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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – EAST DISTRICT,
POMONA COURTHOUSE SOUTH**

DELANEY WAHL, by and through her guardian ad litem, LAURENCE WAHL, LAURENCE WAHL, an individual, and MICHELLE WAHL, an individual,

Plaintiffs,

vs.

T.J. MAXX OF CALIFORNIA LLC, a California Limited Liability Company (previously served and sued as TJX COMPANIES INC., Delaware Corporation) ARMSTRONG GARDEN CENTERS, INC., a California Corporation, BIRDBRAIN, INC., a Michigan Corporation, SUZANNE GEBELE, an individual, STEVEN GEBELE, an individual, and DOES 1-100, inclusive,

Defendants.

CASE NO. KC064733
[Assigned for All Purposes to the Honorable Robert A. Dukes, Dept. O]

FIRST AMENDED COMPLAINT FOR DAMAGES:

1. Negligence - Products Liability
2. Strict Products Liability
3. Negligence-Premises Liability
4. Negligent Infliction of Emotional Distress

DEMAND FOR JURY TRIAL

Complaint Filed: September 26, 2014
FSC Date: April 24, 2014
Trial Date: May 6, 2014

COME NOW the Plaintiffs, DELANEY WAHL, a minor, by and through her Guardian *ad Litem*, LAURENCE WAHL, LAURENCE WAHL, individually, and MICHELLE WAHL, individually, and for causes of action against Defendants, and each of them, complain and allege as follows:

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GENERAL ALLEGATIONS

1
2 1. The true names and/or capacities, whether individual, corporate, associate or otherwise
3 of defendants DOES 1 through 100, inclusive, and each of them, are unknown to plaintiff, who
4 therefore sues said defendants by such fictitious names. Plaintiff is informed and believes, and
5 upon such information and belief alleges, that each of the defendants fictitiously named herein as a
6 DOE is legally responsible, negligently or in some other actionable manner, for the events and
7 happenings hereinafter referred to and proximately caused the injuries and damages to plaintiff as
8 hereinafter alleged. The plaintiff will seek leave of Court to amend this Complaint to insert the
9 true names and/or capacities of such fictitiously named defendants when the same have been
10 ascertained.

11 2. Plaintiffs are informed and believe, and thereupon allege, that at all times mentioned
12 herein, defendants, and each of them, including DOES 1 through 100, inclusive, and each of them,
13 were the agents, servants, employees and/or joint venturers of their codefendants, and were, as
14 such, acting within the course, scope and authority of said agency, employment and/or venture,
15 and that each and every defendant, as aforesaid, when acting as a principal, was negligent in the
16 selection and hiring of each and every other defendant as an agent, employee and/or joint venturer.

17 3. At all times mentioned herein, the Plaintiffs were and now are residents of the County
18 of Orange, State of California. Plaintiff DELANEY WAHL is a minor. MICHELLE and
19 LAURENCE WAHL are the parents of DELANEY WAHL.

20 4. Plaintiffs are informed and believe, and thereupon allege, that at all times mentioned
21 herein, the defendant, ARMSTRONG GARDEN CENTERS, INC., ("ARMSTRONG") was and
22 now is a corporation organized and existing under and by virtue of the laws of the State of
23 California, and that said defendant was and is authorized to do and is doing business in the State of
24 California and that said defendant has regularly conducted business in the State of California.
25 Plaintiffs are also informed and believe that ARMSTRONG is headquartered in the County of Los
26 Angeles.

27 5. Plaintiffs are informed and believe, and thereupon allege, that at all times mentioned
28 herein, the defendant, BIRDBRAIN, INC. ("BIRDBRAIN") was and now is a corporation

1 organized and existing under and by virtue of the laws of the State of Michigan, and that said
2 defendant was and is authorized to do and is doing business in the State of California and that said
3 defendant has regularly conducted business in the State of California.

4 6. Plaintiffs are informed and believe, and thereupon allege, that at all times mentioned
5 herein, the defendant, T.J. MAXX OF CALIFORNIA LLC was and now is a limited liability
6 company organized under and by virtue of laws of Delaware with its principle place of business in
7 California. T.J. MAXX OF CALIFORNIA LLC was originally named in this lawsuit as T.J.X
8 COMPANIES, INC., a corporation organized and existing under and by virtue of the laws of the
9 State of Massachusetts, and that said defendant was and is authorized to do and is doing business
10 in the State of California and that said defendant has regularly conducted business in the State of
11 California. Since this lawsuit began T.J. MAXX OF CALIFORNIA LLC has appeared as the
12 Defendant in this matter in place of T.J.X COMPANIES INC. Plaintiff is informed and believes
13 that T.J. MAXX OF CALIFORNIA LLC. is the owner of a chain of stores in California called T.J.
14 MAXX and will be hereinafter referred to in this complaint as T.J. MAXX.

