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7 J.C. PENNEY COMPANY, INC.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN FRANCISCO

10  
11 MICHAEL DIPIRRO,  
12 Plaintiff,  
13 v.  
14 J.C. PENNEY COMPANY, INC. and DOES 1  
through 150,  
15 Defendant(s).

Case No. 407150 (Consolidated with  
No. 407458)

UNLIMITED JURISDICTION

**STIPULATION TO TERMS OF  
MODIFIED JUDGMENT  
PURSUANT TO SETTLEMENT  
AGREEMENT; [PROPOSED]  
ORDER AND MODIFIED  
JUDGMENT**

Department: 503  
Judge: Hon. A. James Robertson II

Action Filed: April 25, 2002

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20  
21 WHEREAS, on February 9, 2005 and November 22, 2005, this Court issued final Statements  
22 of Decision in the above-captioned action and subsequently entered judgment thereon (“Judgment”);

23 WHEREAS, the Judgment entered by this Court provided that Defendant J.C. Penney Co.,  
24 Inc. (“J.C. Penney”) pay \$347,560 in statutory penalties pursuant to Health and Safety Code section  
25 25249.5 *et seq.* (“Proposition 65”);

26 WHEREAS, the Judgment entered by this Court further required J.C. Penney to abide by  
27 certain terms of injunctive relief with regard to its future sales in California of certain glassware  
28 containing colored decorations on its exterior (“Decorated Glassware Products”);

1           WHEREAS, the Judgment entered by this Court did not impose injunctive relief terms on J.C.  
2 Penney with respect to the identified cosmetic kits at issue;

3           WHEREAS, J.C. Penney filed a Memorandum of Costs in the amount of \$14,086 with regard  
4 to its defense of cosmetics-related claims;

5           WHEREAS, co-defendant Macy's West also filed a Memorandum of Costs in the amount of  
6 \$26,900 with regard to its defense of cosmetics-related claims;

7           WHEREAS, pursuant to Code of Civil Procedure section 1021.5, counsel to Plaintiff Michael  
8 DiPirro ("Plaintiff") intended to bring a motion before this Court for recovery of in excess of  
9 \$5,000,000 for attorneys fees and costs allegedly incurred with respect to litigation of the glassware-  
10 related claims against J.C. Penney in the above-captioned action;

11           WHEREAS, Plaintiff avers that this intended fee application included a reasonable multiplier  
12 of Plaintiff's lodestar to compensate his counsel for the risk of litigation, complexity of the case, skill  
13 with which the claims were prosecuted, the delayed revenue stream and significant public benefit  
14 achieved through the litigation and that the amount sought would not have included all of the fees and  
15 costs incurred in the conduct of extensive settlement negotiations with J.C. Penney or significant fees  
16 and costs Plaintiff and his attorneys have incurred in the Court of Appeal related to J.C. Penney's  
17 review of the Judgment;

18           WHEREAS, J.C. Penney timely filed a Notice of Appeal of the Judgment the Court entered in  
19 the above-captioned action with respect to the glassware claims that were filed against it and that  
20 appeal has not yet been adjudicated;

21           WHEREAS, Plaintiff timely filed a Notice of (Cross) Appeal of the Judgment the Court  
22 entered in the above-captioned action with respect to the cosmetics claims in the above-referenced  
23 action and that appeal has not yet been adjudicated;

24           WHEREAS, Plaintiff and J.C. Penney (collectively, the "Parties") acknowledge that  
25 significant motion practice and other work has been completed on the appellate record thus far;

26           WHEREAS, settlement discussions between the Parties have recently resulted in an  
27 agreement by the Parties to forego appellate litigation and seek a modification of the non-injunctive  
28 relief terms of the Judgment as previously entered by the Court in the above-captioned action;

1           WHEREAS, the agreement reached between the Parties provides for a monetary payment by  
2 J.C. Penney totaling \$2,000,000;

3           WHEREAS, the agreement reached between the Parties further provides that the above-  
4 referenced monetary payment be apportioned as follows:

- 5           1. \$1,017,500 to either the Sheffer Law Firm, or an identified financial institution to be  
6           named, as reimbursement for The Sheffer Law Firm's portion of Plaintiff's attorneys'  
7           fees and costs;
- 8           2. \$832,500 to the Chanler Law Group as reimbursement for its portion of Plaintiff's  
9           attorneys' fees and costs;
- 10          3. \$150,000 to the Chanler Law Group Trust Account for Michael DiPirro to be further  
11          disbursed as follows:
  - 12           a. \$120,000 shall immediately be disbursed as civil penalties pursuant to  
13           Proposition 65, such that 75% of this amount will be forwarded to the Office of  
14           Environmental Health Hazard Assessment and 25% of it will be disbursed to  
15           the Plaintiff; and
  - 16           b. An additional \$30,000 will be held to potentially satisfy the above-referenced  
17           award of costs with regard to the cosmetics-related claims for Macy's West  
18           and any statutory interest owed thereon; should such a cost award be  
19           invalidated by the action of the Court of Appeal or due to a future settlement,  
20           the \$30,000 amount shall instead be disbursed as civil penalties pursuant to  
21           Proposition 65, such that 75% of this amount will be forwarded to the Office of  
22           Environmental Health Hazard Assessment and 25% of it will be disbursed to  
23           the Plaintiff.

24           WHEREAS, the agreement reached between the Parties requires the Parties to withdraw their  
25           respective notices of appeal against each other and will thereby avoid the risk of this Court's  
26           Judgment as to J.C. Penney being reversed in whole or in part;

27           WHEREAS, under the agreement reached between the Parties, J.C. Penney has agreed to give  
28           Plaintiff its copy of all of the transcripts from the trial or appellate courts ordered for purposes of the

1 appeal that it either has in its possession or has ordered within thirty (30) days of this Stipulation or,  
2 if received by J.C. Penney thereafter, within ten (10) days of its receipt; J.C. Penney avers that the  
3 cost of such transcripts is at least \$45,900 exclusive of any fees or costs incurred by J.C. Penney in  
4 association with their procurement;

5 WHEREAS, the agreement reached between the Parties will preserve in its current form the  
6 injunctive relief contained in the Judgment with respect to Decorated Glassware Products offered for  
7 sale by J.C. Penney in California and continue to require J.C. Penney to make a sizeable statutory  
8 penalty payment notwithstanding the arguments for reversal of the Judgment it could have raised on  
9 appeal;

10 WHEREAS, the agreement reached between the Parties will provide counsel to Plaintiff with  
11 reimbursement of a portion of the fees and costs they incurred in acting as private attorney generals in  
12 prosecuting the above-captioned matter, but will not fully reimburse Plaintiff's counsel for all of the  
13 fees and costs they intended to seek even without the use of a multiplier or the inclusion of fees and  
14 costs associated with settlement negotiations or appellate work performed; and

15 WHEREAS, this Court's approval of the agreement reached between the Parties and entry of  
16 a [Proposed] Modified Judgment reflecting the terms set forth herein will, by avoiding the need for  
17 continued litigation, conserve the resources of the Parties, this Court and the Court of Appeal; address  
18 any potentially applicable requirements of Proposition 65, including with respect to injunctive relief,  
19 penalties, and plaintiff's attorneys fee reimbursement; and is otherwise appropriate and in the interest  
20 of justice under these circumstances;

21 WHEREAS Plaintiff, his counsel, J.C. Penney and its counsel agree to employ best efforts to  
22 support each term of this Stipulation and to secure the prompt entry of the [Proposed] Modified  
23 Judgment in the above-captioned action forthwith. In this regard, J.C. Penney shall file and serve a  
24 motion to approve this [Proposed] Modified Judgment on or before December 15, 2006, Plaintiff's  
25 counsel shall submit supporting declarations to the motion with regard to the reasonableness of the  
26 attorneys' fee and costs payments to be received hereunder, and the Parties shall appear *ex-parte* on  
27 or before December 15, 2006, in Department 503 of this Court, to submit an application for an order  
28 shortening time to have heard such motion to approve this Stipulation and [Proposed] Modified

1 Judgment. J.C. Penney shall further request and provide support for setting a hearing date, on such  
2 motion to approve, on January 3, 2007, or, if the Court does not then elect to make that date available  
3 to the Parties, at the Court's next earliest available date.

