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

11 PRECILA BALABBO,

12 Plaintiff,

13 v.

14 THE TJX COMPANIES, INC.,

15 Defendant.

Case No.: CGC-23-608469

CONSENT JUDGMENT

Judge: Richard B. Ulmer

Dept.: 302

Hearing Date: July 9, 2024

Hearing Time: 9:30 AM

Complaint Filed: August 18, 2023

1 **1. INTRODUCTION**

2 1.1 **The Parties.** This Consent Judgment is entered into by and between Precila Balabbo
3 acting on behalf of the public interest (hereinafter “Balabbo”) and The TJX Companies, Inc. (“TJX”
4 or “Defendant”) with Balabbo and Defendant collectively referred to as the “Parties” and each of
5 them as a “Party.” Balabbo is alleged to be an individual residing in California that seeks to promote
6 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
7 hazardous substances contained in consumer products. TJX is alleged to be a person in the course
8 of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

9 1.2 **Allegations and Representations.** Balabbo alleges that Defendant has exposed
10 individuals to lead from its sales of Covered Products, defined below, without providing a clear
11 and reasonable exposure warning pursuant to Proposition 65. Lead is listed pursuant to Proposition
12 65 as a chemical known to the State of California to cause cancer and birth defects or other
13 reproductive harm.

14 1.3 **Notice of Violation/Action.** On or about August 19, 2022, Balabbo served TJX and
15 various public enforcement agencies with documents entitled “60-Day Notice of Violation”
16 pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant violated
17 Proposition 65 for failing to warn consumers and customers that use of Covered Products expose
18 users in California to lead. No public enforcer has brought and is diligently prosecuting the claims
19 alleged in the Notice. On August 18, 2023, Balabbo filed a complaint (the “Complaint”) alleging
20 the violations set forth in the Notice.

21 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
23 venue is proper in the County of San Francisco, and that this Court has jurisdiction to approve,
24 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution
25 of all claims which were or could have been raised in the Complaint based on the facts alleged
26 therein and in the Notice.

1 1.5 Defendant denies the material allegations contained in the Notice and Complaint
2 and maintains that it has not violated Proposition 65 with respect to the Covered Products. Nothing
3 in this Consent Judgment shall be construed as an admission by Defendant of any fact, finding,
4 issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be
5 construed as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation
6 of law, such being specifically denied by Defendant. However, this section shall not diminish or
7 otherwise affect the obligations, responsibilities, and duties of Defendant under this Consent
8 Judgment.

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term “Covered Products” means Novogratz Mug Sets,
11 Style No. 758980, that are manufactured, distributed, shipped into California by TJX.

12 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
13 entered as a judgment by the Court.

14 **3. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**


15 3.1 **Reformulation of Covered Products.** Within ninety (90) days of the Effective
16 Date, TJX shall not order any Covered Products for sale in California unless such Covered Products
17 are: (a) reformulated Products pursuant to § 3.2, below; or (b) labeled with a clear and reasonable
18 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a
19 “Reformulated Product” is a Covered Product that is in compliance with the standard set forth in §
20 3.2 below. The warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated
21 Product.

22 3.2 **Reformulation Standard.** “Reformulated Products” shall mean Covered Products
23 that produce a wipe test result no higher than 1 microgram (µg) of lead when analyzed pursuant to
24 NIOSH method no. 9100.

25 3.3 **Clear and Reasonable Warning.** Within 90 days of the Effective Date, and
26 continuing thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4
27 must be provided for all Covered Products that Defendant purchases for sale in California that is
28

1 not a Reformulated Product. There shall be no obligation for Defendant to provide a warning for
2 Covered Products that enter the stream of commerce prior to the Effective Date. The warning shall
3 consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b), respectively:

4 (a) **Warning.** The “Warning” shall consist of the statement:

5  **WARNING:** This product can expose you to chemicals including lead, which
6 is known to the State of California to cause cancer and birth defects or other
7 reproductive harm. For more information go to www.P65Warnings.ca.gov.