15 7. Plaintiffs are informed and believe, and thereupon allege, that at all times mentioned
16 herein, the defendants, SUZANNE and STEVEN GEBELE ("GEBELES"), were and now are
17 residents of County of Orange, in the State of California.

18 8. That at all times mentioned herein, defendants ARMSTRONG, BIRDBRAIN, T.J.
19 MAXX, and DOES 1 through 50, inclusive, and each of them, were and are engaged in the
20 business of manufacturing, fabricating, designing, assembling, distributing, retailing, buying,
21 selling, inspecting, servicing, repairing, marketing, warranting, modifying, leasing and/or
22 advertising pourable fuel gel products ("GEL FUEL") and/or firepot that were designed to use the
23 GEL FUEL ("FIREPOT"), and each and every component part thereof, for use in interstate
24 commerce and in the State of California. Plaintiffs are informed and believe that the GEL FUEL
25 product and the FIREPOT product were defectively manufactured, designed, and were also
26 rendered defective as a result of inadequate warnings, labels, and instructions.

27 9. On or about June 24, 2012, Plaintiffs were attending an outdoor event at the home of
28 the GEBELES' ("SUBJECT PROPERTY"). The GEBELES had purchased both the defective

1 GEL FUEL product and defective FIREPOT product. The GEBELES were placing the defective
2 GEL FUEL product into the defective FIREPOT product, (hereinafter referred to as the SUBJECT
3 FIREPOT) when the defects in both the GEL FUEL product and the SUBJECT FIREPOT caused
4 an explosion. The fire from the explosion was powerful enough to immediately reach and burn
5 DELANEY WAHL who was not in close proximity to either the GEL FUEL product or the
6 SUBJECT FIREPOT. DELANEY WAHL's parents LAURENCE WAHL and MICHELLE
7 WAHL witnessed the explosion, witnessed the fire, and witnessed their daughter being burned by
8 the fire. They immediately rushed forward and helped put out the fire that was burning their
9 daughter.

10 10. Based on information and belief, the GEBELES' purchased the GEL FUEL product
11 from ARMSTRONG. Based on information and belief the GEBELES' purchased the FIREPOT
12 product from T.J. MAXX.

13 11. That at all times mentioned herein, defendants ARMSTRONG and DOES 1-25, and
14 each of them, negligently and carelessly manufactured, fabricated, designed, assembled,
15 distributed, bought, retailed, sold, inspected, serviced, repaired, marketed, warranted, modified,
16 leased, warned of dangers of, and/or advertised the GEL FUEL product and each and every
17 component part thereof, in that same was capable of causing, and in fact did cause, personal
18 injuries while the product was being used in a manner reasonably foreseeable, thereby rendering
19 same unsafe and dangerous for use by a consumer, user or bystander. That all times mentioned
20 herein the GEL FUEL product was defectively designed, manufactured, and/or lacked adequate
21 warnings, instructions, and safety provisions, all of which were foreseeably responsible for
22 causing Plaintiffs' injuries.

23 12. That at all times mentioned herein, defendants BIRDBRAIN, T.J. MAXX and DOES
24 26-50, and each of them, negligently and carelessly manufactured, fabricated, designed,
25 assembled, distributed, bought, sold, retailed, inspected, serviced, repaired, marketed, warranted,
26 modified, leased, warned of dangers of, and/or advertised the FIREPOT product and each and
27 every component part thereof, in that same was capable of causing, and in fact did cause, personal
28 injuries, while being used in a manner reasonably foreseeable, thereby rendering same unsafe and

1 dangerous for use by the consumer, user, or bystander. That all times mentioned herein the
2 FIREPOT product was defectively designed, manufactured, and/or lacked adequate warnings,
3 instructions, and safety provisions, all of which were foreseeably responsible for causing
4 Plaintiffs' injuries.

