue to knowingly and intentionally expose consumers within the State of California to Di(2-ethylhexyl) phthalate (DEHP) at levels that, upon reasonable use of the product, exceed the No Significant Risk Level and the Maximum Allowable Dose Level without providing clear and reasonable warning of this exposure. In particular, the product does not warn that it contains chemicals known to the State of California to cause both cancer and reproductive toxicity, developmental, male.

**Route of Exposure:** The exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of the product. Consequently, the primary route of exposure to these chemicals is through dermal absorption. Initial exposure would result from directly touching or holding the item during normal use. For example, the user would be expected to touch the plastic when removing or replacing items from the bag. Ingestion would occur from hand to mouth contact, for example, from eating after having handled the item.

**Duration of the Violations:** Each of these ongoing violations has occurred on every day since at least January 7, 2020; as well as every day since the product was introduced to the California marketplace and following the one-year anniversary date of the listing at issue; and will continue every day

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<sup>1</sup> The public enforcement agencies that have been served with copies of this notice of violations are identified in the attached distribution list accompanying the Certificate of Service.

<sup>2</sup> The specifically identified example of the type of product that is subject to this Notice is for the recipient’s benefit to assist in its investigation of, among other things, the magnitude of potential exposures to the listed chemical from other items within the product category. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under “Product.” Further, it is Espinoza’s position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient’s custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

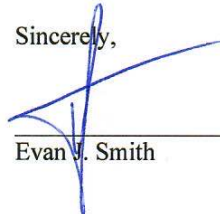
until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is removed from the product.

Pursuant to Title 11, C.C.R. §3100, a certificate of merit is attached hereto. Pursuant to Title 27, C.C.R. §25903(b), a copy of "The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary" is also enclosed.

Consistent with the public interest goals of Proposition 65 and desire to have these ongoing violations of California law quickly rectified, Espinoza is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation.

Espinoza has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



---

Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action. My business address is 2 Bala Plaza, Suite 510, Bala Cynwyd, Pennsylvania. I am employed in Montgomery County where the mailing occurred.

On March 25, 2020, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on the following entities and individuals listed below by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Certified Mail:

Member/Manager Cindy Home Fashions, LLC c/o Corporation Filings of New York 90 State Street Suite 700, Office 40 Albany, NY 12207	President/CEO Marshalls of MA, Inc. c/o CT Corporation System 155 Federal Street, Suite 700 Boston, MA 02110
President/CEO The TJX Companies, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	Member/Manager Cindy Home Fashions, LLC 1407 Broadway Suite 3407 New York, NY 10018

On March 25, 2020, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on each of the individuals on the service list attached hereto as Appendix B by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Priority Mail.

Executed on March 25, 2020, in Bala Cynwyd, Pennsylvania.

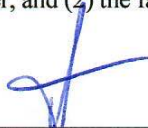
  
\_\_\_\_\_  
Evan J. Smith

**CERTIFICATE OF MERIT**  
Health & Safety Code Section 25249.7(d)

I, Evan J. Smith, hereby declare:

- (1) This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice have violated Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
- (2) I am the attorney for the noticing party Gabriel Espinoza.
- (3) I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies or other data regarding the alleged exposure to the listed chemicals that are the subject of the action.
- (4) Based on the information obtained through these consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator(s) will be able to establish any of the affirmative defenses set forth in the statute.
- (5) The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health & Safety Code Section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: March 25, 2020

  
\_\_\_\_\_  
Evan J. Smith  
Attorney for Gabriel Espinoza

# EXHIBIT “D”

LAW OFFICES  
**BRODSKY & SMITH, LLC**

TWO BALA PLAZA, SUITE 510  
BALA CYNWYD, PA 19004

610.667.6200  
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856.795.7250

NEW YORK OFFICE  
240 MINEOLA BOULEVARD  
MINEOLA, NY 11501  
516.741.4977

CALIFORNIA OFFICE  
9595 WILSHIRE BLVD., SUITE 900  
BEVERLY HILLS, CA 90212  
877.534.2590

March 25, 2020

esmith@brodskysmith.com

President/CEO Trade Linker International, Inc. 570 South Avenue East, Bldg. C-1 Cranford, NJ 07016	President/CEO Marshalls of MA, Inc. c/o CT Corporation System 155 Federal Street, Suite 700 Boston, MA 02110
President/CEO The TJX Companies, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING  
THE ATTACHED CERTIFICATE OF SERVICE

Re: Notice of Violation of California Health & Safety Code §25249.6, *et seq.*

To Whom It May Concern:

Brodsky & Smith, LLC (“Brodsky Smith”) represents Gabriel Espinoza (“Espinoza”), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items.

With respect to the product identified below, Espinoza has identified a violation of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at Cal. Health & Safety Code §25249.5, *et seq.* This violation has occurred and continues to occur because the alleged Violator(s) identified below failed to provide required clear and reasonable warnings with this product. Section 25249.6 of the statute provides that “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ...” Without proper warnings regarding the toxic effects of exposures to this listed chemical that results from contact with this product, California citizens lack the information necessary to make an informed decision on whether and/or how to eliminate (or reduce) their risk of exposure to the listed chemical from the reasonably foreseeable use of the product.

