

## SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into by and between the California Air Resources Board (CARB), with its principal office at 1001 I Street, Sacramento, California, and The TJX Companies, Inc. (TJX) with its principal place of business at 770 Cochituate Road, Framingham, Massachusetts.

### RECITALS

1. The Consumer Products Regulations, title 17, California Code of Regulations (17 CCR) section 94500 et seq. applies to any person who sells, supplies, offers for sale, or manufactures consumer products for use in the state of California.
2. The Table of Standards in 17 CCR section 94509(a) sets forth the percentage by weight of allowed volatile organic compounds (VOC) for the following categories:
  - Air Freshener: liquid/pump spray category manufactured after January 1, 1996. Air Freshener: liquid/pump spray must meet the 18 percent by weight standard for VOC.
  - Hair Styling Products: aerosol and pump spray category manufactured after December 31, 2006. Hair Styling Products: aerosol and pump spray must meet the 6 percent by weight standard for VOC.
  - General Purpose Cleaner: nonaerosol category manufactured after December 31, 2012. General Purpose Cleaner: nonaerosol must meet the 0.5 percent by weight standard for VOC.
  - Nail Polish Remover category manufactured after December 31, 2007. Nail Polish Remove mu t meet the 1.0 percent by weight standard for VOC.
  - Personal Fragrance Product: with 20% or less fragrance category manufactured after January 1, 1999. Personal Fragrance Product: with 20% or less fragrance must meet the 75 percent by weight standard for VOC.
3. The Table of Standards in 17 CCR section 94502 sets forth a limit of 40 percent by weight of high volatility organic compounds (HVOC) for the Antiperspirant: aerosol category manufactured after January 1, 2001.
4. A manufacturer of a consumer product subject to 17 CCR section 94509 is required to display on each consumer product container or package, the day, month, and year on which the product was manufactured or a code indicating such date as set forth in 17 CCR section 94512(b).

5. Failure to comply with the Consumer Products Regulation is a violation of state law resulting in penalties. Among other penalties, Health and Safety Code (H&SC) sections 42400-42403 authorize strict liability penalties up to \$10,000 for each day that the violation occurs.
  
6. CARB alleges that TJX sold, supplied, offered for sale, or manufactured for sale in California, the following products that are subject to a VOC limit for a regulated category specified in 17 CCR section 94509(a): Sebini of England No.3 Reed Diffuser, Olivia Blake Tangerine & Patchouli Fragranced Diffuser, Olivia Blake London Lime Blossom & Basil Fragranced Diffuser, Rose Gardenia Reed Diffuser, Parks London Wild Fig, Cassia, & Orange Blossom Diffuser, The Aromatherapy Co. Naturals Jasmine & White Thyme Diffuser Set, The Aromatherapy Home Scent Pink Pepper & Ginger Diffuser Set, Profumtore Per Ambient Melegnano Diffuser, Profumtore Per Ambient Ambra Room Spray, Profumtore Per Ambient Rosa Room Spray, Simply Sandalwood Room Spray, Bio Keratin Volumizing Root Lifter, Hempz Haute Mess Dry Conditioner, Martino Cartier Amika- Sealed With a Kiss, Theorie Altitude Volumizing Spray, Beauty Concepts Nail Polish Remover, Spotless Wood Furniture & Glass Cleaner, Bella Cucina Multi-Purpose Spray, Penthouse Passionate Deodorant Body Spray, Penthouse Playful Deodorant Body Spray, David Beckham Instinct Men Deodorant Body Spray, Intimately Men Deodorant Body Spray, Adidas Deep Energy Deodorant Body, Adidas Extreme Power Deodorant Body Spray, D & H Australia- Lemon Verbena Aroma Reeds, Dickens & Hawthorne Australia Black Cherry Aroma Reeds, Dickens & Hawthorne Spiced Apple & Clove Diffuser, Dickens & Hawthorne Australia Lime Blossom Aroma Reeds, Dickens & Hawthorne Australia Lavender & Honey Room Spray, Eddie & Wallace Australia Beach House Fresh Ocean Breeze Aroma Reeds, M & G Champagne & Gardenia Reed Diffuser, Cowshed Room Lazy Cow Soothing Diffuser, Cowshed Moody Cow Balancing Room Fragrance, Cowshed Horny Cow Room Fragrance, Crespi Milano Rose & Fig Diffuser, Crespi Milano Black Noir Diffuser, Crespi Milano Orange & Cinnamon Diffuser, Crespi Milano Melegnano Black Pomegranate Diffuser, Lady Jane Room Fresh Linen Room Spray.
  
