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6 Attorneys for Plaintiff
CONSUMER ADVOCACY GROUP, INC.

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

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11 CONSUMER ADVOCACY GROUP, INC., in
the interest of the Public,

Case No. CGC-13-528729

12 Plaintiff,

CONSENT JUDGMENT [PROPOSED]

13
14 v.

Health & Safety Code § 25249.5 *et seq.*

15 NEXT PRODUCTS (USA), LLC, a New
Jersey Limited Liability Company; THE TJX
16 COMPANIES, INC. DBA TJ MAXX, a
Delaware Corporation; T.J. MAXX OF CA,
17 LLC, a Delaware Limited Liability Company,
and DOES 1-20,

18
19 Defendants.

20 **1. INTRODUCTION**

21 1.1 This Consent Judgment is entered into by and between plaintiff, Consumer
22 Advocacy Group, Inc. (referred to as "CAG) acting on behalf of itself and in the interest of the
23 public and defendants The TJX Companies, Inc. and T.J. Maxx of CA, LLC (collectively "TJX")
24 with each a Party to the action and collectively referred to as "Parties."

25 1.2 CAG is a California corporation that serves as a private enforcer of Proposition
26 65, as described in Proposition 65 and the regulations of the Attorney General of California at 11
27 Cal. Code Regs. § 3000 *et seq.*
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1 1.3 TJX employs ten or more persons, is a person in the course of doing business for
2 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
3 Safety Code §§ 25249.6 et seq. (“Proposition 65”), and distributes and sells Computer Cameras,
4 including the Smart Webcam® “No software installation required” 3.0 Mega Pixels, 3 Strong
5 White LED, 800 x 600, Built-in Microphone, Item No. 85491. Lead is known to the State of
6 California to cause cancer and/or birth defects or other reproductive harm.

7 1.4 **Notice of Violation.**

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

15 1.5 **Complaint.**

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

22 1.6 **Consent to Jurisdiction**

23 For purposes of this Consent Judgment, the Parties stipulate that this Court has
24 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
25 over TJX as to the acts alleged in the Complaint, that venue is proper in the County of San
26 Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full settlement
27 and resolution of the allegations contained in the Complaint and of all claims which were or could
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1 have been raised by any person or entity based in whole or in part, directly or indirectly, on the
2 facts alleged therein or arising therefrom or related to.

3 **1.7 No Admission**

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

10 **2. DEFINITIONS**

11 2.1 "Covered Product" means the Smart Webcam® "No software installation
12 required" 3.0 Mega Pixels, 3 Strong White LED, 800 x 600, Built-in Microphone, Item No.
13 85491.

14 2.2 "Effective Date" means the date that this Consent Judgment is approved by the
15 Court.

16 2.3 "Lead" means lead and lead compounds.

17 2.4 "Notice" means the February 27, 2012 Notice.

18 **3. INJUNCTIVE RELIEF/REFORMULATION**

19 3.1 As of the Effective Date TJX shall not sell the Covered Product in California
20 unless it is reformulated to contain less than 200 parts per million of lead.

21 **4. SETTLEMENT PAYMENTS**

22 4.1 Within 14 business days of the Effective Date or receipt of Forms W-9 from CAG,
23 whichever is later, TJX shall pay a total of \$35,000 as complete settlement of all monetary claims
24 by CAG related to the Notice, as follows.

25 4.2 **Payment In Lieu of Civil Penalties:** TJX shall pay \$1,000.00 in lieu of civil
26 penalties to "Consumer Advocacy Group, Inc." CAG will use this payment for investigation of
27 the public's exposure to Proposition 65 listed chemicals through various means, laboratory fees
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1 for testing for Proposition 65 listed chemicals, expert fees for evaluating exposures through
2 various mediums, including but not limited to consumer product, occupational, and
3 environmental exposures to Proposition 65 listed chemicals, and the cost of hiring consulting and
4 retained experts who assist with the extensive scientific analysis necessary for those files in
5 litigation, in order to reduce the public's exposure to Proposition 65 listed chemicals by notifying
6 those persons and/or entities believed to be responsible for such exposures and attempting to
7 persuade those persons and/or entities to reformulate their products or the source of exposure to
8 completely eliminate or lower the level of Proposition 65 listed chemicals, thereby addressing the
9 same public harm as allegedly in the instant Action. Further, should the court require it, CAG
10 will submit under seal, an accounting of these funds as described above as to how the funds were
11 used.

12 **4.3 Reimbursement of Attorney's Fees and Costs:** TJX shall pay \$32,000.00 to
13 "Yeroushalmi & Associates" as reimbursement for the investigation fees and costs, testing costs,
14 expert fees, attorney fees, and other litigation costs and expenses for all work performed through
15 the approval of this Consent Judgment.

16 **4.4 Civil Penalty:** TJX shall issue two separate checks for a total amount of \$
17 2,000.00 as penalties pursuant to Health & Safety Code § 25249.12: (a) one check made payable
18 to the State of California's Office of Environmental Health Hazard Assessment (OEHHA) in the
19 amount of \$1,500.00, representing 75% of the total penalty; and (b) one check to Consumer
20 Advocacy Group, Inc. in the amount of \$500.00 representing 25% of the total penalty. Two
21 separate 1099s shall be issued for the above payments: The first 1099 shall be issued to OEHHA,
22 P.O. Box 4010, Sacramento, CA 95184 (EIN: 68-0284486) in the amount of \$1,500.00. The
23 second 1099 shall be issued in the amount of \$500.00 to CAG and delivered to: Yeroushalmi &
24 Associates, 9100 Wilshire Boulevard, Suite 240W, Beverly Hills, California 90212

25 **4.5** All payments to CAG and Yeroushalmi & Associates under this Consent
26 Judgment shall be delivered to: Yeroushalmi & Associates, 9100 Wilshire Blvd., Suite 240W,
27 Beverly Hills, CA 90212.
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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:

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
2 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
3 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM,
MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
DEBTOR.

4 CAG understands and acknowledges that the significance and consequence of this waiver of
5 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
6 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
7 including but not limited to any exposure to, or failure to warn with respect to exposure to, lead or
8 lead compounds from Covered Products, CAG will not be able to make any claim for those
9 damages against TJX the Defendant Releasees, or Downstream Defendant Releasees.

10 Furthermore, CAG acknowledges that it intends these consequences for any such Claims as may
11 exist as of the date of this release but which CAG does not know exist, and which, if known,
12 would materially affect their decision to enter into this Consent Judgment, regardless of whether
13 their lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.
14 This Section 5.2 shall not extend upstream to any entity that manufactured the Covered Product
15 or any component parts thereof, or any distributor or supplier who sold the Covered Product to
16 TJX.

17 **6. ENFORCEMENT OF JUDGMENT**

18 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
19 hereto. The parties may, by noticed motion or order to show cause before the Superior Court of
20 California, San Francisco, giving the notice required by law, enforce the terms and conditions
21 contained herein. A Party may enforce any of the terms and conditions of this Consent Judgment
22 only after that Party first provides 30 days' notice to the Party allegedly failing to comply with the
23 terms and conditions of this Consent Judgment and attempts to resolve such Party's failure to
24 comply in an open and good faith manner.

25 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
26 proceeding to enforce Section 3 of this Consent Judgment, CAG shall provide a Notice of
27 Violation ("NOV") to TJX. The NOV shall include for each Covered Product: the date(s) the
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1 alleged violation(s) was observed and the location at which the Covered Product was offered for
2 sale, and shall be accompanied by all test data obtained by CAG regarding the Covered Product.

3 **6.2.1 Non-Contested NOV.** CAG shall take no further action regarding the
4 alleged violation if, within 30 days of receiving such NOV, TJX serves a Notice of
5 Election (“NOE”) that meets one of the following conditions:

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

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

12 **6.2.2 Contested NOV.** TJX may serve an NOE informing CAG of its election
13 to contest the NOV within 30 days of receiving the NOV.

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

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

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

24 **6.3** In any proceeding brought by either Party to enforce this Consent Judgment, the
25 prevailing party shall be entitled to recover its attorney’s fees and costs.
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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

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

5 **12. ATTORNEY'S FEES**

6 12.1 Except as specifically provided in Section 4.3, each Party shall bear its own costs
7 and attorney fees in connection with this action.

8 **13. ENTIRE AGREEMENT**

9 13.1 This Consent Judgment contains the sole and entire agreement and understanding
10 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,
11 negotiations, commitments and understandings related hereto. No representations, oral or
12 otherwise, express or implied, other than those contained herein have been made by any party
13 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
14 deemed to exist or to bind any of the Parties.

15 **14. GOVERNING LAW**

16 14.1 The validity, construction and performance of this Consent Judgment shall be
17 governed by the laws of the State of California, without reference to any conflicts of law
18 provisions of California law.

19 14.2 The Parties, including their counsel, have participated in the preparation of this
20 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
21 Consent Judgment was subject to revision and modification by the Parties and has been accepted
22 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
23 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
24 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
25 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
26 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
27 this regard, the Parties hereby waive California Civil Code § 1654.
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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.

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

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AGREED TO:

Date:

Name:

Title:

CONSUMER ADVOCACY GROUP,
INC.

AGREED TO:

Date:

Name:

Title:

THE TJX COMPANIES, INC.

AGREED TO:

Date:

Name:

Title:

TJX MAXX OF GA, LLC

IT IS SO ORDERED.

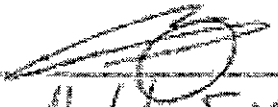
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JUDGE OF THE SUPERIOR COURT

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AGREED TO:

Date: 3-26-14



Name: Michael Sashon

Title: Executive Director
CONSUMER ADVOCACY GROUP,
INC.

AGREED TO:

Date:

Name:

Title:
THE TJX COMPANIES, INC.

AGREED TO:

Date:

Name:

Title:
TEX MAXX OF CA, LLC

IT IS SO ORDERED.

Date:

JUDGE OF THE SUPERIOR COURT