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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
17 IN AND FOR THE COUNTY OF SAN FRANCISCO  
18 UNLIMITED CIVIL JURISDICTION

19 WHITNEY R. LEEMAN,  
20 Plaintiff,  
21 v.  
22 TJX COMPANIES, INC.; MARSHALLS, INC.;  
23 and DOES 1 through 150,  
24 Defendants.

Consolidated Case No. CGC-04-436838  
(Consolidated with Case No.04-437016)

**STIPULATION AND [PROPOSED]  
ORDER RE: CONSENT JUDGMENT**

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1       **1.       INTRODUCTION**

2               **1.1       Plaintiff and Settling Defendant.** This Consent Judgment is entered into by and  
3 between plaintiff Whitney R. Leeman Ph.D. (hereafter “Dr. Leeman” or “Plaintiff”) and  
4 Marshalls of MA, Inc., TJ Maxx of CA, LLC, and HomeGoods, Inc. (hereinafter collectively  
5 “The TJX Entities”), with Plaintiff and The TJX Entities collectively referred to as the “Parties”  
6 and Dr. Leeman and The TJX Entities each being a “Party.” Plaintiff has also named The TJX  
7 Companies, Inc. (“TJX”) as a defendant. TJX alleges that it is not licensed to do business in  
8 California and does not do business in California. TJX alleges that TJ Maxx of CA, LLC, and  
9 HomeGoods, Inc. are wholly owned subsidiaries of TJX and do business in California. TJ Maxx  
10 of CA, LLC, and HomeGoods, Inc. have agreed to be bound by the terms of this Stipulation and  
11 [Proposed] Order Re: Consent Judgment (“Consent Judgment”). As part of this Consent  
12 Judgment, all claims against TJX will be dismissed without prejudice pursuant to section 18  
13 below.

14               **1.2       Plaintiff.** Dr. Leeman is an individual residing in Sacramento, California who  
15 seeks to promote awareness of exposures to toxic chemicals and improve human health by  
16 reducing or eliminating hazardous substances contained in consumer and industrial products.

17               **1.3       General Allegations.** Plaintiff alleges that The TJX Entities have distributed  
18 and/or sold in the State of California double old fashioned glasses and other glass beverageware  
19 products with colored artwork, designs or markings on the exterior surface with materials that  
20 contain lead and/or cadmium, and glass and metal candleholders with materials that contain lead.  
21 Lead and cadmium are listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of  
22 1986, California Health & Safety Code §§ 25249.5 et seq., also known as Proposition 65, to cause  
23 birth defects or other reproductive harm. Lead and cadmium shall be referred to herein as “Listed  
24 Chemicals.”

25               **1.4       Product Descriptions.** The products that are covered by this Consent Judgment  
26 are defined as follows: glass beverageware products sold and/or distributed by The TJX Entities  
27 with colored artwork, designs or markings on the exterior surface (“Glass Beverageware  
28 Products”), and glass and metal candleholders sold or distributed by The TJX Entities

1 (“Candleholder Products”) including, by way of example and without limitation, glass  
2 beverageware and candleholder products contained in the items listed at Exhibit A. Such  
3 products are referred to separately herein as the “Glass Beverageware Products” and the  
4 “Candleholder Products”, and are collectively referred to as the “Products.”

5       **1.5 Notices of Violation.** Beginning on September 3, 2004, Dr. Leeman served The  
6 TJX Entities and various public enforcement agencies with documents, entitled “60-Day Notice  
7 of Violation” (“Notice”) that provided The TJX Entities and such public enforcers with notice  
8 that alleged that The TJX Entities were in violation of Health & Safety Code § 25249.6<sup>1</sup> for  
9 failing to warn purchasers that certain products that they sold expose users in California to lead  
10 and/or cadmium. For purposes of this Consent Judgment only, TJX stipulates that it received  
11 Plaintiff’s Notices on behalf of TJ Maxx of CA, LLC and HomeGoods, Inc.

12       **1.6 Complaint.** On December 6, 2004, Dr. Leeman, in the interest of the general  
13 public in California, filed a complaint (hereafter referred to as the “Complaint” or the “Action”) in  
14 the Superior Court for the City and County of San Francisco against Marshalls, TJX, and  
15 Does 1 through 150, alleging violations of Health & Safety Code § 25249.6 based on the alleged  
16 exposures to one or more of the Listed Chemicals contained in certain glass beverageware  
17 products sold by The TJX Entities. On December 10, 2004, Dr. Leeman, in the interest of the  
18 general public in California, filed a complaint in the Superior Court for the City and County of  
19 San Francisco against Marshalls, TJX, and Does 1 through 150 (Case No. CGC-04-437016)  
20 alleging violations of Health & Safety Code § 25249.6 based on the alleged exposures to one or  
21 more of the Listed Chemicals contained in certain candleholder products sold by The TJX  
22 Entities. Upon entry of this Consent Judgment, the Court shall consolidate the two actions into  
23 the *Leeman v. TJX* action filed December 6, 2004, Case No. CGC-04-436838.