4 **THE PARTIES, BY AND THROUGH THEIR RESPECTIVE COUNSEL OF**  
5 **RECORD, DO HEREBY STIPULATE AND AGREE AND REQUEST THAT THE COURT**  
6 **MODIFY ITS PRIOR JUDGMENT AS FOLLOWS:**

- 7 1. J.C. Penney shall, within three (3) business days of entry of a modified judgment in  
8 the above-captioned matter by the Court pay a total of \$1,017,500 to either The  
9 Sheffer Law Firm or a financial institution of its choice (to be determined and  
10 confirmed in writing prior to the time for payment) as reimbursement for The Sheffer  
11 Law Firm's portion of Plaintiff's attorneys' fees and costs. (If the Court does not  
12 enter the [Proposed] Modified Judgment on January 3, 2007, J.C. Penney shall instead  
13 arrange to electronically transfer these funds into the Morrison & Foerster LLP Client  
14 Trust Account within seven (7) additional business days, where such funds shall be  
15 held pending the Parties further mutual best efforts to obtain approval and entry of the  
16 [Proposed] Modified Judgment; such funds then shall be provided to The Sheffer Law  
17 Firm within three (3) business days of entry of a modified judgment in the above-  
18 captioned action by the Court or, if, as set forth below, the Parties mutually conclude  
19 that, despite their further mutual best efforts, no such approval and entry by the Court  
20 will be forthcoming and that their agreement is therefore null and void, the funds shall  
21 then be returned from the Morrison & Foerster LLP Client Trust to J.C. Penney.)  
22 Instructions for the format of such payment shall be confirmed in a separate writing to  
23 J.C. Penney prior to the time for such payment. Payment shall not be made by J.C.  
24 Penney any earlier than the receipt of such express directions from The Sheffer Law  
25 Firm; this term shall in no way change or affect J.C. Penney's obligation to make this  
26 payment as directed by The Sheffer Law Firm;
- 27 2. J.C. Penney shall, within three (3) business days of entry of a modified judgment in  
28 the above-captioned matter by the Court pay a total of \$832,500 to the Chanler Law

1 Group as reimbursement for Plaintiff's attorneys' fees and costs. (If the Court does  
2 not enter the [Proposed] Modified Judgment on January 3, 2007, J.C. Penney shall  
3 instead arrange to electronically transfer these funds into the Morrison & Foerster LLP  
4 Client Trust Account within seven (7) additional business days, where such funds shall  
5 be held pending the Parties further mutual best efforts to obtain approval and entry of  
6 the [Proposed] Modified Judgment; such funds then shall be provided to The Chanler  
7 Law Group within three (3) business days of entry of a modified judgment in the  
8 above-captioned action by the Court or, if, as set forth below, the Parties mutually  
9 conclude that, despite their further mutual best efforts, no such approval and entry by  
10 the Court will be forthcoming and that their agreement is therefore null and void, the  
11 funds shall then be returned from the Morrison & Foerster LLP Client Trust to J.C.  
12 Penney.) Such payment shall be made payable to the "Clifford Chanler c/o Chanler  
13 Law Group" and sent to Clifford Chanler, c/o Chanler Law Group, 71 Elm Street,  
14 Suite 8, New Canaan, CT 06840;

15 3. J.C. Penney shall, within three (3) business days of entry of a modified judgment in  
16 the above-captioned matter by the Court, in lieu of addressing or appealing the Court's  
17 prior civil penalty award as reflected in the Judgment, instead pay a total of \$150,000  
18 to the "Chanler Law Group Trust Account for Michael DiPirro" (mailed to Clifford  
19 Chanler, c/o Chanler Law Group, 71 Elm Street, Suite 8, New Canaan, CT 06840) to  
20 be further disbursed by the Chanler Law Group as follows:

- 21 a) \$120,000 shall immediately be disbursed by the Chanler Law Group as civil  
22 penalties pursuant to Proposition 65, such that 75% of this amount will be  
23 forwarded to the Office of Environmental Health Hazard Assessment and 25%  
24 of it will be disbursed to the Plaintiff; and
- 25 b) An additional \$30,000 will be held in the Chanler Law Group's trust account to  
26 potentially satisfy the above-referenced award of costs with regard to the  
27 cosmetics-related claims for Macy's West and any statutory interest owed  
28 thereon; should such cost awards with regard to the cosmetics-related claims

1 be invalidated by the action of the Court of Appeal or due to a future  
2 settlement between Plaintiff and Macy's West, the \$30,000 amount shall  
3 instead be disbursed by the Chanler Law Group as civil penalties pursuant to  
4 Proposition 65, such that 75% of this amount will be forwarded to the Office of  
5 Environmental Health Hazard Assessment and 25% of it will be disbursed to  
6 the Plaintiff. (If the Court does not enter the [Proposed] Modified Judgment  
7 on January 3, 2007, J.C. Penney shall instead arrange to electronically transfer  
8 these funds into the Morrison & Foerster LLP Client Trust Account within  
9 seven (7) additional business days, where such funds shall be held pending the  
10 Parties further mutual best efforts to obtain approval and entry of the  
11 [Proposed] Modified Judgment; such funds then shall be provided to the  
12 Chanler Law Group Trust Account for Michael DiPirro within three (3)  
13 business days of entry of a modified judgment in the above-captioned action  
14 by the Court or, if, as set forth below, the Parties mutually conclude that,  
15 despite their further mutual best efforts, no such approval and entry by the  
16 Court will be forthcoming and that their agreement is therefore null and void,  
17 the funds shall then be returned from the Morrison & Foerster LLP Client  
18 Trust to J.C. Penney.)

- 19 4. Plaintiff and J.C. Penney shall, upon entry of a Modified Judgment by the Court,  
20 notify the Court of Appeal and Macy's West that Plaintiff and J.C. Penney are  
21 withdrawing their Notices of Appeal against each other with respect to the above-  
22 captioned action;
- 23 5. J.C. Penney shall, within thirty (30) days of this Stipulation or thirty (30) days of J.C.  
24 Penney's receipt of any such transcript (whichever is earlier), give Plaintiff its copy of  
25 all of the transcripts from the trial or appellate courts ordered for purposes of the  
26 appeal that it either has in its possession or has ordered within thirty (30) days of this  
27 Court's entry of a Modified Judgment based on this Stipulation or, if received by J.C.  
28 Penney thereafter, within ten (10) days of its receipt;





1 shall be null and void upon receipt of notice thereof and Plaintiff shall have up to  
2 twenty (20) days after receipt of such notice to file and serve such an application for  
3 recovery of fees and costs against J.C. Penney, and J.C. Penney shall be free to contest  
4 the application in whole or in part.

5 **RESPECTFULLY SUBMITTED AND APPROVED AS TO FORM:**

6  
7 Dated: December 7, 2006

ROBERT L. FALK  
ANGELA L. PADILLA  
MORRISON & FOERSTER LLP

8  
9  
10 By: \_\_\_\_\_  
11 Robert L. Falk  
12 Attorneys for Defendant  
13 J.C. PENNEY COMPANY, INC.

14  
15  
16 Dated: December \_\_\_, 2006

GREGORY M. SHEFFER  
THE SHEFFER LAW FIRM

17 By: \_\_\_\_\_  
18 Gregory M. Sheffer  
19 Attorneys for Plaintiff  
20 MICHAEL DIPIRRO

21  
22 Dated: December 7, 2006

CLIFFORD A. CHANLER  
CHANLER LAW GROUP

23 By:   
24 Clifford A. Chanler  
25 Attorneys for Plaintiff  
26 MICHAEL DIPIRRO  
27  
28

1 **AGREED UPON AND APPROVED AS TO CONTENT:**

2  
3 Dated: December , 2006

4  
5 By: \_\_\_\_\_

Joanne L. Bober

6 Executive Vice President, General  
7 Counsel and Secretary  
8 J.C. PENNEY COMPANY, INC.

9  
10 Dated: December 7, 2006

11  
12 By: \_\_\_\_\_

13 Plaintiff, Michael DiPirro

14 **BASED ON THE STIPULATION OF THE PARTIES AND OTHER CONSIDERATIONS IN**  
15 **THE INTEREST OF JUSTICE, THE FOREGOING SHALL HEREBY BE THE ORDER OF**  
16 **THIS COURT AND ITS PRIOR JUDGMENT IN THE ABOVE-CAPTIONED ACTION IS**  
17 **SO MODIFIED.**

18  
19 Dated: December \_\_, 2006

20 \_\_\_\_\_  
21 Hon. A. James Robertson II, Judge