Please allow this letter to serve as notice of this violation to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Brodsky Smith intends to file a private enforcement action on behalf of Espinoza sixty (60) days after effective service of

this notice unless the public enforcement agencies<sup>1</sup> have commenced and are earnestly prosecuting an action to redress these violations.

**Alleged Violator(s):** The name of the companies covered by this notice that Violated Proposition 65 (hereinafter “the Violators”) are:

Trade Linker International, Inc.  
Marshalls of MA, Inc.  
The TJX Companies, Inc.

**Product Category/Type:** The type of product causing this violation is:

<b><i>Product<sup>2</sup></i></b>	<b><i>Retailer(s)</i></b>	<b><i>Manufacturer(s)/Distributor(s)</i></b>
Park Avenue Hotel Collection 2 Pack King Pillowcases – Case UPC#8 171070 296562 1260-091773735-000599-24-2 6002-0250-993712-81	Marshalls of MA, Inc. The TJX Companies, Inc.	Trade Linker International, Inc.

**Listed Chemicals:** This violation involves exposure to the chemical Di(2-ethylhexyl) phthalate (DEHP). On January 1, 1988, the State of California listed DEHP as a chemical known to the State to cause cancer. On October 24, 2003, the State of California listed Di(2-ethylhexyl) phthalate (DEHP) as a chemical known to cause developmental male reproductive toxicity. Both additions took place more than twenty (20) months before Espinoza served this Notice.

**Violations:** The alleged Violators knowingly and intentionally have exposed and continue to knowingly and intentionally expose consumers within the State of California to Di(2-ethylhexyl) phthalate (DEHP) at levels that, upon reasonable use of the product, exceed the No Significant Risk Level and the Maximum Allowable Dose Level without providing clear and reasonable warning of this exposure. In particular, the product does not warn that it contains chemicals known to the State of California to cause both cancer and reproductive toxicity, developmental, male.

**Route of Exposure:** The exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of the product. Consequently, the primary route of exposure to these chemicals is through dermal absorption. Initial exposure would result from directly touching or holding the item during normal use. For example, the user would be expected to touch the plastic when removing or replacing items from the bag. Ingestion would occur from hand to mouth contact, for example, from eating after having handled the item.

**Duration of the Violations:** Each of these ongoing violations has occurred on every day since at least January 7, 2020; as well as every day since the product was introduced to the California marketplace and following the one-year anniversary date of the listing at issue; and will continue every day

---

<sup>1</sup> The public enforcement agencies that have been served with copies of this notice of violations are identified in the attached distribution list accompanying the Certificate of Service.

<sup>2</sup> The specifically identified example of the type of product that is subject to this Notice is for the recipient’s benefit to assist in its investigation of, among other things, the magnitude of potential exposures to the listed chemical from other items within the product category. It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under “Product.” Further, it is Espinoza’s position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient’s custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.



until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is removed from the product.

Pursuant to Title 11, C.C.R. §3100, a certificate of merit is attached hereto. Pursuant to Title 27, C.C.R. §25903(b), a copy of "The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary" is also enclosed.

Consistent with the public interest goals of Proposition 65 and desire to have these ongoing violations of California law quickly rectified, Espinoza is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation.

Espinoza has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



---

Evan J. Smith

**Attachments**

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary



**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action. My business address is 2 Bala Plaza, Suite 510, Bala Cynwyd, Pennsylvania. I am employed in Montgomery County where the mailing occurred.

On March 25, 2020, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on the following entities and individuals listed below by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Certified Mail:

President/CEO Trade Linker International, Inc. 570 South Avenue East, Bldg. C-1 Cranford, NJ 07016	President/CEO Marshalls of MA, Inc. c/o CT Corporation System 155 Federal Street, Suite 700 Boston, MA 02110
President/CEO The TJX Companies, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	

On March 25, 2020, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on each of the individuals on the service list attached hereto as Appendix B by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Priority Mail.

Executed on March 25, 2020, in Bala Cynwyd, Pennsylvania.

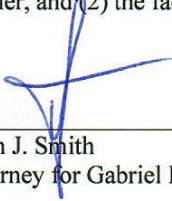
  
\_\_\_\_\_  
Evan J. Smith

**CERTIFICATE OF MERIT**  
Health & Safety Code Section 25249.7(d)

I, Evan J. Smith, hereby declare:

- (1) This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice have violated Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
- (2) I am the attorney for the noticing party Gabriel Espinoza.
- (3) I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies or other data regarding the alleged exposure to the listed chemicals that are the subject of the action.
- (4) Based on the information obtained through these consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator(s) will be able to establish any of the affirmative defenses set forth in the statute.
- (5) The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health & Safety Code Section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: March 25, 2020

  
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Evan J. Smith  
Attorney for Gabriel Espinoza