5 13. The FIREPOT product and GEL FUEL PRODUCT that injured Plaintiffs have caused
6 explosions, burns, and injuries to persons across the country. Prior to Plaintiffs' injuries
7 BIRDBRAIN, T.J. MAXX, ARMSTRONG, and DOES 1-50 had notice of these injuries as well
8 as the defective and dangerous nature of these products.

9 14. Plaintiffs are informed and believe that the SUBJECT FIREPOT is called a
10 BIRDBRAIN VESTA FIREPOT. Plaintiffs are informed and believe that T.J. MAXX obtained
11 the SUBJECT FIREPOT from BIRDBRAIN in 2010. Plaintiffs are also informed and believe that
12 T.J. MAXX sold the SUBJECT FIREPOT to SUZANNE GEBELE in 2010.

13 15. When BIRDBRAIN sold the SUBJECT FIREPOT to T.J. MAXX, the SUBJECT
14 FIREPOT, like all the other FIREPOT products T.J. MAXX acquired from BIRDBRAIN, was
15 housed inside a box that had been developed by BIRDBRAIN. Plaintiffs are informed and believe
16 that that the box for the SUBJECT FIREPOT described the SUBJECT FIREPOT as a "Hand
17 Glazed Ceramic Firepot." The box went on to explain that the SUBJECT FIREPOT was designed
18 for "indoor or outdoor use" and that it uses clean burning fuel gel. The box for the SUBJECT
19 FIREPOT also explained that the SUBJECT FIREPOT was equipped with a "stainless steel Fuel
20 Gel reservoir." The box also explained that the SUBJECT FIREPOT included a "metal snuffer for
21 safe extinguishing of flame." The box also provided instructions and warnings from BIRDBRAIN
22 as to how BIRDBRAIN believed the SUBJECT FIREPOT should be fueled and re-fueled with
23 fuel gel.

24 16. Prior to providing the SUBJECT FIREPOT to T.J. MAXX, BIRDBRAIN was aware of
25 the dangers of the design of the SUBJECT FIREPOT, including the Fuel Gel Reservoir that was
26 sold with the Firepot. In particular, BIRDBRAIN could foresee situations in which a consumer
27 attempting to re-fuel the firepot with pourable fuel gel could start a dangerous flash fire if the
28 consumer did not realize that flames or smoldering material were still left over in the SUBJECT

1 FIREPOT’S fuel gel reservoir. BIRDBRAIN recognized that it would be difficult for consumers
2 to always know if a flame or smoldering material was still burning inside the SUBJECT
3 FIREPOT’s fuel gel reservoir. Given that persons attempting to re-fuel the SUBJECT FIREPOT
4 and persons in proximity to the SUBJECT FIREPOT could face a substantial and real risk of
5 serious burns, bodily injury, or even death from a sudden flash fire, BIRDBRAIN determined that
6 it was necessary to include additional warnings with the SUBJECT FIREPOT in an attempt to
7 alert consumers about the risk of flash fires and to instruct consumers on how to avoid the risk of
8 flash fires. As such, BIRDBRAIN included inside the SUBJECT FIREPOT a package insert. The
9 package insert was placed directly inside the fuel gel reservoir. The fuel gel reservoir was placed
10 directly inside the SUBJECT FIREPOT.

11 17. The package insert placed inside the SUBJECT FIREPOT by Birdbrain included a
12 number of warnings and instructions, including but not limited to, the following:

- 13 a.) Only use the SUBJECT FIREPOT with fuel gel.
- 14 b.) **“Never add fuel gel to an open fire or flame as there is a danger of a flash fire**
15 **and severe burns.”** (Emphasis in original).
- 16 c.) **“REFILLING THE FIREPOT:** Always use the snuffer to completely extinguish
17 any flame in the fuel reservoir before refueling with Fuel Gel. **(Do not assume that**
18 **the flame is out because you cannot see it.....snuff for 15 seconds it to be sure!)**
19 Always use the snuffer to extinguish the flame – do not blow out.” (Emphasis in
20 original and added).
- 21 d.) **“Always let the Fuel Gel reservoir cool completely before adding additional Fuel**
22 **Gel as there may be a risk of a vapor flash.”** (Emphasis added.)
- 23 e.) “It is recommended that the Fuel Gel in the fuel reservoir be burned completely.”
- 24 f.) “Allow fuel reservoir and Firepot to cool completely before handling.”
- 25 g.) **“DANGER: FLAMMABLE, KEEP FUEL GEL BOTTLE AWAY FROM FIRE**
26 **OR FLAME.** Contents may catch fire. Fumes may catch fire. Keep Fuel Gel bottle
27 away from any flame, such as the FIREPOT, or a pilot light, and any object that
28 sparks.” (Emphasis in original)

1 h.) **“Do not place the Fuel Gel bottle within 4 feet of any flame.”** (Emphasis added.)