24       **1.7 No Admission.** The TJX Entities deny the material factual and legal allegations  
25 contained in Plaintiff’s Notices and Complaints, and allege that all products that they have sold  
26 and distributed in California, including the Products, have been and are in compliance with all

27 \_\_\_\_\_  
28 <sup>1</sup> Unless otherwise indicated, all statutory and regulatory references are to California law.

1 laws and that it had no knowledge of the presence of Proposition 65-listed chemicals in the  
2 Products it has sold. Nothing in this Consent Judgment shall be construed as an admission by  
3 The TJX Entities of any fact, finding, issue of law, or violation of law, nor shall compliance with  
4 this Agreement constitute or be construed as an admission by The TJX Entities of any fact,  
5 finding, conclusion, issue of law or violation of law. However, this section shall not diminish or  
6 otherwise affect the obligations, responsibilities and duties of The TJX Entities under this  
7 Consent Judgment.

8       **1.8 Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties  
9 stipulate that this Court has jurisdiction over the allegations of violations contained in the  
10 Complaint and personal jurisdiction over The TJX Entities as to the acts alleged in the Complaint,  
11 that venue is proper in the City and County of San Francisco, and that this Court has jurisdiction  
12 to enter this Consent Judgment and to enforce the provisions thereof.

13       **1.9 Effective Date.** For purposes of this Consent Judgment, the “Effective Date” shall  
14 be the date on which this Consent Judgment is approved by the Court.

15 **2. INJUNCTIVE RELIEF: PROPOSITION 65**

16       **2.1 WARNINGS AND REFORMULATION OBLIGATIONS**

17           **(a) Required Warnings.** The TJX Entities agree that they will not sell or  
18 offer for sale in California any Products purchased after the Effective Date containing the Listed  
19 Chemicals, unless warnings are given in accordance with one or more provisions in  
20 subsection 2.2 below.

21           **(b) Exceptions.** The warning requirements set forth in subsections 2.1(a) and  
22 2.2 below shall not apply to Reformulated Products as defined in subsection 2.3 below.

23       **2.2 CLEAR AND REASONABLE WARNINGS**

24           **(a) Product Labeling.** A warning is affixed to the packaging, labeling or  
25 directly on a Product by The TJX Entities, their agents, or the manufacturer, importer, or  
26 distributor of the Product that states:

27       / / /

28       / / /

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(i) *Warnings for Glass Beverageware Products*

**WARNING:** The materials used as colored decorations on the exterior of this product contain lead and cadmium, chemicals known to the State of California to cause birth defects and other reproductive harm.

or

**WARNING:** The materials used as colored decorations on the exterior of these products contain chemicals known to the State of California to cause birth defects and other reproductive harm.<sup>2</sup>

(ii) *Warning for Candleholder Products*

**WARNING:** The materials used in this product contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm.

(iii) *Warning for Glass Beverageware and Candleholder Products*

**WARNING:** This product contains chemicals known to the State of California to cause birth defects and other reproductive harm.

If the manufacturer, importer or distributor of a Product sold at the TJX entities has been authorized to use Proposition 65 warning language for Products pursuant to a prior court-approved Proposition 65 settlement agreement, the TJX Entities may use the manufacturer, importer or distributor’s court-approved warning language pursuant to this Consent Judgment if that language is substantially similar to the language contained in the warnings above. In order to use such warnings, the substantially similar court-approved language must have been approved for use for the same specific type of Product for which the TJX Entities intends to use the warning.

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<sup>2</sup> This warning is to be used only when the Products are sold as a set.

1 Warnings issued for Products pursuant to subsection 2.2(a) shall be prominently placed  
2 with such conspicuousness as compared with other words, statements, designs, or devices as to  
3 render it likely to be read and understood by an ordinary individual under customary conditions  
4 prior to purchase. Any changes to the language or format of the warning required by this  
5 subsection shall only be made following: (1) approval of Plaintiff; (2) approval from the  
6 California Attorney General's Office, provided that written notice of at least fifteen (15) days is  
7 given to Plaintiff for the opportunity to comment; (3) Court approval.

8 (b) **Point-of-Sale Warnings.** The TJX Entities may execute their warning  
9 obligations through the posting of signs at their retail outlets in the State of California at which  
10 Products are sold, in accordance with the terms specified in subsections 2.2(b)(i) and 2.2(b)(ii).

