

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dr. Whitney R. Leeman (“Leeman”) and The TJX Companies, Inc. (“TJX”), with Leeman and TJX collectively referred to as the “Parties.” Leeman is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. TJX employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations

Leeman alleges that TJX imports, sells, and/or offers for sale cases for electronics with vinyl/PVC zipper pulls containing di(2-ethylhexyl)phthalate (“DEHP”) in the State of California without the requisite Proposition 65 health hazard warning. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

1.3 Product Description

The products that are covered by this Settlement Agreement are cases for electronics with vinyl/PVC zipper pulls that were distributed by Flash Ventures, Inc. (“Flash Ventures”) to TJX including, but not limited to, the *Tribecca Netbook Sleeve*, *San Francisco Giants*, *FVA4537*, *UPC #8 45933 04537 3*, that were sold and/or offered for sale in California by TJX, hereinafter referred to as the “Products.”

1.4 Notice of Violation

On or about July 30, 2014, Leeman served Flash Ventures, TJX, and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”),

alleging that Flash Ventures and TJX were in violation of Proposition 65 for failing to warn customers and consumers in the State of California that the Products exposed users to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 No Admission

TJX denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, imported, distributed, sold and/or offered for sale in the State of 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 of law, 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 of law, 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 May 15, 2015.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Reformulation Commitment

TJX represents that as of the Effective Date, it has ceased purchasing or selling any Products. Commencing on the Effective Date and continuing into the future, TJX shall not sell and/or offer for sale in the State of California any Products distributed to TJX by Flash Ventures unless the Products are Reformulated Products. For purposes of this Settlement Agreement, "Reformulated Products" shall mean Products containing less than or equal to 1,000 parts per million (0.1%) DEHP in each Accessible Component when analyzed pursuant to EPA testing methodologies 3580A and 8270C. For purposes of this Settlement Agreement, "Accessible

Component” shall mean a component of a Product that can be touched by a person during normal, intended and foreseeable use of the Product.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, TJX shall pay a total of \$1,600 in civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Leeman. Leeman’s counsel shall be responsible for remitting TJX’s penalty payment under this Settlement Agreement to OEHHA. Payment shall be made within seven days of TJX’s receipt of both: (i) a counterpart of this Settlement Agreement executed by Leeman and (ii) an IRS Form W-9 completed by Leeman, via wired US funds pursuant to wire instructions to be provided by Leeman contemporaneously with, or prior to, her delivery of said executed counterpart of this Settlement Agreement.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that Leeman and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. TJX then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Leeman and her counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement. TJX shall pay \$16,000 for fees and costs incurred as a result of investigating, bringing this matter to TJX’s attention, and negotiating a settlement in the public interest. Payment shall be made within seven days of TJX’s receipt of both: (i) a counterpart of this Settlement Agreement executed by Leeman and (ii) an IRS Form

W-9 completed by The Chanler Group, via wired US funds pursuant to wire instructions to be provided by Leeman contemporaneously with, or prior to, her delivery of said executed counterpart of this Settlement Agreement.

5. RELEASES

5.1 Leeman's Release of TJX

This Settlement Agreement is a full, final and binding resolution between Leeman, in her individual capacity only and not on behalf of the public, and TJX, of any violation of Proposition 65 that was or could have been asserted by Leeman on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees, against TJX, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom TJX directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on their failure to warn about alleged exposures to DEHP contained in the Products that were distributed by Flash Ventures to TJX and sold and/or offered for sale by TJX or Releasees in the State of California before the Effective Date.

In further consideration of the promises and agreements herein contained, Leeman, in her individual capacity only, on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all her rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that she may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses -- including, but not limited to, investigation fees, expert fees, and attorneys' fees, but exclusive of fees and costs on appeal -- limited to and arising under Proposition 65 with respect to DEHP in the Products distributed by Flash Ventures to TJX and sold and/or offered for sale by TJX or Releasees in California before the Effective Date, against TJX and Releasees.

5.2 TJX's Release of Leeman

TJX, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Leeman and her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Leeman and her attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

6. SEVERABILITY

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

7. 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.

8. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) overnight courier on any party by the other party at the following addresses:

To TJX:

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

To Leeman:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

With copy to:

Jeffrey Margulies, Esq.
Norton Rose Fulbright US LLP
555 South Flower Street, Forty-First Floor
Los Angeles, CA 90071

Any party may, from time to time, 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

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.

10. POST-EXECUTION ACTIVITIES

Leeman agrees to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7, subdivision (f).

11. MODIFICATION


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

12. AUTHORIZATION

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

AGREED TO:


Date: June 16, 2015

By: 
Dr. Whitney K. Leeman

AGREED TO:

THE TJX COMPANIES, INC.

Date: 6/25/15

By: 
Colleen Dunham Henschke,
Vice President, Legal—Litigation &
Regulatory Affairs