2 18. BIRDBRAIN not only included the package insert described in Paragraphs 16-17
3 inside the box for the SUBJECT FIREPOT, but also included the package insert inside of all
4 FIREPOTS it provided to T.J. MAXX.

5 19. Despite the fact that T.J. MAXX received the SUBJECT FIREPOT inside a box
6 prepared by Birdbrain that contained warnings and instructions regarding the SUBJECT
7 FIREPOT, T.J. MAXX intentionally sold the SUBJECT FIREPOT (including the fuel gel
8 reservoir) to SUZANNE GEBELE outside of the box provided by BIRDBRAIN.

9 20. Despite the fact that T.J. MAXX received the SUBJECT FIREPOT with the package
10 insert described in Paragraphs 16-17 which contained warnings and instructions, T.J. MAXX
11 intentionally sold the SUBJECT FIREPOT (including the fuel gel reservoir) to SUZANNE
12 GEBELE without the package insert described in Paragraphs 16-17.

13 21. Given the importance of adequate instructions and warnings to the safety of persons
14 using the SUBJECT FIREPOT and persons in the vicinity of the SUBJECT FIREPOT as well as
15 the extreme danger and extreme potential for injury caused by flash fires, T.J. MAXX consciously,
16 willingly, and knowingly disregarded the health and safety of consumers by intentionally selling
17 the SUBJECT FIREPOT outside of its box and without the package insert described in Paragraphs
18 16-17. T.J. MAXX knew that it was extremely dangerous to sell a product that relied on fire and
19 had a risk of flash fires without the warnings and instructions provided to T.J. MAXX by
20 BIRDBRAIN. T.J. MAXX knew that if one of its vendors determined that it was necessary to
21 include warnings and instructions with a product, that it would be extremely dangerous and
22 improper for T.J. MAXX to remove such warnings and instructions prior to selling the product to
23 a customer.

24 22. T.J. MAXX’s conduct is all the more despicable because it is not the first time that a
25 store affiliated with T.J. MAXX has been accused of removing warnings and instructions from
26 BIRDBRAIN FIREPOT products. On June 17, 2011 (over a year before Plaintiffs’ injuries) T.J.
27 MAXX was alerted to an incident in which a customer sustained injuries as a result of a
28 BIRDBRAIN FIREPOT product. That customer has also alleged that a store affiliated with T.J.

1 MAXX sold a BIRDBRAIN FIREPOT without the box and without package insert described in
2 Paragraphs 16-17.

3 23. T.J. MAXX's conduct is all the more despicable because shortly after T.J. MAXX
4 received notice of the injury described in Paragraph 22 (and prior to Plaintiffs' injuries), T.J.
5 MAXX sought to remove all remaining BIRDBRAIN products it had on its store shelves and
6 destroy such products. T.J. MAXX conducted this "internal recall" in secret to protect itself from
7 liability for the defects of the BIRDBRAIN FIREPOT products. Shockingly, while T.J. MAXX
8 secretly took steps to protect itself from the BIRDBRAIN FIREPOTS, T.J. MAXX took
9 absolutely no steps to protect consumers who had purchased the BIRDBRAIN FIREPOTS from
10 T.J. MAXX. In conscious disregard of the safety of consumers, T.J. MAXX did not alert
11 consumers to the problems/dangers of the BIRDBRAIN FIREPOTS and took no steps to recall the
12 FIREPOTS that T.J. MAXX had sold to consumers.

13 24. At all times mentioned herein, the officers, directors, and/or managing agents of T.J.
14 MAXX and DOES 26 through 50, inclusive, authorized and/or ratified the conduct of their
15 employees who intentionally sold the SUBJECT FIREPOT and other BIRDBRAIN FIREPOTS
16 without the BIRDBRAIN provided box and package insert despite the danger of severe injury
17 from flash fire. Further, at all times mentioned herein, the officers, directors, and/or managing
18 agents of T.J. MAXX and DOES 26 through 50, inclusive, authorized and/or ratified the conduct
19 of their employees who conducted the secret T.J. MAXX internal recall.

