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THE TJX COMPANIES, INC.

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 COUNTY OF MARIN
16 UNLIMITED CIVIL JURISDICTION
17

18 JOHN MOORE,

19 Plaintiff,

20 v.

21 LEON MAX, INC.; THE TJX COMPANIES,
22 INC.; HOMEGOODS, INC.; and DOES 1-
150, inclusive,

23 Defendants.
24

Case No. CIV1803859

CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff John Moore (Moore) and
4 defendant The TJX Companies, Inc. (TJX), with Moore and TJX each referred to individually as a
5 “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Moore is a resident of the State of California who seeks to promote awareness of exposures
8 to toxic chemicals, and to improve human health by reducing or eliminating harmful substances
9 contained in consumer products.

10 **1.3 Defendant**

11 TJX employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
13 Safety Code § 25249.5 *et seq.* (Proposition 65).

14 **1.4 General Allegations**

15 Moore alleges that TJX manufactures, imports, distributes, sells and/or offers for sale in
16 California vinyl jewelry boxes containing di(2-ethylhexyl)phthalate (DEHP), and that it does so
17 without providing the health hazard warning that Moore alleges is required by Proposition 65.
18 DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause
19 birth defects and other reproductive harm.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are limited to the *Max Studio Home*
22 *Jewelry Box, STYLE 144737*, manufactured, imported, distributed, sold and/or offered for sale by
23 TJX and sold and/or offered for sale in the State of California, hereinafter the “Products.”

24 **1.6 Notice of Violation**

25 On May 31, 2018, Moore served TJX, Leon Max, Inc., Homegoods, Inc. and the requisite
26 public enforcement agencies with a 60-Day Notice of Violation (Notice), alleging that TJX, Leon
27 Max, Inc., and Homegoods, Inc. violated Proposition 65 when it failed to warn its customers and
28 consumers in California that the Products expose users to DEHP. To the best of the Parties’

1 knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the
2 allegations set forth in the Notice.

3 **1.7 Complaint**

4 On October 26, 2018, Moore commenced the instant action (Complaint), naming TJX, Leon
5 Max, Inc., and Homegoods, Inc. as defendants for the alleged violations of Proposition 65 that are
6 the subject of the Notice. Moore agrees that within fifteen (15) days of the Effective Date or his
7 counsel's receipt of the settlement payments required by Section 3, whichever is later, he will file a
8 request for dismissal without prejudice as to defendants Leon Max, Inc., and Homegoods, Inc.

9 **1.8 No Admission**

10 TJX denies the material, factual and legal allegations contained in the Notice and Complaint,
11 and maintains that all of the products that it has sold or distributed for sale in California, including
12 the Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment
13 shall be construed as, nor shall compliance with this Consent Judgment constitute or be construed as,
14 an admission by TJX of any fact, finding, conclusion of law, issue of law, or violation of law. This
15 section shall not, however, diminish or otherwise affect TJX's obligations, responsibilities, and
16 duties under this Consent Judgment.

17 **1.9 Jurisdiction**

18 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
19 jurisdiction over TJX as to the allegations contained in the Complaint, that venue is proper in the
20 County of Marin, and that the Court has jurisdiction to enter and enforce the provisions of this
21 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this
24 Consent Judgment is approved by the Court.

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1 **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

2 **2.1 Commitment to Reformulate or Provide Warnings**

3 Commencing on the Effective Date and continuing thereafter, TJX shall only manufacture
4 for sale, import for sale, and purchase for resale in California Products that are Reformulated
5 Products as defined by Section 2.2 or that are labeled with a clear and reasonable warning as set
6 forth in Section 2.3. If, after the Effective Date, TJX sells Products that are not Reformulated
7 Products via mail order catalog and/or the internet to customers located in California, TJX shall also
8 provide warnings for such Products by identifying the specific Product to which the warning applies
9 as specified in Sections 2.4 through 2.6.

10 **2.2 Reformulation Standard**

11 “Reformulated Products” are Products containing DEHP, butyl benzyl phthalate (“BBP”), di-
12 n-butyl (“DBP”), di-isodecyl phthalate (“DIDP”), diisononyl phthalate (“DINP”), and di-n-hexyl
13 phthalate (“DnHP”) each in concentrations of less than 0.1 percent (1,000 parts per million) in each
14 accessible component when analyzed by a laboratory accredited by the State of California, a federal
15 agency, or a nationally recognized accrediting organization. For purposes of compliance with this
16 reformulation standard, testing samples shall be prepared and extracted using Consumer Product
17 Safety Commission (CPSC) methodology CPSC-CH-C1001.09.3 and analyzed using U.S.
18 Environmental Protection Agency (EPA) methodology 8270D, or other methodologies utilized by
19 federal or state government agencies to determine phthalate content in a solid substance.