11 (i) Point of sale warnings shall be provided through one or more signs  
12 (and triangle symbols, if applicable) posted at each point of display of the Products or at every  
13 cash register where a sale occurs that state:

14 A. *Warnings for Glass Beverageware Products*

15 **WARNING: The materials used as colored decorations on the**  
16 **exterior of this glassware product contain lead**  
17 **and cadmium, chemicals known to the State of**  
18 **California to cause birth defects and other**  
**reproductive harm.**

19 or

20 **WARNING: Use of certain glassware products with colored**  
21 **decorations on the exterior for sale in this store**  
22 **will expose you to lead and/or cadmium,**  
**chemicals known to the State of California to**  
**cause birth defects or other reproductive harm.**

23 **Products identified with this symbol:**



25 **Displayed on the product, are the ones for**  
26 **which this warning is given.**

27 *(See warning attached hereto as Exhibit B)*

1 B. *Combined warning for Glass Beverageware and*  
2 *Tableware Products*

3 **WARNING:** Use of certain glassware products with colored  
4 decorations on the exterior and use of certain  
5 tableware for sale in this store will expose you to  
6 lead and/or cadmium, chemicals known to the  
7 State of California to cause birth defects or  
8 other reproductive harm.

9 **Products identified with this symbol:**



11 **Displayed on the product, are the ones for**  
12 **which this warning is given.**

13 *(See warning attached hereto as Exhibit C)*

14 C. *Warning for Candleholder Products*

15 **WARNING:** The materials used in these candleholder  
16 products contain lead, a chemical known to the  
17 State of California to cause birth defects or  
18 other reproductive harm.

19 [List *Specific* Products to which Warnings Apply]

20 or

21 **WARNING:** Use of certain candleholders for sale in this  
22 store will expose you to lead a chemical known  
23 to the State of California to cause birth defects  
24 or other reproductive harm.

25 **Candleholders identified with this symbol:**



27 **Displayed on the product, are the ones for**  
28 **which this warning is given.**

(ii) A point of sale warning provided pursuant to subsection 2.2(b)(i) shall be prominently placed with such conspicuousness as 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 prior to purchase and shall be placed or written in a manner such that the consumer understands to which *specific* Products the warnings apply, so as to minimize if not

1 eliminate the chances that an overwarning situation will arise. Any changes to the language or  
2 format of the warning required for Products by this subsection shall only be made following:  
3 (1) approval of Plaintiff; (2) approval from the California Attorney General's Office, provided that  
4 written notice of at least fifteen (15) days is given to Plaintiff for the opportunity to comment; or  
5 (3) Court approval.

6 (c) **Internet Sales:** For sales of Products made to California residents through  
7 internet websites, The TJX Entities shall execute their warning obligations by providing a  
8 Warning Message, as defined below, with a font size equal to or greater than the font size used  
9 for any description or price of the Product, whichever is greater, on their websites in the manner  
10 specified below. For purposes of this subsection 2.2(c), the term "Warning Message" means any  
11 of the alternative warning statements set out in subsection 2.2(a) above, which apply to the type  
12 of product for which the warning applies, and referencing the *specific* Product or Products which  
13 are subject of the warning.

14 The Warning Message or a link to a page containing the Warning Message shall be  
15 displayed either (1) on the same page on which the Product is displayed, (2) on the same page as  
16 any order form for the Product, (3) on the same page as the price for the Product, or (4) on one or  
17 more pages displayed to the purchaser over the internet or via electronic mail during the checkout  
18 and the order confirmation process for sale of the Product, but prior to the purchase of the  
19 Product. If a link is used, it shall state "Warning information for California residents" and shall  
20 be of equal size to the other links on the page.

21 2.3 **REFORMULATION STANDARDS:** Products satisfying the conditions of  
22 section 2.3(a) and 2.3(b) are referred to as "Reformulated Products" and are defined as follows:

23 (a) **Reformulation Standards for Glass Beverageware Products Intended  
24 for the Storage or Consumption of Food or Beverages**

25 (i) If the colored artwork, designs or markings on the exterior surface  
26 of the Product do not extend into the top 20 millimeters of the beverageware (*i.e.*, only appear  
27 below the exterior portion of the lip and rim area as defined by American Society of Testing and  
28 Materials Standard Test Method C 927-99, hereinafter the "Lip and Rim Area"), produce a test



1 result no higher than 1.0 micrograms (ug) of lead and 8.0 micrograms (ug) of cadmium using a  
2 Ghost Wipe™ test applied to all of the decorated portions of the exterior surface of the Product  
3 performed as outlined in NIOSH method no. 9100:

4 (ii) If the external decorations on the Product do not extend into the top  
5 20 millimeters of the beverage ware and the Product utilizes paints for all colored artwork, designs  
6 or markings containing six one-hundredths of one percent (0.06%) lead and forty-eight one  
7 hundredths of one percent (0.48%) cadmium or less by weight as measured at the option of The  
8 TJX Entities or the manufacturer or distributor of the Product, either before or after the material is  
9 fired onto (or otherwise affixed to) the Product, using a sample size of the materials in question  
10 measuring approximately 50-100 mg and a test method of sufficient sensitivity to establish a limit  
11 of quantitation (as distinguished from detection) of less than 600 parts per million (“ppm”);<sup>3</sup> or