20 25. Had T.J. MAXX actually provided SUZANNE GEBELE with the warnings and
21 instructions provided by BIRDBRAIN with the SUBJECT FIREPOT or alerted GEBELE about its
22 internal secret recall Plaintiffs would not have been injured.

23 26. As a proximate result of the conduct of the Defendants, and each of them, as aforesaid,
24 Plaintiffs suffered severe and permanent injuries.

25 27. The above-described conduct of Defendants T.J. MAXX and DOES 26 through 50,
26 inclusive, by and through their officers, directors, employees and/or managing agents, was carried
27 out with a conscious disregard of Plaintiffs' rights and of the safety of consumers and, therefore,
28 Plaintiffs are entitled to an award of punitive damages in an amount sufficient to punish

1 Defendants T.J. MAXX and DOES 26 through 50, inclusive, in light of their financial condition,
2 and to make an example of them.

3 FIRST CAUSE OF ACTION

4 (Negligence)

5 (Brought by Plaintiff DELANEY WAHL as Against Defendants ARMSTRONG,
6 BIRDBRAIN, T.J. MAXX, and DOES 1 through 50, inclusive)

7 28. Plaintiffs re-allege as though fully set forth at length and incorporate herein by
8 reference, all of the allegations and statements contained in paragraphs 1 through 27, inclusive, of
9 the General Allegations above.

10 29. Plaintiffs are informed and believe, and thereupon allege, that at all times mentioned
11 herein, defendants ARMSTRONG, and DOES 1 through 25, inclusive, and each of them, were
12 engaged in the business of manufacturing, fabricating, designing, assembling, distributing, buying,
13 selling, retailing, inspecting, testing, analyzing, servicing, repairing, marketing, warranting,
14 maintaining, modifying, altering, controlling, installing, fitting, entrusting, managing, advertising,
15 supervising the use of making representations about and/or warning of defects in, or dangers
16 associated with the use of the said FUEL GEL product, including all component parts thereof, and
17 had a duty to manufacture, fabricate, design, synthesize, assemble, distribute, retail, buy, sell,
18 inspect, test, analyze, service, repair, market, warrant, maintain, modify, alter, control, install, fit,
19 entrust, manage, advertise, supervise the use of, make representations about and/or warn of defects
20 in, or dangers associated with the use of, the said product, including all component parts thereof,
21 in a reasonable manner, defendants knew, or in the exercise of reasonable care should have
22 known, would be used, without inspection for defects or dangers.

23 30. Plaintiffs are informed and believe, and thereupon allege, that at all times mentioned
24 herein, defendants BIRDBRAIN, T.J. MAXX, and DOES 26 through 50, inclusive, and each of
25 them, were engaged in the business of manufacturing, fabricating, designing, assembling,
26 distributing, retailing, buying, selling, inspecting, testing, analyzing, servicing, repairing,
27 marketing, warranting, maintaining, modifying, altering, controlling, installing, fitting, entrusting,
28 managing, advertising, supervising the use of making representations about and/or warning of

1 defects in, or dangers associated with the use of the said FIREPOT product, including all
2 component parts thereof, and had a duty to manufacture, fabricate, design, synthesize, assemble,
3 distribute, buy, sell, inspect, test, analyze, service, repair, market, warrant, maintain, modify, alter,
4 control, install, fit, entrust, manage, advertise, supervise the use of, make representations about
5 and/or warn of defects in, or dangers associated with the use of, the said product, including all
6 component parts thereof, in a reasonable manner, defendants knew, or in the exercise of
7 reasonable care should have known, would be used without inspection for defects or dangers.

8 31. Plaintiffs are informed and believe, and thereupon allege, that at all times mentioned
9 herein, defendants ARMSTRONG, BIRDBRAIN, T.J. MAXX, and DOES 1 through 50,
10 inclusive, and each of them, breached their above-mentioned duties by negligently, recklessly,
11 and/or carelessly manufacturing, fabricating, designing, synthesizing, assembling, distributing,
12 buying, selling, retailing, inspecting, testing, analyzing, servicing, repairing, marketing,
13 warranting, maintaining, modifying, altering, controlling, installing, fitting, entrusting, managing,
14 advertising, supervising the use of, making representations about, warning and/or failing to warn
15 of defects in, or dangers associated with the use of, the GEL FUEL product and/or the FIREPOT
16 product, as described above, including all or some component parts thereof, thereby rendering the
17 said products unsafe and dangerous for use by consumers, users and bystanders, which
18 proximately caused the injuries and damages to Plaintiffs, as set forth herein.

19 32. As a direct and proximate result of the conduct of the defendants, and each of them,
20 Plaintiff Delaney Wahl was hurt and injured in her health, strength and activity, sustaining injuries
21 to her body and shock and injury to their nervous system and person, all of which said injuries
22 have caused and continue to cause the plaintiff great physical, mental and nervous pain and
23 suffering. Plaintiff is informed and believe, and thereupon allege, that said injuries will result in
24 some permanent injury and/or disability and/or scaring to her, all to her general damage in an
25 amount which will be stated according to proof, pursuant to California Code of Civil Procedure,
26 Section 425.10, which amount is in excess of Fifty Thousand Dollars (\$50,000.00).

27 33. As a direct and proximate result of the conduct of the defendants, and each of them, as
28 aforesaid, Plaintiff Delaney Wahl was compelled to and did employ the services of hospitals,

1 physicians, surgeons, nurses and the like, to care for and treat her, and did incur hospital, medical,
2 professional and incidental expenses, and plaintiff is informed and believes, and thereupon alleges,
3 that by reason of her injuries, she will necessarily incur additional like expenses for an indefinite
4 period of time in the future, and the exact amount of such expenses will be stated according to
5 proof, pursuant to California *Code of Civil Procedure*, Section 425.10.

6 34. As a direct and proximate result of the conduct of the defendants, and each of them, as
7 aforesaid, Plaintiff Delaney Wahl is informed and believes, and thereupon alleges, that she will
8 also sustain a loss of earning capacity, the exact amount of which losses is unknown to Plaintiff at
9 this time, and when said amounts are ascertained, the Plaintiff will ask leave of Court to amend
10 this Complaint and all the above-described conduct of Defendants T.J. MAXX and DOES 26
11 through 50, inclusive, by and through their officers, directors, employees and/or managing agents,
12 was carried out with a conscious disregard of Plaintiffs' rights and of the safety of consumers and,
13 therefore, Plaintiffs are entitled to an award of punitive damages in an amount sufficient to punish
14 Defendants T.J. MAXX and DOES 26 through 50, inclusive, in light of their financial condition,
15 and to make an example of them.

16 35. The above-described conduct of Defendants T.J. MAXX and DOES 26 through 50,
17 inclusive, by and through their officers, directors, employees and/or managing agents, was carried
18 out with a conscious disregard of Plaintiffs' rights and of the safety of consumers and, therefore,
19 Plaintiffs are entitled to an award of punitive damages in an amount sufficient to punish
20 Defendants T.J. MAXX and DOES 26 through 50, inclusive, in light of their financial condition,
21 and to make an example of them.

22 **SECOND CAUSE OF ACTION**

23 (Strict Liability)

24 (Brought by Plaintiff DELANEY WAHL as Against Defendants ARMSTRONG,
25 BIRDBRAIN, T.J. MAXX, and DOES 1 through 50, inclusive)

26 36. Plaintiff re-alleges as though fully set forth at length, and incorporates herein by
27 reference, all of the allegations and statements contained in paragraphs 1 through 27, inclusive,
28 above.

1 37. Plaintiff is informed and believes, and thereupon alleges, that at all times herein
2 mentioned, Defendants ARMSTRONG, and DOES 1 through 25, inclusive and each of them, by
3 and through their officers, directors, employees and/or managing agents, were the manufacturers,
4 fabricators, designers, assemblers, testers, distributors, sellers, retailers, inspectors, marketers,
5 warranters, lessors, renters, suppliers, modifiers, providers and/or advertisers of the FUEL GEL
6 product, which contained design and/or manufacturing defects, and every component part thereof,
7 and which was capable of causing, and in fact, did cause personal injuries to the users and
8 consumers thereof, including plaintiffs, while being used in a manner reasonably foreseeable,
9 thereby rendering same unsafe and dangerous for use by the consumer, user and/or bystander.
10 Defendants ARMSTRONG, and DOES 1 through 25, and each of them, by and through their
11 officers, directors, employees and/or managing agents, also failed to provide adequate warnings or
12 instructions to consumers and users of the FUEL GEL product concerning the significant dangers
13 associated with the FUEL GEL product and/or its component parts, or to instruct consumers and
14 users regarding the use of the FUEL GEL product, and warned or failed to warn, and instructed or
15 failed to instruct, anticipated users of the FUEL GEL product, concerning use of the FUEL GEL
16 product.

17 38. Plaintiff is informed and believes, and thereupon alleges, that at all times herein
18 mentioned, Defendants BIRDBRAIN, T.J. MAXX, and DOES 26 through 50, inclusive and each
19 of them, by and through their officers, directors, employees and/or managing agents, were the
20 manufacturers, fabricators, designers, assemblers, testers, distributors, sellers, retailers, inspectors,
21 marketers, warranters, lessors, renters, suppliers, modifiers, providers and/or advertisers of the
22 FIREPOT product, which contained design and/or manufacturing defects, and every component
23 part thereof, and which was capable of causing, and in fact, did cause personal injuries to the users
24 and consumers thereof, including plaintiffs, while being used in a manner reasonably foreseeable,
25 thereby rendering same unsafe and dangerous for use by the consumer, user and/or bystander.
26 Defendants BIRDBRAIN, T.J. MAXX, and DOES 26 through 50, and each of them, by and
27 through their officers, directors, employees and/or managing agents, also failed to provide
28 adequate warnings or instructions to consumers and users of the FIREPOT product concerning the

1 significant dangers associated with the FIREPOT product and/or its component parts, or to instruct
2 consumers and users regarding the use of the FIREPOT product, and warned or failed to warn, and
3 instructed or failed to instruct, anticipated users of the FIREPOT, concerning use of the FIREPOT.

4 39. Plaintiffs are informed and believe, and thereupon allege, that at all times mentioned
5 herein, the FIREPOT product and FUEL GEL product were defective when placed on the market
6 by Defendants, and DOES 1 through 50, and each of them, and were of such a nature that the
7 defects would not be discovered in the normal course of inspection and operation by users thereof.
8 At all times relevant herein, the FIREPOT product and FUEL GEL product were in substantially
9 the same condition as it was when it was originally placed into the stream of commerce by
10 Defendants, and DOES 1 through 50, inclusive and each of them.

11 40. Plaintiff is informed and believes and thereupon alleges, that on or about June 24, 2012
12 that the GEL FUEL product and the FIREPOT product, were being used in a reasonably
13 foreseeable manner. As a direct and proximate result of the defective condition of the GEL FUEL
14 product and the FIREPOT product, and the conduct of Defendants, and DOES 1 through 50,
15 inclusive and each of them, Plaintiffs suffered severe and permanent injuries as set forth herein.

16 41. Plaintiff re-alleges as though fully set forth at length, and incorporates herein by
17 reference, all of the allegations and statements contained in paragraphs 19 through 21, inclusive,
18 of the First Cause of Action above.

19 42. The above-described conduct of Defendants T.J. MAXX and DOES 26 through 50,
20 inclusive, by and through their officers, directors, employees and/or managing agents, was carried
21 out with a conscious disregard of Plaintiffs' rights and of the safety of consumers and, therefore,
22 Plaintiffs are entitled to an award of punitive damages in an amount sufficient to punish
23 Defendants T.J. MAXX and DOES 26 through 50, inclusive, in light of their financial condition,
24 and to make an example of them.

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THIRD CAUSE OF ACTION

(Negligence-Premises Liability)

(Brought by Plaintiff DELANEY WAHL as Against Defendants SUZANNE GEBELE,
STEVEN GEBELE, and DOES 50-100, inclusive)

43. Plaintiff realleges as though fully set forth at length, and incorporates herein by reference, all of the allegations and statements contained in paragraphs 1 through 27, inclusive, above.

44. Plaintiffs are informed and believe, and thereupon allege, that at all times mentioned herein, defendants GEBELES, and DOES 50-100, inclusive, and each of them, owned, controlled, managed, leased/rented, supervised, and/or maintained the SUBJECT PROPERTY.

45. Plaintiffs are informed and believe, and thereupon alleged, that at all times mentioned herein, defendants GEBELES, and DOES 50-100, inclusive, and each of them, were under a duty to exercise such reasonable care as that exercised by reasonably prudent persons with in the community, for the health and safety of persons lawfully on the SUBJECT PROPERTY, including Plaintiffs.