20 **2.3 Clear and Reasonable Warnings**

21 Commencing on or before the Effective Date, TJX shall provide clear and reasonable
22 warnings for all Products that are not Reformulated Products provided for sale to customers in
23 California in accordance with this Section pursuant to Title 27, California Code of Regulations,
24 § 25600, *et seq.* Each warning shall be prominently placed with such conspicuousness as compared
25 with other words, statements, designs, or devices as to render it likely to be read and understood by
26 an ordinary individual under customary conditions before purchase or use and shall be provided in a
27 manner such that it is clearly associated with the specific Product to which the warning applies.

28 The warning shall consist of the one of the following statements:

1 (a) **Warning.**

2 **⚠ WARNING:** This product can expose you to Di(2-
3 ethylhexyl)phthalate (DEHP), which is known to the
4 State of California to cause birth defects or other
5 reproductive harm. For more information go to
6 www.P65Warnings.ca.gov.

7 Or

8 (b) **Short-Form Warning.**

9 **⚠ WARNING:** Reproductive Harm – www.P65Warnings.ca.gov.

10 (c) **Foreign Language Requirement.** Where a consumer product sign, label or

11 shelf tag used to provide a warning includes consumer information in a language other than English,
12 the warning must also be provided in that language in addition to English.

13 **2.4 Product Warnings**

14 TJX shall affix a warning to the Product label or otherwise directly on each Product provided
15 for sale in retail outlets in California or sold via mail order catalog and/or the internet to customers
16 located in California. For the purpose of this agreement, "Product label" means a display of written,
17 printed or graphic material that is printed on or affixed to a Product or its immediate container or
18 wrapper. The entire warning shall appear in a type size of at least 6-point type and no smaller than
19 the largest type size used for other consumer information on the product. The warning shall consist
20 of either the Warning, or the Short-Form Warning described in subsection 2.3(a) or (b), respectively.

21 **2.5 Mail Order Catalog Warnings**

22 In the event that, after the Effective Date, TJX prints new catalogs and sells Products via mail
23 order through such catalogs to customers located in California, TJX shall provide a warning for each
24 Product both on the Product label in accordance with Section 2.4, and in the catalog in a manner that
25 clearly associates the warning with the specific Product being purchased. Any warning provided in a
26 mail order catalog shall be in the same type size or larger than other consumer information provided
27 for the Product within the catalog and shall be provided on the same page and in the same location as
28 the display and/or description of the Product. The catalog warning may use the Short-Form Warning

1 content described in Section 2.3(b) if the warning provided on the Product label also uses the Short-
2 Form Warning content.

3 **2.6 Internet Warnings**

4 If, after the Effective Date, TJX sells Products via the internet to customers located in
5 California, TJX shall provide warnings for each Product both on the Product label in accordance
6 with Section 2.4, and by prominently displaying the warning to the customer prior to completing the
7 purchase or during the purchase of the Products without requiring customers to seek out the warning.
8 The warning or a clearly marked hyperlink to the warning using the word “**WARNING**” given in
9 conjunction with the sale of the Products via the internet shall appear either: (a) on the same web
10 page on which the Product is displayed; (b) on the same web page as the order form for the Product;
11 or (c) on one or more web pages displayed to a purchaser during the checkout process. The warning
12 shall appear in any of the above instances adjacent to or immediately following the display or
13 description of the Product for which it is given in the same type size or larger than the Product
14 description text. The internet warning may use the Short-Form Warning content described in
15 Section 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning
16 content.

17 **3. MONETARY SETTLEMENT TERMS**

18 **3.1 Civil Penalty Payments**

19 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims referred to
20 in the Notice, Complaint, and this Consent Judgment, TJX agrees to pay \$2,500 in civil penalties.
21 TJX’s civil penalty payment will be allocated according to Health and Safety Code § 25249.12(c)(1)
22 and (d), with seventy-five percent (75%) of the penalty paid to the California Office of
23 Environmental Health Hazard Assessment (OEHHA), and the remaining twenty-five percent (25%)
24 of the penalty payment retained by Moore. TJX shall issue its payment in two checks made payable
25 to (a) “OEHHA” in the amount of \$1,875; and (b) “John Moore, Client Trust Account” in the
26 amount of \$625. Moore’s counsel shall send OEHHA’s portion of the penalty paid by TJX to
27 OEHHA.

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1 **3.2 Reimbursement of Attorneys' Fees and Costs**

2 The parties acknowledge that Moore and his counsel offered to resolve this dispute without
3 reaching terms on their fees and costs. Shortly after the other settlement terms had been finalized,
4 the Parties negotiated the compensation to be paid to Moore and his counsel under general contract
5 principles and the private attorney general doctrine codified at California Code of Civil Procedure
6 § 1021.5 for all work performed through the mutual execution of this Consent Judgment and court
7 approval of the same, but exclusive of fees and costs on appeal, if any. TJX agrees to pay \$28,500
8 by a check made payable to "The Chanler Group" for all fees and costs incurred investigating,
9 bringing this matter to TJX's attention, litigating, and negotiating a settlement in the public interest.

10 **3.3 Payment Timing**

11 TJX shall deliver its civil penalty and attorneys' fee reimbursement payments to Moore's
12 counsel to the address in Section 3.4 within ten (10) calendar days of the Effective Date.

