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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF LOS ANGELES

10 APS&EE, LLC, a limited liability company, )  
11 Plaintiff, )  
12 v. )  
13 THE TJX COMPANIES INC. dba )  
14 HOMEGOODS, a corporation, and DOES 1 )  
15 through 100, inclusive, )  
16 Defendants. )

CASE NO. 19STCV10610

**[PROPOSED] CONSENT JUDGMENT**

Judge: Hon. Richard L. Fruin  
Dept.: 15  
Compl. Filed: March 27, 2019

Unlimited Jurisdiction

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1 **1. RECITALS**

2 **1.1 The Parties**

3 **1.1.1** This Consent Judgment (“Consent Judgment”) is entered into by and  
4 between Plaintiff, APS&EE, LLC (“Plaintiff”) and Defendant, The TJX Companies, Inc.  
5 (“Defendant”), with Plaintiff and Defendant each referred to individually as a “Party” and  
6 collectively as the “Parties.”

7 **1.1.2** Plaintiff is an organization based in California with an interest in  
8 protecting the environment, improving human health and the health of ecosystems, and  
9 supporting environmentally sound practices, which includes promoting awareness of exposure to  
10 toxic chemicals and reducing exposure to hazardous substances found in consumer products.

11 **1.1.3** Defendant is a corporation and a person in the course of doing business as  
12 the term is defined in California Health & Safety Code Section 25249.6 *et seq.* (“Proposition  
13 65”).

14 **1.2 Allegations**

15 Plaintiff alleges that Defendant manufactured, distributed, supplied, sold and/or offered  
16 to sell Cerámica El Avión red and white Christmas tree bowl (Dept 31, Style 323688, Type 6,  
17 Cat 4513) and Cerámica El Titi red and white salsa bowl (Dept 31, Style 336273, Type 6, Cat  
18 8205) (hereinafter collectively, the “Products”) in the State of California, causing users in  
19 California to be exposed to lead, without providing a “clear and reasonable warning” required by  
20 Proposition 65. Lead is listed by the State of California as known to cause cancer and birth  
21 defects or other reproductive harm.

22 On January 3, 2019, Plaintiff issued a Sixty-Day Notice of Violation (the “Notice”),  
23 along with a Certificate of Merit, to Defendant, Cerámica El Avión, Cerámica El Titi, and  
24 various public enforcement agencies regarding the alleged violation of Proposition 65 with  
25 respect to the Products. On March 27, 2019, Plaintiff, acting in the public interest, filed the  
26 instant action in the Superior Court for the County of Los Angeles, alleging violations of  
27 Proposition 65 (the “Complaint”).

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1           **1.3    No Admissions**

2           Defendant denies all the material, factual and legal allegations in Plaintiff’s Notice and  
3 Complaint and maintains that the Products have been, and are, in compliance with all laws, and  
4 that Defendant has not violated Proposition 65. This Consent Judgment shall not constitute or be  
5 construed as an admission of liability by Defendant but, to the contrary, as a compromise of  
6 claims that are expressly contested and denied. However, nothing in this section shall affect the  
7 Parties’ obligations, duties, and responsibilities under this Consent Judgment.

8           **1.4    Jurisdiction and Venue**

9           For purposes of this Consent Judgment only, the Parties stipulate that the above-entitled  
10 Court has jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper  
11 in Los Angeles County, and that this Court has jurisdiction to enter and enforce the provisions of  
12 this Consent Judgment pursuant to California Code of Civil Procedure Section 664.6 and  
13 Proposition 65.

14           **1.5    Effective Date**

15           The “Effective Date” shall be the date this Consent Judgment is approved and entered by  
16 the Court.

17 **2.    INJUNCTIVE RELIEF AND REFORMULATION**

18           **2.1    Reformulation Standard**

19           (a)    For purposes of this Consent Judgment, the following definitions apply:  
20           “*Exterior Decorations*” is defined as all colored artwork, designs and/or markings  
21 on the exterior surface of the Products.

22           “*Lip and Rim Area*” is defined as the exterior top 20 millimeters of the Products.

23           “*No Detectable Lead*” shall mean that no lead is detected at a level above 200  
24 parts per million (“ppm”) based on a sample of at least 50 milligrams of the decorating material  
25 in question.

26           (b)    As of the Effective Date, and continuing thereafter, Defendant shall only  
27 manufacture, distribute, supply, sell or offer for sale in California Products that use decorating  
28 materials in Exterior Decorations that satisfy one of the standards outlined in 2.1(c)(1) or (2) or

1 (3) below. However, because these Products are also decorated in the *Lip and Rim Area*,  
2 subsection 2.1(c)(4) must also be satisfied, or if the Products do not meet these reformulation  
3 standards, then they must be accompanied by a clear and reasonable warning as described in  
4 Section 2.2:

5 (c)(1) **Decorating Materials' Content-Based Reformulation Standard:** Under  
6 this Standard the *Exterior Decorations* used beneath the *Lip and Rim Area* can only utilize  
7 decorating materials that contain 600 ppm of lead or less as measured using EPA Test Method  
8 3050(b) before the decorating material is fired onto (or otherwise affixed to) the Product.

9 (c)(2) **Wipe Test-Based Standard:** Under this alternative Standard, the Product  
10 must produce a test result no higher than 1.0 microgram (ug) of lead using EPA Test Method  
11 3050(b) based on a wipe sample collected using NIOSH Method 9100 as applied specifically to a  
12 100 square centimeter area of the Product that contains the majority of the *Exterior Decorations*.

13 (c)(3) **Total Acetic Acid Immersion Test-Based Standard:** Under this  
14 alternative Standard, the Product must achieve a result of 0.99 ppm or less for lead after  
15 correction for internal volume when tested pursuant to ASTM Method C927 as modified for total  
16 immersion<sup>1</sup> with results corrected for internal volume.

17 (c)(4) **Additional Lip and Rim Area Decoration Standard:** Because the  
18 Products contain *Exterior Decorations* in the *Lip and Rim Area*:

19 (i) Any *Exterior Decorations* that extend into the *Lip and Rim Area*  
20 may only utilize decorating materials that contain *No Detectable Lead*, or

21 (ii) The Product yields a test result showing a concentration level of  
22 0.5 ug/ml or less of lead using ASTM Method C927.

## 23 **2.2 Proposition 65 Warnings**

24 When a warning is required for Products under Section 2.1, Defendant shall provide a  
25 warning substantially similar to either the following long-form or short-form warning.

26 Long-Form Warning:  
27 \_\_\_\_\_

28 <sup>1</sup> For this testing protocol, refer to Exhibit 2 of the Consent Judgment entered in *Brimer v. Royal Doulton USA, Inc.*, et al., San Francisco County No. CGC-07-459941 as of the Effective Date.

1           **⚠️WARNING:** This product can expose you to [*chemicals including*] lead, which  
2 is[*are*] known to the State of California to cause cancer and birth defects or other  
3 reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

4 Short-Form Warning:

5           **⚠️WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

6 Defendant may use “chemicals including lead” in place of “lead” in the long-form warning. The  
7 warning shall be accompanied by a symbol consisting of a black exclamation point in a yellow  
8 equilateral triangle with a black outline. Where the label, package, shelf tag or sign for the  
9 Products is not printed using the color yellow, the symbol may be printed in black and white.  
10 The symbol shall be placed to the left of the text of the warning, in a size no smaller than the  
11 height of the word “**WARNING.**” The warning shall be provided directly on each Product or its  
12 label, package, shelf tag or sign with such conspicuousness as compared with other words,  
13 statements or designs as to render it likely to be seen, read and understood by an ordinary  
14 individual prior to purchase. However, if Defendant opts to use the Short-Form Warning, said  
15 warning must be provided on each Product or its label or package; providing it solely on the  
16 shelf tag or sign is insufficient.

17 **3.     PAYMENTS**

18           **3.1     Civil Penalty Pursuant To Proposition 65**

19           In settlement of all the claims referred to in the Notice and Complaint, Defendant shall  
20 pay a total civil penalty of three thousand dollars (\$3,000.00), to be apportioned in accordance  
21 with Health and Safety Code Section 25249.12(c)(1) and (d), with 75% (\$2,250.00) for OEHHA,  
22 and the remaining 25% (\$750.00) for Plaintiff.

23           Defendant shall issue two (2) checks for the civil penalty: (1) a check or money order  
24 made payable to “OEHHA” in the amount of \$2,250.00; and (2) a check or money order made  
25 payable to “Law Offices of Lucas T. Novak” in the amount of \$750.00. Defendant shall remit  
26 the civil penalty payments within ten (10) business days of the Effective Date, to:

27           Lucas T. Novak, Esq.  
28           LAW OFFICES OF LUCAS T. NOVAK  
              8335 W Sunset Blvd., Suite 217  
              Los Angeles, CA 90069

1           **3.2     Reimbursement of Plaintiff’s Fees and Costs**

2           Defendant shall reimburse Plaintiff’s reasonable experts’ and attorney’s fees and costs  
3 incurred in prosecuting the instant action, for all work performed through execution and approval  
4 of this Consent Judgment. Accordingly, Defendant shall issue a check or money order made  
5 payable to “Law Offices of Lucas T. Novak” in the amount of twenty three thousand dollars  
6 (\$23,000.00). Defendant shall remit the payment within ten (10) business days of the Effective  
7 Date, to:

8           Lucas T. Novak, Esq.  
9           LAW OFFICES OF LUCAS T. NOVAK  
10          8335 W Sunset Blvd., Suite 217  
11          Los Angeles, CA 90069

11       **4.     RELEASES**

12           This Consent Judgment is a full, final, and binding resolution between Plaintiff and  
13 Defendant and Defendant’s parents, shareholders, divisions, subdivisions, subsidiaries, partners,  
14 sister companies, directors, members, officers, employees, attorneys, and their successors and  
15 assigns (“Defendant Releasees”) as well as Cerámica El Avión, Cerámica El Titi, and their  
16 downstream distributors, retailers, and franchisees (collectively “Released Parties”), of any  
17 violation of Proposition 65 that have been or could have been asserted in the public interest  
18 against Defendant and Defendant Releasees, regarding the failure to warn about exposure to lead  
19 arising in connection with Products sold by Defendant prior to the Effective Date.

20           **4.1     Plaintiff’s Release Of Defendant**

21           Plaintiff, acting in its individual capacity, and in the public interest, in consideration of  
22 the promises and monetary payments contained herein, hereby releases Defendant, Defendant  
23 Releasees, and Released Parties, from any alleged Proposition 65 violation claims asserted in  
24 Plaintiff’s Notice or Complaint regarding the failure to warn about exposure to lead arising in  
25 connection with Products sold by Defendant prior to the Effective Date .

26           **4.2     Defendant’s Release Of Plaintiff**

27           Defendant and Defendant Releasees, and on behalf of the Released Parties, by this  
28 Consent Judgment, waives all rights to institute any form of legal action against Plaintiff, its

1 shareholders, directors, members, officers, employees, attorneys, experts, successors and  
2 assignees for actions or statements made or undertaken, whether in the course of investigating  
3 claims or seeking enforcement of Proposition 65 against Defendant in this matter.

4 **4.3 Waiver Of Unknown Claims**

5 Plaintiff acknowledges that it is familiar with Section 1542 of California Civil Code  
6 which provides as follows:

7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
8 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
9 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
10 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
11 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
12 DEBTOR OR RELEASED PARTY.

13 Plaintiff waives and relinquishes any right or benefit it has or may have under Section  
14 1542 of California Civil Code or any similar provision under the statutory or non-statutory law  
15 of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits.

16 Plaintiff acknowledges that it may subsequently discover facts in addition to, or different from,  
17 those that it believes to be true with respect to the claims released herein. Plaintiff agrees that this  
18 Consent Judgment and the releases contained herein shall be and remain effective in all respects  
19 notwithstanding the discovery of such additional or different facts.

20 **5. COURT APPROVAL**

21 Upon execution of this Consent Judgment by all Parties, Plaintiff shall file a noticed  
22 Motion for Approval and Entry of Consent Judgment in the above-entitled Court. This Consent  
23 Judgment is not effective until it is approved and entered by the Court.

24 **6. GOVERNING LAW**

25 The terms of this Consent Judgment shall be governed by the laws of the State of  
26 California.

27 **7. NOTICES**

28 All correspondence and notice required to be provided under this Consent Judgment shall  
be in writing and delivered personally or sent by first class or certified mail addressed as follows:

1 TO DEFENDANT:

2 General Counsel  
3 The TJX Companies, Inc.  
4 770 Cochituate Road  
5 Framingham, MA 01701

6 Jeff Margulies, Esq.  
7 Norton Rose Fulbright  
8 555 S Flower St., 41st Floor  
9 Los Angeles, CA 90071

TO PLAINTIFF:

Lucas Novak, Esq.  
Law Offices of Lucas T. Novak  
8335 W Sunset Blvd., Suite 217  
Los Angeles, CA 90069

10 Any Party may modify the person and address to whom the notice is to be sent by  
11 sending the other Party notice by first class.

12 **8. ENTIRE AGREEMENT**

13 This Consent Judgment contains the sole and entire agreement and understanding of the  
14 Parties with respect to the entire subject matter hereof, and any and all prior discussions,  
15 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein  
16 and therein.

17 **9. COUNTERPARTS**

18 This Consent Judgment may be executed in counterparts, each of which shall be deemed  
19 an original, and all of which, when taken together, shall constitute the same document. Execution  
20 and delivery of this Consent Judgment by e-mail, facsimile, or other electronic means shall  
21 constitute legal and binding execution and delivery. Any photocopy of the executed Consent  
22 Judgment shall have the same force and effect as the originals.

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1 **10. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their  
3 respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions  
4 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this  
5 Consent Judgment and is not subject to any conflicting obligation that will or might prevent or  
6 interfere with the execution or performance of this Consent Judgment by said Party.

7  
8 **AGREED TO:**

9 Date: 9/3/19

10  
11 By: 

12 Authorized Representative of The TJX Companies, Inc.

13  
14 **AGREED TO:**

15 Date: \_\_\_\_\_

16  
17 By: \_\_\_\_\_

18 Authorized Representative of APS&EE, LLC

19  
20 **IT IS SO ORDERED.**

21  
22 Dated: \_\_\_\_\_

23 \_\_\_\_\_  
24 JUDGE OF THE SUPERIOR COURT

1 **10. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their  
3 respective Parties. Each Party has read, understood, and agrees to all of the terms and conditions  
4 of this Consent Judgment. Each Party warrants to the other that it is free to enter into this  
5 Consent Judgment and is not subject to any conflicting obligation that will or might prevent or  
6 interfere with the execution or performance of this Consent Judgment by said Party.

7  
8 **AGREED TO:**

9 Date: 9/3/19

10  
11 By: [Signature]

12 Authorized Representative of The TIX Companies, Inc.

13  
14 **AGREED TO:**

15 Date: 9/3/19

16  
17 By: [Signature]

18 Authorized Representative of APS&EE, LLC

19  
20 **IT IS SO ORDERED.**

21  
22 Dated: \_\_\_\_\_

23 \_\_\_\_\_  
24 JUDGE OF THE SUPERIOR COURT  
25  
26  
27  
28