

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Parties

This Settlement Agreement is entered into by and between Audrey Donaldson (“Donaldson”) and The TJX Companies, Inc. (“TJX”), with Donaldson and TJX each individually referred to as a “Party” and collectively as the “Parties.” Donaldson is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. Donaldson alleges that TJX is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

#### 1.2 General Allegations

Donaldson alleges that TJX manufactures, sells, and distributes for sale in California, ceramic mugs with exterior designs containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Donaldson alleges that TJX failed to provide the health hazard warning required by Proposition 65 for exposures to lead.

#### 1.3 Product Description

The products covered by this Settlement Agreement are specifically defined as, and limited to, the TJX “London” Love Your Mug; SKU: 80-2805-639524-000399-17-6, Style No. 639524, that are sold in California by TJX (hereinafter collectively referred to as “Products”).

#### 1.4 Notice of Violation

On December 28, 2021, Donaldson served TJX and the requisite public enforcement agencies with a 60-Day Notice of Violation, alleging that TJX violated

Proposition 65 when it failed to warn its customers and consumers in California of the health hazards associated with exposures to lead from the Products.

No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notices.

#### **1.5 No Admission**

TJX denies the material factual and legal allegations contained in the Notice and maintains that all of the products that it has sold and distributed in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by TJX of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by TJX of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by TJX. This Section shall not, however, diminish or otherwise affect TJX's obligations, responsibilities, and duties under this Settlement Agreement.

#### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this agreement is executed by both parties.

## **2. INJUNCTIVE RELIEF: REFORMULATION/WARNING**

### **2.1 Reformulation Commitment**

As of the Effective Date, TJX shall not purchase the Products for sale into the State of California unless they are Reformulated Products or accompanied by a clear and reasonable warning as described below in Section 2.3.

### **2.2 Reformulation Standards**

"Reformulated Products" are defined as those Products that: (a) contain no more than 90 parts per million ("ppm") lead in any decoration, colored artwork, designs and/or marking on the surface of the Products when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3050B or equivalent methodologies utilized by

federal or state agencies for the purpose of determining lead content in a solid substance; (b) yield a result of non-detect (defined as no more than 25 ppm by weight of lead) for any decorations or design located in the upper 20 millimeters of a Product, i.e., the “Lip-and-Rim” area, when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies used by state and federal agencies to determine lead content on a solid substance; *and* (c) yield no more than 1.0 microgram of lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol.

If the decoration/design is tested after it is affixed to the Product, the percentage of the lead by weight must relate only to the decorating materials and must not include any quantity attributable to non-decorating material (e.g., ceramic substrate).

### **2.3 Product Warnings**

As of the Effective Date, all Products that are purchased for sale into California, that do not qualify as Reformulated Products per Section 2.2, shall bear a clear and reasonable warning pursuant to this Section. 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 under customary conditions of use. For purposes of this Settlement 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: Cancer and Reproductive Harm- [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)**

OR

**⚠ WARNING: This product can expose you to chemicals including lead, which are 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](http://www.P65Warnings.ca.gov).**

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payment**

Pursuant to Health and Safety Code section 25249.7(b)(2), and as consideration for the releases contained in Sections 4.1 and 4.2 below, TJX agrees to pay \$1,200 in civil penalties no later than ten (10) days after the Effective Date or upon TJX's receipt of appropriate W-9 forms from the payees, whichever is later. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount paid to Donaldson, and delivered to the address in Section 3.3 herein. TJX will provide its payment in two checks as follows: (1) "OEHHA" in the amount of \$900; and (2) "Audrey Donaldson" in the amount of \$300.

#### **3.2 Attorneys' Fees and Costs**

The Parties acknowledge that Donaldson and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been reached, TJX expressed a desire to resolve Donaldson's fees and costs. The Parties reached an accord on the compensation due to Donaldson's counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, no later than ten (10) days after the Effective Date or upon TJX's receipt of appropriate W-9 forms from the payees, whichever is later, TJX agrees to pay \$15,300 in the form of a check made payable to "Voorhees & Bailey, LLP," for all fees and costs incurred investigating, bringing this matter to the attention of TJX's management, and negotiating a settlement.

### **3.3 Payment Address**

All payments under this Settlement Agreement shall be delivered to the following address:

Voorhees & Bailey, LLP  
990 Amarillo Avenue  
Palo Alto, CA 94303

## **4. CLAIMS COVERED AND RELEASED**

### **4.1 Donaldson's Release of Proposition 65 Claims**

Donaldson acting on her own behalf, and not on behalf of the public, releases TJX, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents employees, attorneys, and each entity to whom TJX directly or indirectly distributes or sell Products, including, but not limited to, downstream distributors, wholesalers, customers, other retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to lead from the Products.

### **4.2 Donaldson's Individual Release of Claims**

Donaldson, in her individual capacity only and not in her representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of Donaldson of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to lead from the Products manufactured, imported, distributed, or sold by TJX prior to the Effective Date. Nothing in this Section affects Donaldson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve TJX's Products.

Donaldson expressly waives and relinquishes any and all rights and benefits which she has, or which may be conferred on her by California Civil Code section 1542 of any other state or federal statute or common law principle of similar effect, to the

fullest extent that she may lawfully waive such rights or benefits pertaining to the Products; Civil Code section 1542 states:

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.

#### **4.3 TJX's Release of Donaldson**

TJX, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Donaldson and her attorneys and other representatives, for any and all actions taken or statements made by Donaldson and her attorneys and other representatives, in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

#### **5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

#### **6. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then TJX may provide written notice to Donaldson of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

7. **NOTICE**

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

**For TJX:**

General Counsel  
The TJX Companies, Inc.  
770 Cochituate Road  
Framingham, MA 01701

**For Donaldson:**

Audrey Donaldson  
c/o Voorhees & Bailey, LLP  
535 Ramona Street; Suite 5  
Palo Alto, CA 94301

With copy to:

Jeffrey Margulies, Esq.  
Norton Rose Fulbright US LLP  
555 S Flower St., 41st Floor  
Los Angeles, CA 90071

Any Party may, from time to time, specify in writing to the other a change of address to which all notices and other communications shall be sent.

8. **COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

9. **COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Donaldson and her attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

10. **MODIFICATION**

This Settlement Agreement may be modified only by written agreement of the Parties.

**11. ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement of the Parties and any and all prior negotiations and understandings related hereto shall be deemed to have been merged within it. No representations or terms of agreement other than those contained herein exist or have been made by any Party with respect to the other Party or the subject matter hereof.

**12. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

Date: March 03, 2022

By:   
AUDREY DONALDSON

**AGREED TO:**

Date: 3/8, 2022

By:   
THE TJX COMPANIES, INC.  
Jennifer A. Peoples  
VP, Legal