46. Plaintiffs are informed and believe, and thereupon allege, that at all times mentioned herein, defendants GEBELES, and DOES 50-100, inclusive, and each of them, failed to exercise reasonable care by negligently, carelessly, and/or recklessly owning, operating, occupying, managing, and controlling said SUBJECT PROPERTY, including but not limited to, permitting the FUEL GEL product and FIREPOT product to be maintained and used on the SUBJECT PROPERTY.

47. Plaintiffs are informed and believe, and thereupon allege, that the injuries suffered by Plaintiffs were directly and proximately caused by Defendants' conduct, acts, failure to act, omissions, negligence, and failure to exercise the duty of care owed to Plaintiffs.

48. As a direct and proximate result of the conduct of the Defendants, and each of them, Plaintiffs were hurt and injured as set out in Paragraphs 19-21 of the First Cause of Action.

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1 **FOURTH CAUSE OF ACTION**

2 (Negligent Infliction of Emotional Distress)

3 (Brought by Plaintiffs MICHELLE and LAURENCE WAHL

4 as Against all Defendants and DOES 1-100, inclusive)

5 49. Plaintiff re-alleges as though fully set forth at length, and incorporates herein by
6 reference, all of the allegations and statements contained in paragraphs 1 through 27, inclusive,
7 above.

8 50. At all time mentioned herein, Plaintiff DELANEY WAHL was and is the natural
9 daughter of MICHELLE WAHL and LAURENCE WAHL. MICHELLE and LAURENCE
10 WAHL were present at the scene of the event at the time it occurred and were in proximity to
11 DELANEY WAHL during the above-described incident. MICHELLE and LAURENCE WAHL
12 were in the same area as DELANEY WAHL, saw and heard the explosion and the fire caused by
13 the explosion, and watched DELANEY WAHL as she caught fire. MICHELLE and LAURENCE
14 WAHL helped put out the fire that was burning their daughter. MICHELLE and LAURENCE
15 WAHL had a sensory and contemporaneous observance of the incident which resulted in the
16 severe burns of their daughter.

17 51. As a direct and proximate result of the conducts of the Defendants, and DOES 1-100,
18 inclusive, and each of them, plaintiffs MICHELLE WAHL and LAURENCE WAHL were injured
19 in their health, strength and activity, sustaining severe emotional distress and causing them general
20 damage in an amount which will be stated according to proof, pursuant to California Code of Civil
21 Procedure, Section 425.10, which amount is in excess of Fifty Thousand Dollars (\$50,000.00).

22 52. The above-described conduct of Defendants T.J. MAXX and DOES 26 through 50,
23 inclusive, by and through their officers, directors, employees and/or managing agents, was carried
24 out with a conscious disregard of Plaintiffs' rights and of the safety of consumers and, therefore,
25 Plaintiffs are entitled to an award of punitive damages in an amount sufficient to punish
26 Defendants T.J. MAXX and DOES 26 through 50, inclusive, in light of their financial condition,
27 and to make an example of them.

28

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SANTA MONICA, CA 90407-2131

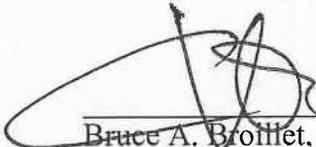
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WHEREFORE, plaintiff prays judgment against defendants, and each of them, as follows:

1. For general damages in excess of Fifty Thousand Dollars (\$50,000.00), and according to proof;
2. For hospital, medical, professional and incidental expenses, according to proof;
3. For loss of earning capacity, according to proof;
4. As to Defendants T.J. MAXX and DOES 26-50., for an award of exemplary damages, in an amount properly calculated to punish said Defendants for their despicable conduct and conscious disregard for the safety of others, and to deter any such despicable conduct and conscious disregard for the safety of others in the future.
5. For pretrial interests, according to the statute; and
6. For such other and further relief as the Court may deem just and proper.

DATED: March 4, 2014

GREENE BROILLET & WHEELER, LLP



Bruce A. Broillet, Esq.
Scott H. Carr, Esq.
Alan Van Gelder, Esq.
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

1
2 Plaintiffs DELANEY WAHL, by and through her Guardian *ad Litem*, LAURENCE
3 WAHL, LAURENCE WAHL, individually, and MICHELLE WAHL, individually, hereby
4 demand a trial of all causes of action by jury.
5

6 DATED: March 4, 2014

GREENE BROILLET & WHEELER, LLP

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Bruce A. Broillet, Esq.
Scott H. Carr, Esq.
Alan Van Gelder, Esq.
Attorneys for Plaintiffs

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