8 (b) **Alternative Warning:** TJX may, but is not required to, use the alternative short-
9 form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

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

11 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
12 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
13 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
14 triangle with a black outline, except that if the sign or label for the Covered Product does not use
15 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
16 than the height of the word “**WARNING:**”. The **Warning** or **Alternative Warning** shall be affixed
17 to or printed on the Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or
18 electronic device or automatic process, providing that the **Warning** or **Alternative Warning** is
19 displayed with such conspicuousness, as compared with other words, statements, or designs as to
20 render it likely to be read and understood by an ordinary individual under customary conditions of
21 purchase or use. The **Warning** or **Alternative Warning** may be contained in the same section of
22 the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning
23 the use of the Covered Product and shall be at least the same size as those other safety warnings. If
24 consumer information is provided in a foreign language, TJX shall provide the **Warning** or
25 **Alternative Warning** in the foreign language.

26 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product’s
27 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
28 TJX offers Products for sale to consumers in California. The requirements of this Section shall be

1 satisfied if the **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word
2 “**WARNING**,” appears on the product display page, or by otherwise prominently displaying the
3 warning to the purchaser prior to completing the purchase. To comply with this Section, TJX shall
4 (a) post the **Warning** or **Alternative Warning** on its own website and, if it has the ability to do so,
5 on the websites of its third-party internet sellers; and (b) if it does not have the ability to post the
6 **Warning** or **Alternative Warning** on the websites of its third-party internet sellers, provide such
7 sellers with written notice in accordance with Title 27, California Code of Regulations, § 25600.2.
8 Third-party internet sellers of the Covered Product that have been provided with written notice in
9 accordance with Title 27, California Code of Regulations, § 25600.2 are not released in Section 5
10 of this Agreement if they fail to meet the warning requirements herein.

11 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
12 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
13 Judgment or by complying with warning requirements adopted by OEHHA applicable to the
14 Covered Product and exposures at issue after the Effective Date, or within 90 days of the Effective
15 Date.

16 **4. MONETARY TERMS**

17 4.1 **Civil Penalty.** TJX shall pay \$2,000.00 as a Civil Penalty pursuant to Health and
18 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
19 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil
20 Penalty remitted to Balabbo, as provided by California Health & Safety Code § 25249.12(d).

21 4.1.1 Within fifteen (15) business days of the Effective Date, or upon receipt of
22 appropriate W-9 forms from the payees, whichever is later, TJX shall issue two separate checks
23 for the Civil Penalty payment to (a) “OEHHA” in the amount of \$1,500.00; and to (b) “Brodsky
24 Smith” in trust for Balabbo in the amount of \$500.00. Payment owed to Balabbo pursuant to this
25 Section shall be delivered to the following payment address:

26 Evan J. Smith, Esquire
27 Brodsky Smith
28 Two Bala Plaza, Suite 805
 Bala Cynwyd, PA 19004

1 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
2 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

3 For United States Postal Service Delivery:

4 Mike Gyurics
5 Fiscal Operations Branch Chief
6 Office of Environmental Health Hazard Assessment
7 P.O. Box 4010
8 Sacramento, CA 95812-4010

9 For Non-United States Postal Service Delivery:

10 Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 1001 I Street
14 Sacramento, CA 95814

15 A copy of the check payable to OEHHA shall be mailed to Brodsky Smith at the address set forth
16 above as proof of payment to OEHHA.

17 4.2 **Attorneys' Fees.** Within fifteen (15) business days of the Effective Date, or upon
18 receipt of appropriate W-9 forms from the payees, whichever is later, TJX shall pay \$20,000.00 to
19 Brodsky Smith as complete reimbursement for Balabbo's attorneys' fees and costs incurred as a
20 result of investigating, bringing this matter to the attention of TJX, litigating and negotiating and
21 obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil
22 Procedure § 1021.5.

23 **5. RELEASE OF ALL CLAIMS**

24 5.1 This Consent Judgment is a full, final, and binding resolution between Balabbo
25 acting on her own behalf, and on behalf of the public interest, and TJX, and its parents,
26 shareholders, members, directors, officers, managers, employees, representatives, agents,
27 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
28 predecessors, successors and assigns ("Defendant Releasees"), and all downstream entities from
whom they directly or indirectly distribute or sell Covered Products, including but not limited to
manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees retailers, and
their parents, subsidiaries, and affiliates, franchisees, and cooperative members ("Downstream

1 Releasees”), of all claims for violations of Proposition 65 based on exposure to lead from use of
2 the Covered Products manufactured, distributed, or sold by TJX within 90 days of the Effective
3 Date. It is the Parties’ intention that this Consent Judgment shall have preclusive effect such that
4 no other actions by private enforcers, whether purporting to act in his, her, or its interests or the
5 public interest shall be permitted to pursue and take any action with respect to any violation of
6 Proposition 65 based on exposure to lead from use of the Covered Products that was alleged in the
7 Complaint, or that could have been brought pursuant to the Notice against TJX and the Downstream
8 Releasees (“Proposition 65 Claims”). TJX’s compliance with the terms of this Consent Judgment
9 constitutes compliance with Proposition 65 by TJX with regard to exposure to lead from use of the
10 Covered Products.

11 5.2 In addition to the foregoing, Balabbo, on behalf of herself, her past and current
12 agents, representatives, attorneys, and successors and assignees, and *not* in her representative
13 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
14 legal action and releases TJX, Defendant Releasees, and Downstream Releasees from any and all
15 manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
16 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys’ fees, of
17 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
18 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered
19 Products manufactured, distributed, or sold by TJX, Defendant Releasees or Downstream
20 Releasees. With respect to the foregoing waivers and releases in this paragraph, Balabbo hereby
21 specifically waives any and all rights and benefits which she now has, or in the future may have,
22 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as
23 follows:

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

1 5.3 TJX waives any and all claims against Balabbo, her attorneys and other
2 representatives, for any and all actions taken, or statements made (or those that could have been
3 taken or made) by Balabbo and her attorneys and other representatives relating to the allegations in
4 the Complaint, whether in the course of investigating claims regarding the Notice or otherwise
5 seeking enforcement of Proposition 65 against it in this matter with respect to Covered Products.

6 **6. INTEGRATION**

7 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
8 any and all prior negotiations and understandings related hereto shall be deemed to have been
9 merged within it. No representations or terms of agreement other than those contained herein exist
10 or have been made by any Party with respect to the other Party or the subject matter hereof.

11 **7. GOVERNING LAW**

12 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
13 California and apply within the State of California. In the event that Proposition 65 is repealed or
14 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
15 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
16 to the extent that, Covered Products are so affected.

17 **8. NOTICES**

18 8.1 Unless specified herein, all correspondence and notices required to be provided
19 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
20 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
21 by the other party at the following addresses:

22 For Defendant:

23 The TJX Companies, Inc.
24 770 Cochituate Road
25 Framingham, MA 01701

26 Jeffrey Margulies
27 Norton Rose Fulbright US LLP
28 555 South Flower St., 41st Floor
 Los Angeles, CA 90071

And

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For Balabbo:

Evan Smith
Brodsky Smith
9595 Wilshire Blvd., Ste. 900
Beverly Hills, CA 90212

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

9. COUNTERPARTS; FACSIMILE SIGNATURES

9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT APPROVAL

10.1 Balabbo agrees to comply with the requirements set forth in California Health & Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment. Defendant agrees it shall support approval of such Motion.

10.2 This Consent Judgment shall not be effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30 days, the case shall proceed on its normal course.

10.3 If the Court approves this Consent Judgment and is reversed or vacated by an appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on its normal course on the trial court’s calendar.

11. MODIFICATION

11.1 This Consent Judgment may be modified only by further stipulation of the Parties and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

1 **12. ATTORNEY'S FEES**

2 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
3 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

4 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
5 pursuant to law.

6 **13. RETENTION OF JURISDICTION**

7 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
8 Consent Judgment.

9 **14. AUTHORIZATION**

10 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
11 respective Parties and have read, understood, and agree to all of the terms and conditions of this
12 document and certify that he or she is fully authorized by the Party he or she represents to execute
13 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
14 explicitly provided herein each Party is to bear its own fees and costs.

15 **AGREED TO:**

AGREED TO:

16
17 Date: _____

Date: April 30, 2024

18 By: _____

By: J. A. P.

19 PRECILA BALABBO

THE TJX COMPANIES, INC.

20
21 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

22
23 Dated: _____

Judge of Superior Court

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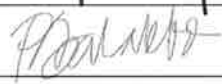
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12 document and certify that he or she is fully authorized by the Party he or she represents to execute
13 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
14 explicitly provided herein each Party is to bear its own fees and costs.

15 **AGREED TO:**

AGREED TO:

16
17 Date: 5 / 16 / 24

Date: _____

18 By: 
19 **PRECILA BALABBO**

By: _____
THE TJX COMPANIES, INC.

20
21 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

22
23 Dated: _____

24 _____
25 Judge of Superior Court