12 (iii) If the Product has colored artwork, designs or markings on the  
13 exterior surface within the Lip and Rim area, it must utilize paints containing “no detectable lead  
14 or cadmium” for all colored artwork, designs or markings within the Lip and Rim area. For  
15 purposed of this subsection, “no detectable lead or cadmium” shall mean that neither lead nor  
16 cadmium is detected at a level above two one-hundredths of one percent (0.02%) for lead or eight  
17 one-hundredths of one percent (0.08%) for cadmium by weight, respectively as measured at the  
18 option of The TJX Entities or the manufacturer or distributor of the Product, either before or after  
19 the material is fired onto (or otherwise affixed to) the Product, using a sample size of the  
20 materials in question measuring approximately 50-100 mg and a test method of sufficient  
21 sensitivity to establish a limit of quantitation (as distinguished from detection) of less than  
22 600 parts per million (“ppm”)<sup>4</sup>

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26 <sup>3</sup> If the decorating material is tested after it is affixed to the Product, the percentage of the Listed Chemical  
27 by weight must relate only to the other portions of the decorating material and not include any calculation of non-  
decorating material.

28 <sup>4</sup> See footnote 3 above.

1                   (b)     **Reformulation Standards for Candleholder Products**

2                   (i)     Any Product containing one tenth of one percent (0.1%) lead or less  
3 by weight in each material used in the Products, (e.g., solder or came); or

4                   (ii)    Any Product that produces a test result no higher than  
5 5.0 micrograms (“ug”) of lead using a Ghost Wipe™ test applied to all portions of the exterior  
6 surface (including the metal portions) of the Product performed as outlined in NIOSH Method  
7 No. 9100.

8           2.4     **REFORMULATION COMMITMENT.** By entering into this Stipulation and  
9 Consent Judgment, the TJX Entities hereby commit that they will only sell Reformulated  
10 Products in California after January 1, 2007.

11     **3.     MONETARY PAYMENTS.**

12           3.1     **Penalties Pursuant to Health & Safety Code § 25249.7(b).** Pursuant to  
13 Health & Safety Code Section 25249.7(b), the TJX Entities shall pay \$50,000 in civil penalties in  
14 two installments pursuant to this section an section 3.2. The first penalty payment of \$20,000  
15 shall be made payable to “Chanler Law Group in Trust For Whitney R. Leeman” and shall be  
16 delivered to Plaintiff’s counsel on or before September 15, 2005, at the following address:

17  
18                                   CHANLER LAW GROUP  
19                                   Attn: Clifford A. Chanler  
20                                   71 Elm Street, Suite 8  
21                                   New Canaan, CT 06840

22           In the event that The TJX Entities pay any penalty and the Consent Judgment is not  
23 thereafter approved and entered by the Court, Dr. Leeman shall return any penalty funds paid  
24 under this agreement within fifteen (15) days of receipt of a written request from The TJX  
25 Entities following notice of the issuance of the Court’s decision.

26           (a)     The Parties agree that The TJX Entities’ potential interest in and ability to  
27 acquire and market Reformulated Products is to be accounted for in this section and, since it is  
28 not a remedy provided for by law, the absence of The TJX Entities previously acquiring,

1 marketing or selling Reformulated Products is not relevant to the establishment of a penalty  
2 amount pursuant to section 3.1 above.

3 (b) **Apportionment of Penalties Received.** After Court approval of this  
4 Consent Judgment pursuant to section 6, all penalty monies received shall be apportioned by  
5 Plaintiff in accordance with Health & Safety Code § 25192, with 75% of these funds remitted to  
6 the State of California's Office of Environmental Health Hazard Assessment and the remaining  
7 25% of these penalty monies retained by Plaintiff as provided by Health & Safety Code  
8 § 25249.12(d). Plaintiff shall bear all responsibility for apportioning and paying to the State of  
9 California the appropriate civil penalties paid in accordance with this section.

10 3.2 **Second Penalty Payment.** If The TJX Entities do not commit, by means of  
11 sending Plaintiff written notice in the manner specified in Section 12, on or before June 30, 2007,  
12 that beginning on or before January 1, 2007, they have purchased (and will continue to purchase)  
13 for sale in California only Reformulated Products, The TJX Entities shall, on July 31, 2007,  
14 tender to Plaintiff the second installment of \$30,000 in civil penalties. Any such payment shall be  
15 made payable to "Chanler Law Group in Trust for Whitney Leeman."

