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Attorneys for Plaintiff
CONSUMER ADVOCACY GROUP, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CONSUMER ADVOCACY GROUP, INC., in the interest of the Public, Plaintiff, v. NEXT PRODUCTS (USA), LLC, a New Jersey Limited Liability Company; THE TJX COMPANIES, INC. DBA TJ MAXX, a Delaware Corporation; T.J. MAXX OF CA, LLC, a Delaware Limited Liability Company, and DOES 1-20, Defendants.	Case No. CGC-13-528729 **CONSENT JUDGMENT [PROPOSED]** Health & Safety Code § 25249.5 *et seq.*

1. INTRODUCTION

1.1 This Consent Judgment is entered into by and between plaintiff, Consumer Advocacy Group, Inc. (referred to as "CAG) acting on behalf of itself and in the interest of the public and defendants The TJX Companies, Inc. and T.J. Maxx of CA, LLC (collectively "TJX") with each a Party to the action and collectively referred to as "Parties."

1.2 CAG is a California corporation that serves as a private enforcer of Proposition 65, as described in Proposition 65 and the regulations of the Attorney General of California at 11 Cal. Code Regs. § 3000 *et seq.*

1.3 TJX employs ten or more persons, is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et seq. ("Proposition 65"), and distributes and sells Computer Cameras, including the Smart Webcam® "No software installation required" 3.0 Mega Pixels, 3 Strong White LED, 800 x 600, Built-in Microphone, Item No. 85491. Lead is known to the State of California to cause cancer and/or birth defects or other reproductive harm.

1.4 **Notice of Violation.**

On February 27, 2012, CAG served TJX, and various public enforcement agencies with a document entitled "60-Day Notice of Violation" that provided the recipients with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn individuals in California of exposures to lead contained in the Computer Cameras it sells, including the Smart Webcam® "No software installation required" 3.0 Mega Pixels, 3 Strong White LED, 800 x 600, Built-in Microphone, Item No. 85491. (herein the "February 27, 2012 Notice") No public enforcer has commenced or diligently prosecuted the allegations set forth in the Notice.

1.5 **Complaint.**

On February 13, 2013, CAG filed a Complaint for civil penalties and injunctive relief ("Complaint") in San Francisco, Superior Court, Case No. CGC-11-528729, against TJX. The Complaint alleges, among other things, that TJX violated Proposition 65 by failing to give clear and reasonable warnings of exposure to lead from Computer Cameras, including the Smart Webcam® "No software installation required" 3.0 Mega Pixels, 3 Strong White LED, 800 x 600, Built-in Microphone, Item No. 85491.

1.6 **Consent to Jurisdiction**

For purposes of this Consent Judgment, the Parties stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction over TJX as to the acts alleged in the Complaint, that venue is proper in the County of San Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full settlement and resolution of the allegations contained in the Complaint and of all claims which were or could

have been raised by any person or entity based in whole or in part, directly or indirectly, on the facts alleged therein or arising therefrom or related to.

1.7 **No Admission**

This Consent Judgment resolves claims that are denied and disputed. The Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all claims between the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not constitute an admission with respect to any material allegation of the Complaint, each and every allegation of which TJX denies, nor may this Consent Judgment or compliance with it be used as evidence of any wrongdoing, misconduct, culpability or liability on the part of TJX.

2. **DEFINITIONS**

2.1 "Covered Product" means the Smart Webcam® "No software installation required" 3.0 Mega Pixels, 3 Strong White LED, 800 x 600, Built-in Microphone, Item No. 85491.

2.2 "Effective Date" means the date that this Consent Judgment is approved by the Court.

2.3 "Lead" means lead and lead compounds.

2.4 "Notice" means the February 27, 2012 Notice.

3. **INJUNCTIVE RELIEF/REFORMULATION**

3.1 As of the Effective Date TJX shall not sell the Covered Product in California unless it is reformulated to contain less than 200 parts per million of lead.

4. **SETTLEMENT PAYMENTS**

4.1 Within 14 business days of the Effective Date or receipt of Forms W-9 from CAG, whichever is later, TJX shall pay a total of $35,000 as complete settlement of all monetary claims by CAG related to the Notice, as follows.

