

SETTLEMENT AGREEMENT BETWEEN APS&EE, LLC AND THE TJX COMPANIES, INC.

1. RECITALS

1.1 **The Parties**

1.1.1 This Settlement Agreement (“Agreement”) is entered into by and between APS&EE, LLC (“APS&EE”) and The TJX Companies, Inc. (“TJX”). APS&EE and TJX shall hereinafter collectively be referred to as the “Parties”.

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

1.1.3 APS&EE alleges that TJX is a company in the course of doing business as the term is defined in California *Health & Safety Code* section 25249.6 et seq. (“Proposition 65”).

1.2 **Allegations**

1.2.1 APS&EE alleges that TJX sold Hnos Pedraza blue flower mug, style 382660, item# 92386, 7-86460-92386-7 (hereinafter the “Products”) in the State of California causing users in California to be exposed to unsafe levels of Lead without providing “clear and reasonable warnings,” in violation of Proposition 65. Lead is potentially subject to Proposition 65 warning requirements because it is listed by the State of California as known to cause cancer and birth defects or other reproductive harm.

1.2.2 On September 23, 2020, APS&EE provided a Sixty-Day Notice of Violation (the “Notice”), along with a Certificate of Merit, to TJX and the various public enforcement agencies regarding the alleged violation of Proposition 65 with respect to the Products.

1.3 No Admissions

TJX denies all allegations of fact and conclusions of law in APS&EE's Notice and maintains that the Products have been, and are, in compliance with all laws, and that TJX has not violated Proposition 65. This Agreement shall not be construed as an admission of liability by TJX, but to the contrary, as a compromise of claims that are expressly contested and denied. Except for the allegations settled and compromised, nothing in this Agreement shall prejudice, waive, or impair any right, remedy, argument, or defense that TJX may have. However, nothing in this section shall affect the Parties' obligations, duties, and responsibilities under this Agreement.

1.4 Compromise

The Parties enter into this Agreement in order to resolve the controversy described above in a manner consistent with prior Proposition 65 settlements and consent judgments that were entered in the public interest and to avoid prolonged and costly litigation between them.

1.5 Effective Date

The "Effective Date" shall be the date upon which a complete and fully executed copy of the Agreement is delivered to each Party or its counsel.

2. INJUNCTIVE RELIEF AND REFORMULATION

As of the Effective Date, TJX shall not purchase Products for sale into California unless the Products (1) are Reformulated Products pursuant to Section 2.1; or (2) contain appropriate warnings as described below in Section 2.2.

2.1 Reformulation

"Reformulated Product" means the finished Product produces a test result no higher than a ratio of 1.0 microgram of lead per 100 square centimeters based on a wipe sample collected using NIOSH Method 9100 or equivalent from the part of the Product that contains the Exterior Decorations. "Exterior Decorations" is defined as all colored artwork, designs and/or markings on the exterior surface of the Products.

2.2 Clear And Reasonable Warnings

As of the Effective Date, any Products that are purchased for sale into California that are not Reformulated Products, shall be accompanied by a clear and reasonable warning. The warning will be prominently placed with such conspicuousness when compared with other words, statements, designs or devices as to render it likely to be read and understood by an ordinary individual prior to purchase. For purposes of this Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed directly to the product or product packaging, label, or tag, and contain one of the following statements:

⚠ WARNING: This product can expose you to Lead which is known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

OR

⚠ WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

If TJX has reason to believe the Products may expose consumers to additional chemicals listed under Proposition 65, then it may replace “Lead which is” with “chemicals, including Lead, which are” in the warning statement. The warning shall be accompanied by a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label for the product is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING”.

3. PAYMENTS

3.1 Civil Penalty Pursuant To Proposition 65

In settlement of all claims referred to in this Agreement, TJX shall pay a total civil penalty of one thousand two hundred and fifty dollars (\$1,250.00) to be apportioned in accordance with *Health and Safety Code* section 25249.12(c)(1) and (d), with 75%

(\$937.50) for State of California Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining 25% (\$312.50) for APS&EE.