#### 16 **4. REIMBURSEMENT OF FEES AND COSTS**

17 4.1 The Parties acknowledge that Plaintiff and her counsel offered to resolve this  
18 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby  
19 leaving this fee issue to be resolved after the material terms of the agreement had been settled.  
20 The TJX Entities then expressed a desire to resolve the fee and cost issue shortly after the other  
21 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on  
22 the compensation due to Plaintiff and her counsel under the private attorney general doctrine  
23 codified at Code of Civil Procedure §1021.5 for all work performed through the Effective Date of  
24 the Agreement. Under the private attorney general doctrine, The TJX Entities shall reimburse  
25 Plaintiff and her counsel for fees and costs, incurred as a result of investigating, bringing this  
26 matter (as well as any other matters reasonably related to the sale of The TJX Entities' Products  
27 allegedly sold in violation of Proposition 65) to The TJX Entities' attention, litigating and  
28 negotiating a settlement in the public interest. The TJX Entities shall pay Plaintiff and her

1 counsel \$70,000 for all attorneys' fees, expert and investigation fees and litigation costs related to  
2 the various claims made against The TJX Entities. The payment shall be made payable to the  
3 "Chanler Law Group" and shall be delivered to Plaintiff's counsel on or before September 15,  
4 2005, at the following address:

5  
6 CHANLER LAW GROUP  
7 Attn: Clifford A. Chanler  
8 71 Elm Street, Suite 8  
9 New Canaan, CT 06840

10 4.2 Except as specifically provided in this Consent Judgment, The TJX Entities shall  
11 have no further obligation with regard to reimbursement of Plaintiff's attorney's fees and costs  
12 with regard to the Products covered in this Action.

## 13 5. RELEASE OF ALL CLAIMS

14 5.1 **Plaintiff's Release of The TJX Entities.** In further consideration of the promises  
15 and agreements herein contained, and for the payments to be made pursuant to sections 3 and 4,  
16 Plaintiff, on behalf of herself, her past and current agents, representatives, attorneys, successors  
17 and/or assignees, and in the interest of the general public, hereby waives all rights to institute or  
18 participate in, directly or indirectly, any form of legal action and release all claims, including,  
19 without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands,  
20 obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to,  
21 investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or  
22 unknown, fixed or contingent (collectively "Claims"), against The TJX Entities and each of its  
23 licensors, licensees, auctioneers, retailers, dealers, customers, owners, purchasers, users, parent  
24 companies, corporate affiliates, subsidiaries and their respective officers, directors, attorneys,  
25 representatives, shareholders, agents, and employees (collectively, "The TJX Entities'  
26 Releasees") arising under Proposition 65, related to The TJX Entities' or The TJX Entities'  
27 Releasees' alleged failure to warn about exposures to or identification of Listed Chemicals  
28 contained in the Products.

1           The Parties further agree and acknowledge that this Consent Judgment is a full, final, and  
2 binding resolution of any violation of Proposition 65 that have been or could have been asserted  
3 in the Complaints against The TJX Entities for their alleged failure to provide clear and  
4 reasonable warnings of exposure to or identification of Listed Chemicals in the Products.

5           In addition, Plaintiff, on behalf of herself, her attorneys, and their agents, waive all rights  
6 to institute or participate in, directly or indirectly, any form of legal action and releases all Claims  
7 against the The TJX Entities' Releasees arising under Proposition 65 related to each of the The  
8 TJX Entities' Releasees' alleged failures to warn about exposures to or identification of Listed  
9 Chemicals contained in the Products and for all actions or statements made by The TJX Entities  
10 or their attorneys or representatives, in the course of responding to alleged violations of  
11 Proposition 65 by The TJX Entities. Provided however, Plaintiff shall remain free to institute any  
12 form of legal action to enforce the provisions of this Consent Judgment.

13           It is specifically understood and agreed that the Parties intend that The TJX Entities'  
14 compliance with the terms of this Consent Judgment resolves all issues and liability, now and in  
15 the future (so long as The TJX Entities comply with the terms of the Consent Judgment)  
16 concerning The TJX Entities and The TJX Entities' Releasees' compliance with the requirements  
17 of Proposition 65, as to the Listed Chemicals in the Products.

18           This release expressly excludes any entity that manufactured or supplied any of the  
19 Products to The TJX Entities, except to the extent that the Products were supplied by The TJX  
20 Entities to an entity that is a TJX Entities' Releasee.

21           **5.2 The TJX Entities' Release of Plaintiff.** The TJX Entities and The TJX Entities'  
22 Releasees waive all rights to institute any form of legal action against Plaintiff, or her attorneys or  
23 representatives, for all actions taken or statements made by Plaintiff and her attorneys or  
24 representatives, in the course of seeking enforcement of Proposition 65 in this Action.

## 25   **6. COURT APPROVAL**

26           This Consent Judgment is not effective until it is approved and entered by the Court and  
27 shall be null and void if, for any reason, it is not approved and entered by the Court within one  
28 year after it has been fully executed by all Parties, in which event any monies that have been

1 provided to Plaintiff or her counsel pursuant to section 3 and/or section 4 above, shall be refunded  
2 within fifteen (15) days.