7. CARB alleges that the following products referenced in Recitals paragraph 6 contained concentrations of VOC exceeding the percent by weight VOC limit for the category in which the product belongs, specified in 17 CCR section 94509(a): Profumtore Per Ambient Melegnano Diffuser, Profumtore Per Ambient Ambra Room Spray, Profumtore Per Ambient Rosa Room Spray, Simply Sandalwood Room Spray, Bio Keratin Volumizing Root Lifter, Hempz Haute Mess Dry Conditioner, Martino Cartier Amika- Sealed With a Kiss, Theorie Altitude Volumizing Spray, Beauty Concepts Nail Polish Remover, Spotless Wood Furniture & Glass Cleaner, Bella Cucina Multi-Purpose Spray, Penthouse Passionate Deodorant Body Spray, Penthouse Playful Deodorant Body Spray, David Beckham Instinct Men Deodorant Body Spray, Intimately

Men Deodorant Body Spray, Adidas Deep Energy Deodorant Body, Adidas Extreme Power Deodorant Body Spray, D & H Australia- Lemon Verbena Aroma Reeds, Dickens & Hawthorne Australia Black Cherry Aroma Reeds, Dickens & Hawthorne Spiced Apple & Clove Diffuser, Dickens & Hawthorne Australia Lime Blossom Aroma Reeds, Dickens & Hawthorne Australia Lavender & Honey Room Spray, Eddie & Wallace Australia Beach House Fresh Ocean Breeze Aroma Reeds, M & G Champagne & Gardenia Reed Diffuser, Cowshed Room Lazy Cow Soothing Diffuser, Cowshed Moody Cow Balancing Room Fragrance, Cowshed Horny Cow Room Fragrance, Crespi Milano Rose & Fig Diffuser, Crespi Milano Black Nair Diffuser, Crespi Milano Orange & Cinnamon Diffuser, Crespi Milano Melegnano Black Pomegranate Diffuser, Lady Jane Room Fresh Linen Room Spray.

8. CARB alleges that TJX, sold, supplied, offered for sale, or manufactured for sale in California, Dove Antiperspirant that is subject to a HVOC limit for a regulated category specified in 17 CCR section 94502.
9. CARB alleges that the Dove Antiperspirant product referenced in Recitals paragraph 8 contained concentrations of HVOC exceeding the 40 percent by weight HVOC limit for the Antiperspirant: aerosol category specified in 17 CCR section 945092.
10. CARB alleges that the following products did not display on each consumer product container or package, the day, month, and year on which the product was manufacture as specified in 17 CCR section 94512(6): Sebini of England No.3 Reed Diffuser, Olivia Blake Tangerine & Patchouli Fragranced Diffuser, Olivia Blake London Lime Blossom & Basil Fragranced Diffuser, Rose Gardenia Reed Diffuser, Parks London Wild Fig, Cassia, & Orange Blossom Diffuser, The Aromatherapy Co. Naturals Jasmine & White Thyme Diffuser Set, The Aromatherapy Home Scent Pink Pepper & Ginger Diffuser Set, Profumtore Per Ambient Melegnano Diffuser, Profumtore Per Ambient Ambra Room Spray, Profumtore Per Ambient Rosa Room Spray, Simply Sandalwood Room Spray, D & H Australia- Lemon Verbena Aroma Reeds, Dickens & Hawthorne Australia Black Cherry Aroma Reeds, Dickens & Hawthorne Spiced Apple & Clove Diffuser, Dickens & Hawthorne Australia Lime Blossom Aroma Reeds, Dickens & Hawthorne Australia Lavender & Honey Room Spray, Eddie & Wallace Australia Beach House Fresh Ocean Breeze Aroma Reeds, M & G Champagne & Gardenia Reed Diffuser, Crespi Milano Black Nair Diffuser, Crespi Milano Orange & Cinnamon Diffuser, Crespi Milano Melegnano Black Pomegranate Diffuser.
11. CARB alleges that if the allegations described in Recitals paragraphs 6, 7, 8, 9, and 10 were proven, civil penalties could be imposed against TJX as provided in H&SC section 42402 et seq. for each and every unit involved in the violations.

12. TJX admits the allegations described in Recitals paragraphs 6, 7, 8, 9, and 10, but denies any liability resulting from said allegations.
13. In consideration of the foregoing, and of the promises and facts set forth herein, the Parties desire to settle and resolve all claims, disputes, and obligations relating to the above-listed alleged violations and voluntarily agree to resolve this matter by means of this Agreement, without the need for formal litigation. TJX has taken, or agrees to take, the actions enumerated below within the Terms and Conditions. CARB accepts this Agreement in termination and settlement of this matter.

### **TERMS AND CONDITIONS**

In consideration of CARB not filing a legal action against TJX for the violations referred to above, CARB and TJX agree as follows:

14. TJX shall not manufacture, sell, supply, or offer for sale in California, any consumer products in violation of the California Consumer Products Regulations set forth in 17 CCR section 94500 et seq.; the terms and conditions set forth in this Agreement will remain valid and enforceable notwithstanding any future violations that may occur.
15. TJX in settlement of the above-described violations of 17 CCR section 94507 et seq., agrees to pay a penalty to CARB in the amount of \$196,800 payable to the California Air Pollution Control Fund, concurrent with the execution of this Agreement. Payment and the signed Agreement shall be mailed to the address specified on the Payment Transmittal Form enclosed with this Agreement.
16. This Agreement shall apply to and be binding upon TJX and its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations and upon CARB and any successor agency that may have responsibility for and jurisdiction over the subject matter of this settlement.
17. The parties stipulate that this Agreement shall be the final resolution of CARB claims regarding the above-described violations and shall have the same res judicata effect as a judgment in terms of acting as a bar to any civil action by CARB against TJX, its officers, directors, receivers, trustees, employees, successors and assignees, subsidiary and parent corporations. This Agreement shall be deemed the recovery of civil penalties for purposes of precluding subsequent criminal action as provided in H&SC section 42400.7(a).
18. This Agreement shall be interpreted and enforced in accordance with the laws of the State of California, without regard to California's choice of law rules.
19. This Agreement constitutes the entire agreement and understanding between CARB and TJX concerning the claims and settlement in this Agreement, and

this Agreement fully supersedes and replaces any and all prior negotiations and agreements of any kind or nature, whether written or oral, between CARB and TJX concerning these claims.

20. The Effective Date of this Agreement shall be the date upon which it is fully executed.
21. This Agreement is deemed to have been drafted equally by CARB and TJX; it will not be interpreted for or against either Party on the ground that said Party drafted it.
22. No agreement to modify, amend, extend, supersede, terminate, or discharge this Agreement, or any portion thereof, shall be valid or enforceable unless it is in writing and signed by all parties to this Agreement.
23. This Agreement shall further serve to toll any statute of limitation until all terms and conditions of this Agreement have been fulfilled.
24. It is further agreed that the stipulated penalties described in this Agreement are non-dischargeable under United States Code, title 11, section 523(a)(7).

**25. Penalty Determination**

H&SC section 39619.7 requires CARB to provide information on the basis for the penalties it seeks. This Agreement includes this information, which is also summarized here.

**The provision of law the penalty is being assessed under and why that provision is most appropriate for that violation.**

The penalty provision being applied, in this case, is H&SC section 42402 et seq. because TJX sold, supplied, offered for sale, or manufactured for sale consumer products for commerce in California in violation of the Consumer Products Regulations (17 CCR section 94507 et seq.). The penalty provisions of H&SC section 42402 et seq. apply to violations of the Consumer Products Regulations because the regulations were adopted under authority of H&SC section 41712, which is in Part 4 of Division 26.

**The manner in which the penalty amount was determined, including aggravating and mitigating factors and per unit or per vehicle basis for the penalty.**

H&SC section 42402 et seq. provides strict liability penalties of up to \$10,000 per day for violations of the Consumer Product Regulations with each day being a separate violation.

In this case, the total penalty is \$196,800 for 171 days of administrative and emission violations. The penalty, in this case, was reduced because TJX made diligent efforts to cooperate with the investigation and to comply, including developing new business practices to ensure future compliance. These business practices include modifying relevant purchasing practices, delivering staff training, and implementing a vendor certification program for the relevant vendor population.

Final penalties were determined based on the unique circumstances of this matter, considered together with the need to remove any economic benefit from noncompliance, the goal of deterring future violations and obtaining swift compliance, the consideration of past penalties in similar negotiated cases, and the potential cost and risk associated with litigating these particular violations. The penalty reflects violations extending over a number of days resulting in quantifiable harm to the environment considered together with the complete circumstances of this case. Penalties in future cases might be smaller or larger on a per ton basis.

The final penalty, in this case, was based in part on confidential financial information or confidential business information provided by TJX that is not retained by CARB in the ordinary course of business. The penalty, in this case, was also based on confidential settlement communications between CARB and TJX that CARB does not retain in the ordinary course of business. The penalty also reflects CARB's assessment of the relative strength of its case against TJX, Inc., the desire to avoid the uncertainty, burden and expense of litigation, obtain swift compliance with the law and remove any unfair advantage that TJX may have secured from its actions.

**Is the penalty being assessed under a provision of law that prohibits the emission of pollution at a specified level, and, if so a quantification of excess emissions, if it is practicable to do so.**

The Consumer Product Regulations do not prohibit emissions above a specified level, but they do limit the concentration of VOCs in regulated products. In this case, a quantification of the excess emissions attributable to the violations was not practicable.

26. Each provision of this Agreement is severable, and in the event that any provision of this Agreement is held to be illegal, invalid, or unenforceable in any jurisdiction, the remainder of this Agreement remains in full force and effect.
27. The parties shall exchange signed copies of this Agreement. Facsimile or photocopied signatures shall be considered as valid signatures as of the

date hereof, although the original signature pages shall thereafter be appended to this Agreement.

28. The undersigned represent that they have full power and authority to enter into this Agreement.

ACKNOWLEDGED AND ACCEPTED BY:

**California Air Resources Board**

The TJX Companies, Inc.

By: \_\_\_\_\_ /S/  
Name: Richard W. Corey  
Title: Executive Officer  
Date: 7/18/2019

By: \_\_\_\_\_ /S/  
Name: Jennifer A. Peoples  
Title: VP Legal – Litigation & Regulatory Counsel  
Date: 6/17/2019