13 **3.4 Payment Address**

14 All payments required by this Consent Judgment shall be delivered to the following address:
15 The Chanler Group
16 Attn: Proposition 65 Controller
17 2560 Ninth Street
18 Parker Plaza, Suite 214
19 Berkeley, CA 94710

20 **4. CLAIMS COVERED AND RELEASED**

21 **4.1 Moore's Release of Proposition 65 Claims**

22 Moore, acting on his own behalf and in the public interest, releases TJX and its parents,
23 subsidiaries, affiliated entities under common ownership, directors, officers, employees, licensors,
24 and attorneys, and its licensor of the Products, including Leon Max, Inc. (collectively, Releasees)
25 and each entity to whom TJX directly or indirectly distributes or sells the Products including, but not
26 limited to, its downstream distributors, wholesalers, customers, retailers, franchisers, cooperative
27 members, licensors and licensees, including Homegoods, Inc. (collectively, Downstream Releasees)
28 for any violations arising under Proposition 65 for unwarned exposures to DEHP from the Products
manufactured, imported, distributed or sold by TJX prior to the Effective Date, as set forth in the
Notice and Complaint. Compliance with the terms of this Consent Judgment constitutes compliance

1 with Proposition 65 by TJX, Releasees, and Downstream Releasees with respect to the alleged or
2 actual failure to warn about exposures to DEHP from Products manufactured, imported, distributed
3 or sold by TJX after the Effective Date.

4 **4.2 Moore's Individual Release of Claims**

5 Moore, in his individual capacity only and *not* in his representative capacity, provides a
6 release to TJX, Releasees, and Downstream Releasees which shall be effective as a full and final
7 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
8 attorneys' fees, damages, losses, claims, liabilities and demands of Moore of any nature, character or
9 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
10 exposures to DEHP, BBP, DBP, DIDP, DINP, and DnHP in Products manufactured, imported,
11 distributed or sold by TJX before the Effective Date. Nothing in Section 4 affects Moore's right to
12 commence or prosecute an action under Proposition 65 against a Releasee or Downstream Releasee
13 that does not involve the Products.

14 **4.3 TJX's Release of Moore**

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

20 **5. COURT APPROVAL**

21 This Consent Judgment shall be null and void if, for any reason, it is not approved and
22 entered by the Court within one year after it has been fully executed by all Parties. The Parties
23 acknowledge that, pursuant to California Health and Safety Code § 25249.7(f)(4), a noticed motion
24 is required for judicial approval of this Consent Judgment, which motion Moore shall draft and file
25 and which TJX shall support.

26 **6. SEVERABILITY**

27 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
28 provision of this Consent Judgment is held by a court to be unenforceable, the validity of the

1 remaining provisions shall not be adversely affected, unless contrary to the mutual intent of the
2 Parties in entering this Consent Judgment.

3 **7. GOVERNING LAW**

4 The terms of this Consent Judgment shall be governed by the laws of the State of California
5 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
6 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then TJX may
7 provide Moore with written notice of any asserted change in the law, and shall have no further
8 injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
9 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve TJX from
10 its obligation to comply with any pertinent state or federal law or regulation.

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13 **8. NOTICE**

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

18 To TJX:

19 General Counsel
20 The TJX Companies, Inc.
21 770 Cochituate Rd
22 Framingham, MA 01701

23 With a Copy To:

24 Jeffrey Margulies, Esq.
25 Norton Rose Fulbright US LLP
26 555 South Flower Street, Forty-First Floor
27 Los Angeles, CA 90071

To Moore:

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

28 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.

1 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

2 This Consent Judgment may be executed in counterparts and by facsimile or portable
3 document format (pdf) signature, each of which shall be deemed an original and, all of which, when
4 taken together, shall constitute one and the same document.

5 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

6 Moore and his counsel agree to comply with the reporting form requirements referenced in
7 California Health and Safety Code § 25249.7(f).

8 **11. ENTIRE AGREEMENT**

9 This Consent Judgment contains the sole and entire agreement and understanding of the
10 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
11 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and
12 therein. There are no warranties, representations, or other agreements between the Parties except as
13 expressly set forth herein. No representations, oral or otherwise, express or implied, other than those
14 specifically referred to in this Consent Judgment have been made by any Party hereto. No other
15 agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to
16 exist or to bind any of the Parties hereto.

17 **12. MODIFICATION**

18 This Consent Judgment may be modified only by: (a) a written agreement of the Parties and
19 the entry of a modified Consent Judgment by the Court thereon; or (b) upon a successful motion of
20 any party and the entry of a modified Consent Judgment by the Court thereon.

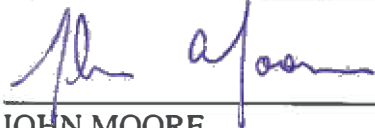
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1 **13. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agreed to all of the terms and conditions of this
4 Consent Judgment.

5
6 **AGREED TO:**

7 Date: 4/23/19

8
9 By: 
10 JOHN MOORE

AGREED TO:

7 Date: 4/22/19

9 By: 
10 THE TJX COMPANIES, INC.

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