3 **7. THE TJX ENTITIES SALES DATA**

4 The TJX Entities understand that the sales data provided to counsel for Dr. Leeman by  
5 The TJX Entities was a material factor upon which Dr. Leeman has relied to determine the  
6 amount of payments made pursuant to Health & Safety Code §25249.7(b) in this Agreement. To  
7 the best of The TJX Entities' knowledge, the sales data provided is full, complete, true and  
8 accurate. In the event that Dr. Leeman discovers facts that demonstrate to a reasonable degree of  
9 certainty that the sales data is materially inaccurate, the parties shall meet in a good faith attempt  
10 to resolve the matter within ten (10) days of The TJX Entities' receipt of notice from Dr. Leeman  
11 of her intent to challenge the accuracy of the sales data. If this good faith attempt fails to resolve  
12 Dr. Leeman's concerns, Dr. Leeman shall have the right to re-institute an enforcement action  
13 against The TJX Entities, for the sales of those additional Products, based upon any existing 60-  
14 Day Notices of violation served on The TJX Entities. In such case, all applicable statutes of  
15 limitation shall be deemed tolled for the period between the date Dr. Leeman filed the instant  
16 action and the date Dr. Leeman notifies The TJX Entities that she is re-instituting the action for  
17 the additional Products. Provided, however, that The TJX Entities shall have no additional  
18 liability, and Dr. Leeman waives any claims that might otherwise be asserted, from the Effective  
19 Date until the date that Dr. Leeman provides notice under this Paragraph 7, so long as The TJX  
20 Entities have complied with the requirements of Paragraph 2 for all of the Products, including  
21 those numbers of Products additionally discovered.

22 **8. SEVERABILITY**

23 If, subsequent to court approval of this Consent Judgment, any of the provisions of this  
24 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable  
25 provisions remaining shall not be adversely affected.

26 **9. ATTORNEYS' FEES**

27 In the event that a dispute arises with respect to any provision(s) of this Consent  
28 Judgment, the prevailing party shall, except as otherwise provided herein, be entitled to recover

1 reasonable and necessary costs and reasonable attorneys' fees incurred from the resolution of  
2 such dispute.

3 **10. ENFORCEMENT OF CONSENT JUDGMENT WITH REGARD TO RETAIL**  
4 **STORES IN CALIFORNIA**

5 10.1 Before moving to enforce the terms and conditions of Section 2 of this Consent  
6 Judgment against The TJX Entities with respect to an alleged violation occurring at a retail store  
7 located in California, Plaintiff and others must follow the procedures set forth in subsections 10.2  
8 through 10.4.

9 10.2 In the event that Plaintiff and/or her attorneys, agents, assigns, or any other person  
10 acting in the public interest under Health & Safety Code §25249.7(d), (hereinafter "Notifying  
11 Person") identifies one or more retail stores in California owned or operated by The TJX Entities  
12 at which Products are sold (hereinafter "retail outlet") for which the warnings required under  
13 subsections 2.2(a) or 2.2(b) of this Consent Judgment are not being given, such Notifying Person  
14 shall notify The TJX Entities, in writing of such alleged failure to warn (the "Notice of Breach").  
15 The Notice of Breach shall be sent by first class mail, with proof of service, to the person(s)  
16 identified in Section 12 of this agreement, and must be served within sixty (60) days of the date  
17 the alleged violation was observed. The Notice of Breach shall identify the date the alleged  
18 violation was observed and the retail outlet in question, and reasonably describe the nature of the  
19 alleged violation with sufficient detail to allow The TJX Entities to determine the basis of the  
20 claim being asserted and to identify the Products to which those assertions apply.

21 10.3 In the event that the Notifying Person identifies a specific retail outlet, other than  
22 the specific one identified in subsection 10.2 of this Consent Judgment, not giving warnings for  
23 Products as required under subsections 2.2(a) or 2.2(b) of this Consent Judgment, such Notifying  
24 Person shall serve The TJX Entities with another Notice of Breach in the manner described in  
25 subsection 10.2 and provide the information required in subsection 10.2.

26 10.4 The Notifying Person shall take no further action against The TJX Entities unless  
27 the Notifying Person discovers, at least thirty (30) days after service of the Notice(s) of Breach  
28

1 served pursuant to subsections 10.2 and 10.3, another failure to warn for any Product at the same  
2 retail outlet(s) identified in the Notice(s) of Breach served pursuant to subsections 10.2 and 10.3.

3 **11. GOVERNING LAW**

4 The terms of this Consent Judgment shall be governed by the laws of the State of  
5 California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by  
6 reason of law generally, or as to the Products specifically, then The TJX Entities shall have no  
7 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, those  
8 Products are so affected.

9 **12. NOTICES**

10 All correspondence and notices required to be provided pursuant to this Consent Judgment  
11 shall be in writing and personally delivered or sent by: (1) first-class, registered, certified mail,  
12 return receipt requested or (ii) overnight courier on either Party by the other at the following  
13 addresses. (Either Party, from time to time, may, pursuant to the methods prescribed above,  
14 specify a change of address to which all future notices and other communications shall be sent.)