4.2 **Payment In Lieu of Civil Penalties:** TJX shall pay $1,000.00 in lieu of civil penalties to "Consumer Advocacy Group, Inc." CAG will use this payment for investigation of the public's exposure to Proposition 65 listed chemicals through various means, laboratory fees

for testing for Proposition 65 listed chemicals, expert fees for evaluating exposures through various mediums, including but not limited to consumer product, occupational, and environmental exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and retained experts who assist with the extensive scientific analysis necessary for those files in litigation, in order to reduce the public's exposure to Proposition 65 listed chemicals by notifying those persons and/or entities believed to be responsible for such exposures and attempting to persuade those persons and/or entities to reformulate their products or the source of exposure to completely eliminate or lower the level of Proposition 65 listed chemicals, thereby addressing the same public harm as allegedly in the instant Action. Further, should the court require it, CAG will submit under seal, an accounting of these funds as described above as to how the funds were used.

4.3 **Reimbursement of Attorney's Fees and Costs:** TJX shall pay $32,000.00 to "Yeroushalmi & Associates" as reimbursement for the investigation fees and costs, testing costs, expert fees, attorney fees, and other litigation costs and expenses for all work performed through the approval of this Consent Judgment.

4.4 **Civil Penalty:** TJX shall issue two separate checks for a total amount of $ 2,000.00 as penalties pursuant to Health & Safety Code § 25249.12: (a) one check made payable to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the amount of $1,500.00, representing 75% of the total penalty; and (b) one check to Consumer Advocacy Group, Inc. in the amount of $500.00 representing 25% of the total penalty. Two separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA, P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of $1,500.00. The second 1099 shall be issued in the amount of $500.00 to CAG and delivered to: Yeroushalmi & Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212

4.5 All payments to CAG and Yeroushalmi & Associates under this Consent Judgment shall be delivered to: Yeroushalmi & Associates, 9100 Wilshire Blvd., Suite 240W, Beverly Hills, CA 90212.

5. MATTERS COVERED BY THIS CONSENT JUDGMENT

5.1 This Consent Judgment is a full, final, and binding resolution between CAG on behalf of itself and in the public interest and TJX and its officers, directors, insurers, employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister companies and their successors and assigns ("Defendant Releasees") and all persons and entities who are downstream in the stream of commerce from TJX who sell or distribute the Covered Product ("Downstream Defendant Releasees"), for all claims for violations of Proposition 65 up through the Effective Date based on exposure to Lead from the Covered Products as set forth in the Notice, through the Effective Date. TJX's and Defendant Releasees' compliance with this Consent Judgment shall constitute compliance with Proposition 65 with respect to Lead from Covered Products as set forth in the Notice. This Section 5.1 shall not extend upstream to any entity that manufactured the Covered Product or any component parts thereof, or any distributor or supplier who sold the Covered Product to TJX.

5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against TJX, Defendant Releasees, and Downstream Defendant Releasees arising from any violation of Proposition 65 or any other statutory or common law regarding the failure to warn about exposure to Lead in Covered Products through the Effective Date. In furtherance of the foregoing, as to alleged exposures to Covered Product, CAG hereby waives any and all rights and benefits which it now has, or in the future may have, conferred upon it with respect to the Claims by virtue of the provisions of section 1542 of the California Civil Code, which provides as follows:

alleged violation(s) was observed and the location at which the Covered Product was offered for sale, and shall be accompanied by all test data obtained by CAG regarding the Covered Product.

6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the alleged violation if, within 30 days of receiving such NOV, TJX serves a Notice of Election ("NOE") that meets one of the following conditions:

(a) The Covered Product was received by TJX for sale in California before the Effective Date, or

(b) Since receiving the NOV TJX has taken corrective action by removing the Covered Product identified in the NOV from sale in California, or (ii) providing a clear and reasonable warning for the Covered Product identified in the NOV pursuant to 27 Cal. Code Regs. § 25603.

6.2.2 **Contested NOV.** TJX may serve an NOE informing CAG of its election to contest the NOV within 30 days of receiving the NOV.

(a) In its election, TJX may request that the same sample(s) of Covered Product(s) tested by CAG be subject to confirmatory testing at an accredited laboratory.

(b) If the confirmatory testing establishes that the Covered Product does not contain lead in excess of the level allowed in Section 3.1 CAG shall take no further action regarding the alleged violation. If the testing does not establish compliance with Section 3.1, TJX may withdraw its NOE to contest the violation and may serve a new NOE pursuant to Section 6.2.1.

(c) If TJX does not withdraw an NOE to contest the NOV, the Parties shall meet and confer for a period of no less than 30 days before CAG may seek an order enforcing the terms of this Consent Judgment.

6.3 In any proceeding brought by either Party to enforce this Consent Judgment, the prevailing party shall be entitled to recover its attorney's fees and costs.

7. ENTRY OF CONSENT JUDGMENT

7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and TJX waive their respective rights to a hearing or trial on the allegations of the Complaint.

7.2 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment and any and all prior agreements between the parties merged herein shall terminate and become null and void, and the actions shall revert to the status that existed prior to the execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in evidence for any purpose in this Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether to modify the terms of the Consent Judgment and to resubmit it for approval.

8. MODIFICATION OF JUDGMENT

8.1 This Consent Judgment may be modified only upon written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as provided by law and upon entry of a modified Consent Judgment by the Court.

8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

9. RETENTION OF JURISDICTION

9.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms of this Consent Judgment.

10. DUTIES LIMITED TO CALIFORNIA

10.1 This Consent Judgment shall have no effect on Covered Products sold by TJX outside the State of California.

11. SERVICE ON THE ATTORNEY GENERAL

11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the California Attorney General so that the Attorney General may review this Consent Judgment

prior to its submittal to the Court for approval. No sooner than forty five (45) days after the Attorney General has received the aforementioned copy of this Consent Judgment, and in the absence of any written objection by the Attorney General to the terms of this Consent Judgment, the parties may then submit it to the Court for approval.

12. ATTORNEY'S FEES

12.1 Except as specifically provided in Section 4.3, each Party shall bear its own costs and attorney fees in connection with this action.

13. ENTIRE AGREEMENT

13.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

14. GOVERNING LAW

14.1 The validity, construction and performance of this Consent Judgment shall be governed by the laws of the State of California, without reference to any conflicts of law provisions of California law.

14.2 The Parties, including their counsel, have participated in the preparation of this Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This Consent Judgment was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive California Civil Code § 1654.

15. EXECUTION IN COUNTERPARTS

15.1 This Consent Judgment may be executed in counterparts and by means of facsimile or portable document format (pdf), which taken together shall be deemed to constitute one document.

16. NOTICES

16.1 Any notices under this Consent Judgment shall be by personal delivery of First Class Mail.

If to CAG:	If to TJX:
Reuben Yeroushalmi, Esq. Yeroushalmi & Yeroushalmi 9100 Wilshire Boulevard, Suite 240W Beverly Hills, CA 90212 (310) 623-1926	General Counsel The TJX Companies, Inc. 770 Cochituate Road Framingham, MA 01701-4666 With a copy to: Jeffrey B. Margulies Fulbright & Jaworski LLP 555 South Flower Street 41st Floor Los Angeles, California 90071

17. AUTHORITY TO STIPULATE

17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of the party represented and legally to bind that party.

AGREED TO:

Date:

_____

Name: _____

Title: _____
CONSUMER ADVOCACY GROUP, INC.

AGREED TO:

Date:

3·26·14

Name: Colleen Henschke

Title: VP Legal
THE TJX COMPANIES, INC.

AGREED TO:

Date:

3·26·14

Name: Colleen Henschke

Title: VP Legal, TJX
TJX MAXX OF GA, LLC

IT IS SO ORDERED.

Date: _____

(see next page)

JUDGE OF THE SUPERIOR COURT

AGREED TO:

Date: 3-26-14

Name: Michael Satterwhite

Title: Executive director
CONSUMER ADVOCACY GROUP, INC.

AGREED TO:

Date:

Name:

Title:
THE TJX COMPANIES, INC.

AGREED TO:

Date:

Name:

Title:
TJX MAXX OF CA, LLC

IT IS SO ORDERED.

Date: MAY 28 2014

JUDGE OF THE SUPERIOR COURT
ERNEST H. GOLDSMITH