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Superior Court of CA,
County of Santa Clara
21CV377568
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 CITY AND COUNTY OF SANTA CLARA
11 UNLIMITED CIVIL JURISDICTION

12
13 DENNIS JOHNSON,
14 Plaintiff,
15 v.
16 MMS TRADING, INC.; The TJX
17 COMPANIES, INC.; and DOES 1-150,
18 inclusive,
19 Defendants.

Case No. 21CV377568
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
(Health & Safety Code § 25249.5 *et seq.*)

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by Plaintiff DENNIS JOHNSON in
3 the public interest of the citizens of the State of California to enforce the People’s right to be
4 informed of the health hazards caused by exposures to Di(2-ethylhexyl) phthalate (“DEHP”), a toxic
5 chemical found in PVC totes sold by defendants in California.

6 2. By this Complaint, Plaintiff seeks to remedy defendants’ continuing failure to warn
7 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 et seq.,
8 who purchase, use or handle defendants’ products, about the risks of exposure to DEHP present in
9 the PVC totes that defendants manufacture, distribute and offer for sale or use throughout the State
10 of California. Individuals not covered by California’s Occupational Safety Health Act, Labor Code
11 § 6300 et seq., who purchase, use or handle defendants’ products, are referred to hereinafter as
12 “consumers.”

13 3. Detectable levels of DEHP are found in the PVC totes that defendants manufacture,
14 distribute, and offer for sale to consumers throughout the State of California.

15 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
16 Health and Safety Code § 25249.6 et seq. (“Proposition 65”), “[n]o person in the course of doing
17 business shall knowingly and intentionally expose any individual to a chemical known to the state to
18 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
19 individual... .” Health & Safety Code § 25249.6.

20 5. Pursuant to Proposition 65, on October 24, 2003, California listed DEHP as a chemical
21 known to cause birth defects and other reproductive harm. DEHP became subject to the “clear and
22 reasonable warning” requirements of the act one year later, on October 24, 2004. Cal. Code Regs.
23 tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

24 6. Defendants manufacture, distribute, import, sell, and/or offer for sale without health
25 hazard warnings in California, PVC totes containing DEHP including, but not limited to, the
26 *Madison West “Bag-In-A-Bag” “The Perfect Clear Bag” PVC tote;* SKU: 19-2160-311654-
27 002999-03-2 37257 87442 8, BGW—2492#- Rose Gold. All such PVC totes containing DEHP are
28 referred to collectively hereinafter as “PRODUCTS.”

1 7. Defendants' failure to warn consumers in the State of California of the health hazards
2 associated with exposures to DEHP in conjunction with defendants' sale of the PRODUCTS are
3 violations of Proposition 65, and subject defendants, and each of them, to enjoinder of such
4 conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

5 8. For defendants' violations of Proposition 65, Plaintiff seeks preliminary and
6 permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with the
7 required warning regarding the health hazards associated with exposures to DEHP. Health & Safety
8 Code § 25249.7(a).

9 9. Pursuant to Health and Safety Code § 25249.7(b), Plaintiff also seeks civil penalties
10 against defendants for their violations of Proposition 65.

11 **PARTIES**

12 10. Plaintiff DENNIS JOHNSON is a citizen of the State of California who is dedicated to
13 protecting the health of California citizens through the elimination or reduction of toxic exposures
14 from consumer products; and he brings this action in the public interest pursuant to Health and
15 Safety Code § 25249.7(d).

16 11. Defendant MMS TRADING, INC. ("MMS TRADING") is a person in the course of
17 doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

18 12. MMS TRADING manufactures, imports, distributes, sells, and/or offers the
19 PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures,
20 imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

21 13. Defendant THE TJX COMPANIES, INC. ("TJX") is a person in the course of doing
22 business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

23 14. TJX manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or
24 use in the State of California, or implies by its conduct that it manufactures, imports, distributes,
25 sells, and/or offers the PRODUCTS for sale or use in the State of California.

26 15. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a person in
27 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
28 25249.11.

1 16. MANUFACTURER DEFENDANTS, and each of them, research, test, design,
2 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests, designs,
3 assembles, fabricates, and manufactures one or more of the PRODUCTS offered for sale or use in
4 California.

5 17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person in
6 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and
7 25249.11.

8 18. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange, transfer,
9 process, and transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale
10 or use in the State of California, or each implies by its conduct that it distributes, exchanges,
11 transfers, processes, and transports one or more of the PRODUCTS to individuals, businesses, or
12 retailers for sale or use in the State of California.

13 19. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in the
14 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

15 20. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
16 individuals in the State of California.

17 21. At this time, the true names of defendants DOES 1 through 150, inclusive, are
18 unknown to Plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to Code
19 of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that each of
20 the fictitiously named defendants is responsible for the acts and occurrences alleged herein. When
21 ascertained, their true names shall be reflected in an amended complaint.

22 22. MMS TRADING, TJX, MANUFACTURER DEFENDANTS, DISTRIBUTOR
23 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be referred
24 to collectively as the “DEFENDANTS.”

VENUE AND JURISDICTION

25
26 23. Venue is proper in the Superior Court for the County of Santa Clara, pursuant to Code
27 of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
28 because Plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of

1 wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS
2 conducted, and continue to conduct, business in Santa Clara County with respect to the
3 PRODUCTS.

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

8 25. The California Superior Court has jurisdiction over DEFENDANTS based on
9 Plaintiff’s information and good faith belief that each of the DEFENDANTS are a person, firm,
10 corporation or association that is a citizen of the State of California, has sufficient minimum contacts
11 in the State of California, and/or otherwise purposefully avails itself of the California market.
12 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California
13 courts consistent with traditional notions of fair play and substantial justice.

14 **FIRST CAUSE OF ACTION**

15 **(Violation of Proposition 65 - Against All Defendants)**

16 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs
17 1 through 25, inclusive.

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

21 28. Proposition 65 states, “[n]o person in the course of doing business shall knowingly and
22 intentionally expose any individual to a chemical known to the state to cause cancer or reproductive
23 toxicity without first giving clear and reasonable warning to such individual....” Health & Safety
24 Code § 25249.6.

25 29. On August 27, 2020, Plaintiff served a sixty-day notice of violation, together with the
26 accompanying certificate of merit, on MMS TRADING, TJX, the California Attorney General, and
27 all other requisite public enforcers alleging that, as a result of DEFENDANTS’ sales of the
28 PRODUCTS, consumers in the State of California are being exposed to DEHP resulting from their

1 reasonably foreseeable use of the PRODUCTS, without the consumers first receiving a “clear and
2 reasonable warning” regarding the harms associated with exposures to DEHP as required by
3 Proposition 65.

4 30. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for
5 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS’ violations have
6 continued beyond their receipt of Plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’
7 violations are ongoing and continuous and, unless enjoined, will continue in the future.

8 31. After receiving Plaintiff’s sixty-day notice of violation, no public enforcement agency
9 has commenced and diligently prosecuted a cause of action against DEFENDANTS under
10 Proposition 65 to enforce the alleged violations that are the subject of Plaintiff’s notice of violation.

11 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and offer
12 for sale or use in California cause exposures to DEHP as a result of the reasonably foreseeable use of
13 the PRODUCTS. Such exposures caused by DEFENDANTS and endured by consumers in
14 California are not exempt from the “clear and reasonable” warning requirements of Proposition 65.

15 33. DEFENDANTS know or should know that the PRODUCTS they manufacture, import,
16 distribute, sell, and offer for sale in California contain DEHP.

17 34. DEHP is present on the PRODUCTS in such a way as to expose consumers through
18 dermal contact and/or ingestion during reasonably foreseeable use.

19 35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
20 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code of
21 Regulations, section 25602(b).

22 36. DEFENDANTS know that the normal and reasonably foreseeable use of the
23 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

24 37. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable use
25 of the PRODUCTS will occur by their deliberate, non-accidental participation in the manufacture,
26 importation, distribution, sale, and offering of the PRODUCTS for sale or use to consumers in
27 California.

28

1 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers
2 in California who have been, or will be, exposed to DEHP through dermal contact and/or ingestion
3 resulting from their use of the PRODUCTS.

4 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
5 directly by California voters, consumers exposed to DEHP through dermal contact and/or ingestion
6 as a result of their use of the PRODUCTS that DEFENDANTS sell without a “clear and reasonable”
7 health hazard warning, have suffered, and continue to suffer, irreparable harm for which they have
8 no plain, speedy, or adequate remedy at law.

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

12 41. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a)
13 also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

14 **PRAYER FOR RELIEF**

15 Wherefore, Plaintiff prays for judgment against DEFENDANTS as follows:

16 1. That the Court, pursuant to Health and Safety Code § 25249.7(b), assess civil penalties
17 against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation;

18 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
19 permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS
20 for sale or use in California without a “clear and reasonable warning” in accordance with title 27 of
21 the California Code of Regulations, section 25601 *et seq.*, regarding the harms associated with
22 exposures to DEHP;

23 3. That the Court, Pursuant to Health and Safety Code § 25249.7(a), issue preliminary
24 and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the
25 chain of commerce in California without a “clear and reasonable warning” as defined by California
26 Code of Regulations title 27, section 25601 *et seq.*;

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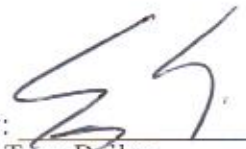
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- 4. That the Court grant Plaintiff his reasonable attorneys' fees and costs of suit; and
- 5. That the Court grant such other and further relief as may be just and proper.

Dated: February 11, 2021

Respectfully submitted,
VOORHEES & BAILEY, LLP

By: 

Troy Bailey
Attorneys for Plaintiff
DENNIS JOHNSON