15 To The TJX Entities:

16 Ann McCauley  
17 Senior Vice President  
18 TJX Companies  
19 770 Cochituate Road  
20 Framingham, MA 01701

21 With a copy to:

22 Patrick J. Cafferty, Jr.  
23 Munger, Tolles & Olson LLP  
24 560 Mission Street  
25 Twenty-Seventh Floor  
26 San Francisco, CA 94105-2907

27 To Plaintiff:

28 Clifford A. Chanler.  
Chanler Law Group  
71 Elm Street, Suite 8  
New Canaan, CT 06840



1 **13. NO ADMISSIONS**

2 Nothing in this Consent Judgment shall constitute or be construed as an admission by The  
3 TJX Entities of any fact, finding, conclusion, issue of law, or violation of law, nor shall  
4 compliance with this Consent Judgment constitute or be construed as an admission by The TJX  
5 Entities of any fact, finding, conclusion, issue of issue of law, or violation of law, such being  
6 specifically denied by The TJX Entities. The TJX Entities reserve all of their rights and defenses  
7 with regard to any claim by any party under Proposition 65 or otherwise. However, this section  
8 shall not diminish or otherwise affect The TJX Entities' obligations, responsibilities and duties  
9 under this Consent Judgment.

10 **14. COUNTERPARTS; FACSIMILE SIGNATURES**

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

14 **15. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

15 Plaintiff agrees to comply with the reporting form requirements referenced in Health &  
16 Safety Code § 25249.7(f). Pursuant to regulations promulgated under that section, Plaintiff shall  
17 present this Consent Judgment to the California Attorney General's Office within five (5) days  
18 after receiving all of the necessary signatures. A noticed motion to enter the Consent Judgment  
19 will then be served on the Attorney General's Office at least forty-five (45) days prior to the date  
20 a hearing is scheduled on such motion in the Superior Court for the City and County of San  
21 Francisco unless the Court allows a shorter period of time.

22 **16. ADDITIONAL POST EXECUTION ACTIVITIES**

23 The Parties shall mutually employ their best efforts to support the entry of this Agreement  
24 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely  
25 manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed  
26 motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the  
27 Plaintiff agrees to file a Motion to Approve the Agreement ("Motion"), which Plaintiff's counsel  
28 shall prepare, within a reasonable period of time after the Execution Date. The TJX Entities shall

1 have no additional responsibility to Plaintiff's counsel pursuant to C.C.P. §1021.5 or otherwise  
2 with regard to reimbursement of any fees and costs incurred with respect to the preparation and  
3 filing of the Motion or with regard to Plaintiff's counsel appearing for a hearing or related  
4 proceedings thereon.

5 **17. MODIFICATION**

6 This Consent Judgment may be modified only by: (1) written agreement of the Parties  
7 and upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of any Party  
8 as provided by law and upon entry of a modified Consent Judgment by the Court. The Attorney  
9 General shall be served with notice of any proposed modification to this Consent Judgment at  
10 least fifteen (15) days in advance of its consideration by the Court.

11 **18. DISMISSAL OF THE TJX COMPANIES, INC.**

12 After notice of entry of the Consent Judgment and after receipt of the monetary payments  
13 required by Sections 3 and 4, the Plaintiff shall dismiss The TJX Companies, Inc., without  
14 prejudice and Plaintiff shall provide to counsel for The TJX Entities the executed dismissal  
15 without prejudice of all claims in the consolidated action against The TJX Companies, Inc.

16 **19. AUTHORIZATION**

17 The undersigned are authorized to execute this Consent Judgment on behalf of their  
18 respective Parties and have read, understood and agree to all of the terms and conditions of this  
19 Consent Judgment.

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AGREED TO:

AGREED TO:

Date:

Date:

By: \_\_\_\_\_  
Plaintiff Whitney R. Leeman

By: \_\_\_\_\_  
Ann McCauley, Secretary  
Defendants MARSHALLS OF MA, INC.,  
HOMEGOODS, INC., AND TJ MAXX OF  
CA, LLC

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date:

Date:

CHANLER LAW GROUP

MUNGER, TOLLES & OLSON LLP

By: \_\_\_\_\_  
Daniel Bornstein  
Attorneys for Plaintiff  
WHITNEY R. LEEMAN

By: \_\_\_\_\_  
Patrick J. Cafferty, Jr.  
Attorney for Defendants  
MARSHALLS OF MA, INC.,  
HOMEGOODS, INC., AND TJ MAXX OF  
CA, LLC

**IT IS SO ORDERED.**

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

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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## EXHIBIT A

All glass beverageware items with colored designs and/or artwork on the exterior including, but not limited to:

4 Double Old Fashioned Glasses (#T1280-002521260).

and

All glass and metal candleholders including, but not limited to:

Candleholders (#T1282 008468044).