TJX shall issue two (2) checks for the civil penalty: (1) a check or money order made payable to “OEHHA” in the amount of \$937.50; and (2) a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of \$312.50. TJX shall remit the payments within fifteen (15) business days of the Effective Date or TJX’s receipt of the W-9 Forms of the relevant payees, whichever is later, to:

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

3.2 Reimbursement Of APS&EE’s Fees And Costs

TJX shall reimburse APS&EE’s reasonable experts’ and attorney’s fees and costs incurred in prosecuting the instant action, for all work performed through execution of this Agreement. Accordingly, TJX shall issue a check or money order made payable to “Law Offices of Lucas T. Novak” in the amount of fifteen thousand dollars (\$15,000.00). TJX shall remit the payment within fifteen (15) business days of the Effective Date or TJX’s receipt of the W-9 Forms of the relevant payees, whichever is later, to:

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

4. RELEASES

4.1 APS&EE’s Release Of TJX

APS&EE, acting in its individual capacity, in consideration of the promises and monetary payments contained herein, hereby releases TJX, its parents, subsidiaries, shareholders, directors, members, officers, employees, attorneys, successors and assignees, as well as its downstream distributors, retailers, and franchisees (collectively “Released Parties”), from any alleged Proposition 65 violation claims asserted in

APS&EE's Notice regarding failure to warn about Lead exposure from the Products that TJX has caused to be sold and/or offered for sale in California before and up to the Effective Date.

4.2 TJX's Release Of APS&EE

TJX, by this Agreement, waives all rights to institute any form of legal action against APS&EE, its shareholders, directors, members, officers, employees, attorneys, experts, successors and assignees for actions or statements made or undertaken, whether in the course of investigating claims or seeking enforcement of Proposition 65 against TJX in this matter. If any Released Party should institute any such action, then APS&EE's release of said Released Party in this Agreement shall be rendered void and unenforceable.

4.3 Waiver Of Unknown Claims

APS&EE acknowledges that it is familiar with Section 1542 of California Civil Code which provides as follows:

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

APS&EE waives and relinquishes any right or benefit it has or may have under Section 1542 of California Civil Code or any similar provision under the statutory or non-statutory law of any other jurisdiction to the full extent that it may lawfully waive all such rights and benefits. APS&EE acknowledges that it may subsequently discover facts in addition to, or different from, those that it believes to be true with respect to the claims released herein. APS&EE agrees that this Agreement and the releases contained herein shall be and remain effective in all respects notwithstanding the discovery of such additional or different facts.

5. SEVERABILITY

Should any part or provision of this Agreement for any reason be declared by a Court to be invalid, void or unenforceable, the remaining portions and provisions shall continue in full force and effect provided such remaining provisions reflect the overall bargain of the Parties.

6. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California.

7. NOTICE

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

<p>TO TJX:</p> <p>General Counsel The TJX Companies, Inc. 770 Cochituate Road Framingham, MA 01701</p> <p>With copy to:</p> <p>Jeffrey Margulies, Esq. Norton Rose Fulbright US LLP 555 S Flower St., 41st Floor Los Angeles, CA 90071</p>	<p>TO APS&EE:</p> <p>Lucas T. Novak, Esq. Law Offices of Lucas T. Novak 8335 W Sunset Blvd., Suite 217 Los Angeles, CA 90069</p>
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8. COUNTERPARTS

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


9. AUTHORIZATION

The undersigned are authorized to execute this Agreement on behalf of their respective Parties. Each Party has read, understood, and agrees to all of the terms and

conditions of this Agreement. Each Party warrants to the other that it is free to enter into this Agreement and is not subject to any conflicting obligation that will or might prevent or interfere with the execution or performance of this Agreement by said Party.

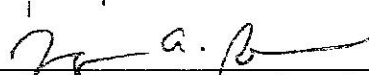
AGREED TO:

Date: 3/24/21

By: 
Authorized Representative of APS&EE, LLC

AGREED TO:

Date: 3/26/21

By: 
Authorized Representative of The TJX Companies, Inc.
Jennifer A. Peoples
VP, Legal - Litigation & Regulatory Counsel