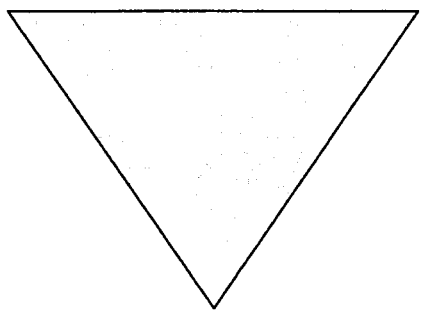
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**EXHIBIT B**  
(Alternate Point-of-Sale Warning for Glass Beverageware Products)

**PROP 65**  
**WARNING**

**Use of certain glassware products with colored decorations on the exterior for sale in this store will expose you to lead and cadmium, chemicals known to the State of California to cause birth defects or other reproductive harm.**

**Products identified with this symbol:**



**displayed on the product,  
are the ones for which this warning is given.**

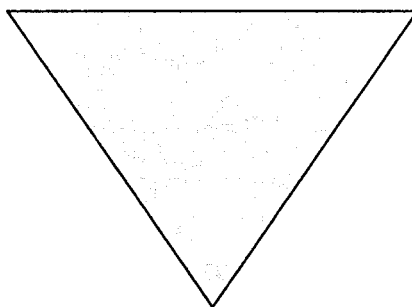
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EXHIBIT C  
(Combined Warning for Glass Beverageware and Tableware)

**PROP 65  
WARNING**

**Use of certain glassware products with colored decorations on the exterior and use of certain tableware for sale in this store will expose you to lead and/or cadmium, chemicals known to the State of California to cause birth defects or other reproductive harm.**

**Products identified with this symbol:**



**displayed on the product,  
are the ones for which this warning is given.**

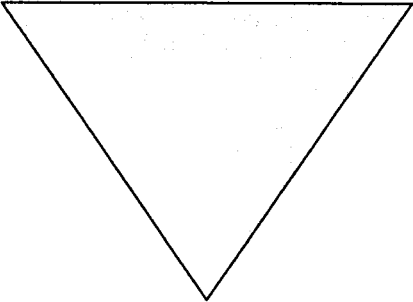
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**EXHIBIT D**  
(Alternate Point-of-Sale Warning for Candleholder Products)

**PROP 65**  
**WARNING**

**Use of certain candleholders for sale in this store will expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm.**

**Candleholders identified with this symbol:**



**displayed on the product, are the ones for which this warning is given.**

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AGREED TO:

AGREED TO:

Date:

Date:

By: \_\_\_\_\_  
Plaintiff Whitney R. Leeman

By: Ann McCauley  
Ann McCauley, Secretary  
Defendants MARSHALLS OF MA, INC.,  
HOMEGOODS, INC., AND T.J. MAXX OF  
CA, LLC

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date:

Date:

CHANLER LAW GROUP

MUNGER, TOLLES & OLSON LLP

By: \_\_\_\_\_  
Daniel Bornstein  
Attorneys for Plaintiff  
WHITNEY R. LEEMAN

By: \_\_\_\_\_  
Patrick J. Cafferty, Jr.  
Attorney for Defendants  
MARSHALLS OF MA, INC.,  
HOMEGOODS, INC., AND TJ MAXX OF  
CA, LLC

**IT IS SO ORDERED.**

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

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT



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AGREED TO:

Date: 9/17/05

By: Whitney Leeman  
Plaintiff Whitney R. Leeman

APPROVED AS TO FORM:

Date:

CHANLER LAW GROUP

By: \_\_\_\_\_  
Daniel Bornstein  
Attorneys for Plaintiff  
WHITNEY R. LEEMAN

**IT IS SO ORDERED.**

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

AGREED TO:

Date:

By: \_\_\_\_\_  
Ann McCauley, Secretary  
Defendants MARSHALLS OF MA, INC.,  
HOMEGOODS, INC., AND TJ MAXX OF  
CA, LLC

APPROVED AS TO FORM:

Date:

MUNGER, TOLLES & OLSON LLP

By: \_\_\_\_\_  
Patrick J. Cafferty, Jr.  
Attorney for Defendants  
MARSHALLS OF MA, INC.,  
HOMEGOODS, INC., AND TJ MAXX OF  
CA, LLC

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

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AGREED TO:

AGREED TO:

Date:

Date:

By: \_\_\_\_\_  
Plaintiff Whitney R. Leeman

By: \_\_\_\_\_  
Ann McCauley, Secretary  
Defendants MARSHALLS OF MA, INC.,  
HOMEGOODS, INC., AND TJ MAXX OF  
CA, LLC

APPROVED AS TO FORM:

APPROVED AS TO FORM:

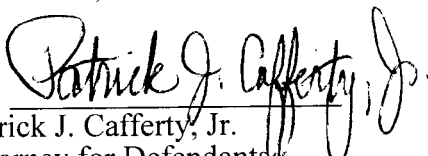
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Date: 9/13/05

CHANLER LAW GROUP

MUNGER, TOLLES & OLSON LLP

By: \_\_\_\_\_  
Daniel Bornstein  
Attorneys for Plaintiff  
WHITNEY R. LEEMAN

By:   
Patrick J. Cafferty, Jr.  
Attorney for Defendants  
MARSHALLS OF MA, INC.,  
HOMEGOODS, INC., AND TJ MAXX OF  
CA, LLC

**IT IS SO ORDERED.**

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

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT