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*Attorneys for Plaintiff S. Chester, et al.*

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION

IN RE THE TJX COMPANIES, INC.

STACI CHESTER, *et al.*,  
Plaintiffs,

vs.

THE TJX COMPANIES, INC., *et al.*,  
Defendants.

SHEPPARD, MULLIN, RICHTER &  
HAMPTON LLP  
A Limited Liability Partnership  
Including Professional Corporations  
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*Attorneys for Defendant The TJX  
Companies, Inc., et al.*

Case No. 5:15-cv-01437-DDP-DTBx

**CLASS ACTION SETTLEMENT  
AGREEMENT**

Courtroom: 5D – First Street

Date:

Time: 1:30 p.m.

Judge: Hon. Otis D. Wright, II

**CLASS ACTION SETTLEMENT AGREEMENT**

This Class Action Settlement Agreement (the "Agreement") is made by and between the Class Representatives, individually and on behalf of the Settlement Class, and Defendant The TJX Companies, Inc., T.J. Maxx of CA, LLC, Marshalls of CA, LLC, and HomeGoods, Inc. (collectively, "TJX" or the "Settling Defendant").<sup>1</sup> The Class Representatives, the Settlement Class, and the Settling Defendant are collectively referred to as the "Parties."

**RECITALS**

WHEREAS, on July 17, 2015, Staci Chester filed a complaint against The TJX Companies, Inc. and T.J. Maxx of CA, LLC in the United States District Court for the Central District of California, Case No. 5:15-cv-01437-DDP-DTBx;

WHEREAS, on July 17, 2015, Daniel Friedman filed a complaint against The TJX Companies, Inc. and T.J. Maxx of CA, LLC in the United States District Court for the Central District of California, Case No. 5:15-cv-01437-DDP-DTBx;

WHEREAS, on July 23, 2015, Robin Berkoff filed two complaints against The TJX Companies, Inc. and Marshalls of CA, LLC (Case No. 5:15-cv-01475-PA-DTBx) and The TJX Companies, Inc. and HomeGoods, Inc. (Case No. 5:15-cv-01480-CAS-KKx), respectively, in the United States District Court for the Central District of California;

WHEREAS, on July 23, 2015, Theresa Metoyer filed a complaint against The TJX Companies, Inc. and HomeGoods, Inc. in the United States District Court for the Central District of California, Case No. 5:15-cv-01480-CAS-KKx;

WHEREAS, on August 19, 2015 the Court allowed the Class Representatives to file a consolidated amended complaint against The TJX Companies, Inc., T.J. Maxx of CA, LLC, Marshalls of CA, LLC, and HomeGoods, Inc. in the United States District Court for the Central District of California;

<sup>1</sup> Capitalized terms in this Agreement are defined in Section 1, below.

1 WHEREAS, on September 3, 2015, Class Representatives Staci Chester, Robin  
2 Berkoff, Daniel Friedman, and Theresa Metoyer filed a Consolidated Amended Class  
3 Action Complaint against The TJX Companies, Inc., T.J. Maxx of CA, LLC, Marshalls  
4 of CA, LLC, and HomeGoods, Inc. in the United States District Court for the Central  
5 District of California (the "Complaint") Case No. 5:15-cv-01437-DDP-DTBx;

6 WHEREAS, the Complaint alleges that TJX has used false or misleading  
7 Compare At price advertising on TJX price tags on items sold at TJX stores in California  
8 during the Class Period. The Class Representatives claim that they and other consumers  
9 relied on TJX's Compare At pricing when purchasing items from TJX. Plaintiffs sued  
10 for monetary and injunctive relief;

11 WHEREAS, on October 19, 2015, TJX filed its motion to dismiss the Complaint;

12 WHEREAS, on August 18, 2016, the Court denied TJX's motion to dismiss the  
13 Complaint;

14 WHEREAS, Class Representatives and Class Counsel (defined below) have  
15 pursued this litigation believing that it is meritorious, and they have conducted an  
16 investigation of the facts and law surrounding this case, including, but not limited to, (i)  
17 researching the applicable law and the potential defenses; (ii) conducting extensive  
18 written discovery and depositions, including without limitation, reviewing TJX's public  
19 filings and internal documents concerning its Compare At price advertising; (iii) hiring  
20 and consulting with an expert; (iv) developing arguments for class certification,  
21 preparing and filing a motion for class certification; (v) briefing numerous motions,  
22 including without limitation class certification and summary judgment; and (vi)  
23 attending an all-day in-person mediation, including numerous follow-up telephonic  
24 sessions with the mediator. Based on their own independent investigation and  
25 evaluation, Class Counsel is of the opinion that the Settlement is fair, reasonable, and  
26 adequate and is in the best interests of the Settlement Class Members as well as future  
27 California consumers, in light of all known facts and circumstances, including the risk  
28 of significant delay, the defenses asserted by TJX, trial risk and appellate risk;

1 WHEREAS, TJX denies liability and wrongdoing of any kind associated with the  
2 claims alleged, and contends that this Litigation is not appropriate for class certification  
3 or for class treatment. TJX continues to assert that the Class Representatives will not  
4 be able to establish any entitlement to any monetary remedy or injunctive relief. TJX  
5 also continues to assert that it has complied with all applicable price comparison  
6 advertising laws and that its Compare At prices are fair and not deceptive or misleading.

7 WHEREAS, on April 17, 2017, TJX submitted the Expert Report of Kristofer  
8 Buchan. Mr. Buchan conducted a study of a representative sample of 348 products  
9 recently offered for sale at all three of TJX's chain stores in California. TJX believes  
10 that the study shows that at least 96% of the time, the same or a comparable product  
11 was offered for sale at least one other major California retailer for a price that was the  
12 same as or higher than TJX's advertised Compare At price;

13 Plaintiffs submitted the expert report of Christian Tregillis which they believe  
14 refutes or casts doubt upon the findings of Mr. Buchan.

15 WHEREAS, on April 17, 2017, TJX submitted the Expert Report of Carol A.  
16 Scott, Ph.D. Dr. Scott recently conducted a survey of 636 TJX customers in California,  
17 which TJX believes demonstrates that: (i) approximately 60% of respondents stated  
18 that they understood TJX's Compare At prices consistently with TJX's definition of  
19 them; (ii) 81.4% of respondents said that learning TJX's definition would not change  
20 the likelihood they would shop at a TJX store; (iii) after being shown TJX's definition  
21 of Compare At pricing, only 3.4% of respondents stated that they would not have bought  
22 the last product they purchased at a TJX store;

23 Plaintiffs submitted the expert report of Christian Tregillis which they believe  
24 refutes or casts doubt upon the findings of Carol A. Scott, Ph.D.;

25 WHEREAS, TJX further asserts that despite its good faith belief that it is not  
26 liable for any of the claims asserted, and despite its good faith belief that class  
27 certification would not be appropriate, TJX will not oppose the District Court's  
28 certification of the Settlement Class contemplated by this Agreement solely for

1 purposes of effectuating this Settlement. TJX's agreement to certification of the  
2 Settlement Class is expressly without prejudice to TJX's rights to oppose certification  
3 of a class or oppose any other claim (i) in this Litigation, should the Agreement not be  
4 approved or implemented for any reason; or (ii) in any other litigation, whether pending  
5 in California or elsewhere;

6 WHEREAS, in the event the Agreement is not approved or is otherwise terminated,  
7 this Agreement shall be deemed null and void and be of no further force or effect and  
8 may not be used by any Party for any purpose in this Litigation or any other action;

9 WHEREAS, the entry of Final Judgment in this Litigation shall dismiss with  
10 prejudice all claims which were or which could have been alleged in the Litigation  
11 by any and all Settlement Class Members against TJX, with the exception of any  
12 individual claims that might be retained by Settlement Class Members who exclude  
13 themselves from the Settlement, if any; and

14 WHEREAS, the Parties agree to cooperate and take all reasonable steps  
15 necessary and appropriate to obtain preliminary and final approval of this  
16 Settlement, to effectuate its terms, and to dismiss this Litigation with prejudice.

17 THEREFORE, the Parties hereby agree as follows:

18 **1. Definitions**

19 1.1 The term "Agreement" as used herein means this Class Action Settlement  
20 Agreement.

21 1.2 The term "Attorneys' Fees and Costs" as used herein means the attorneys'  
22 fees and costs to be requested by Class Counsel, subject to Court approval in accordance  
23 with the provisions below.

24 1.3 The term "Claim" as used herein means a Claim submitted by way of a  
25 Claim Form in accordance with this Agreement.

26 1.4 The term "Claim Form" as used herein means the Claim Form for the  
27 Settlement Class attached hereto as Exhibit 1, which is agreed to by the Parties,  
28 subject to Court approval, as the method by which a Class Member may submit a Claim.

1 Only those Settlement Class Members who submit a Claim Form, in the manner set  
2 forth in this Agreement, subject to Court approval, shall be eligible to recover a share  
3 of the Settlement proceeds.

4 1.5 The term "Claimant" as used herein means any Settlement Class  
5 Member who submits a Claim Form.

6 1.6 The term "Claims Administrator" as used herein means JND Legal  
7 Administration ("JND"), or another entity subsequently selected, which, subject to  
8 Court approval, shall perform the duties of, among other things: (i) providing Notice,  
9 Claim Forms and Opt-Out Request Forms to Settlement Class Members; (ii) publishing  
10 the Publication Notice; (iii) providing notice as required by the Class Action Fairness  
11 Act, 28 U.S.C. § 1715; (iv) tracking returned Claim Forms and Opt-Out Requests; (v)  
12 notifying the Parties of determinations regarding submitted Claim Forms and Opt-Out  
13 Requests consistent with this Agreement; (vi) distributing Merchandise Credits; and  
14 (vii) other notice and administration duties in accordance with this Agreement and the  
15 Court's orders.

16 1.7 The term "Class Counsel" as used herein means the following counsel who  
17 have appeared on behalf of the Class Representatives: Douglas Caiafa of DOUGLAS  
18 CAIAFA, A Professional Law Corporation, Christopher J. Morosoff of the LAW  
19 OFFICE OF CHRISTOPHER J. MOROSOFF, and Greg K. Hafif of the LAW OFFICE  
20 OF HERBERT HAFIF.

21 1.8 The term "Class List" as used herein means the list of customers, and their  
22 email or physical mailing addresses to the extent known, who purchased during the  
23 Settlement Class Period from a T.J. Maxx, Marshalls or HomeGoods store in California  
24 one or more items that included a TJX price tag with a Compare At price, and who have  
25 not received a refund or credit for all of their purchase(s).

26 1.9 The term "Class Representatives" as used herein means Staci Chester,  
27 Robin Berkoff, Daniel Friedman, and Theresa Metoyer.  
28



1           1.10 The term "Class Representative Enhancement Payment" as used herein  
2 means the amount Class Counsel shall request be paid to the Class Representatives in  
3 their capacity as "Class Representatives" to compensate them for initiating the Action  
4 and performing work in support of the Action.

5           1.11 The term "Email Notice" as used herein means a document  
6 substantially in the form of the document attached hereto as Exhibit 3, which has been  
7 agreed to by the Parties, subject to Court approval, and which will be sent to potential  
8 Settlement Class Members as an email where an email address exists on the Class List.

9           1.12 The term "Final Judgment" as used herein refers to the Final Judgment and  
10 Order of Final Approval approving the Settlement and dismissing the Litigation with  
11 prejudice as against TJX, which this Settlement and Agreement contemplates will be  
12 entered and approved by the District Court.

13           1.13 The term "In-Store Notice" as used herein means a document substantially  
14 in the form of the document attached hereto as Exhibit 7, which has been agreed to by  
15 the Parties, subject to Court approval, and which will be posted for ninety (90) days in  
16 T.J. Maxx, Marshalls, and HomeGoods stores in California.

17           1.14 The term "Merchandise Credit" as used herein means a credit  
18 redeemable for purchases at any T.J. Maxx, Marshalls or HomeGoods store in  
19 California. Each Merchandise Credit shall be fully transferable, stackable and may be  
20 used in connection with any promotional discount(s) that are otherwise available with  
21 the use of Merchandise Credits. Merchandise Credits have no expiration date and need  
22 not be used in full at any time. They will maintain a running balance that is depleted  
23 based on use until the balance is zero. Holders will have the option of redeeming an  
24 unused Merchandise Credit for cash in an amount equal to 75% of the Merchandise  
25 Credit at the time of its issuance by returning the Merchandise Credit to the Claims  
26 Administrator within one (1) year after its issuance. Merchandise Credits that have  
27 been used to make a purchase are not redeemable for cash. They are not gift cards or  
28 gift certificates under California or federal law and, thus, it is the Parties' belief and

1 intent that the Merchandise Credits are not subject to the restrictions and terms found  
2 under California or federal law regarding gift cards or gift certificates. The  
3 Merchandise Credits may not be used for past purchases, layaway, or to purchase gift  
4 cards or certificates. They will not be replaced if lost, stolen, or damaged, and copies  
5 will not be accepted. No minimum purchase amount is required to use them. Other  
6 than as specified herein, they are not redeemable for cash.

7 1.15 The term "Litigation" means the underlying litigation between the Parties  
8 as identified in the above-captioned case.

9 1.16 The term "Monetary Component" as used herein means \$8,500,000 to  
10 be made available by TJX pursuant to this Settlement, which represents TJX's  
11 total monetary liability under this Agreement or otherwise pursuant to this Settlement.

12 1.17 The term "Notice" as used herein means a document substantially in  
13 the form of the Notice of Proposed Class Action Settlement Between Plaintiff and TJX  
14 attached hereto as Exhibit 2, which has been agreed to by the Parties, subject  
15 to Court approval, and which the Claims Administrator will make available through the  
16 Settlement Website, explaining the terms of the Settlement and the Claims, Opt- Out,  
17 and objection processes.

18 1.18 The term "Notice and Administration Costs" as used herein means the  
19 costs to send notice and administer the Settlement as contemplated by this Agreement.

20 1.19 The term "Opt-Out Request Form" as used herein means a form that  
21 will be available for download on the Settlement Website, which can be used by  
22 Settlement Class Members to request to opt out of the Settlement. Settlement Class  
23 Members are not required to use the Opt-Out Request Form in order to communicate  
24 their desire to opt out of the Settlement to the Claims Administrator.

25 1.20 The term "Parties" as used herein means the Class Representatives, the  
26 Settlement Class, and Settling Defendants.

27 1.21 The term "Postcard Notice" as used herein means a document substantially  
28 in the form attached hereto as Exhibit 4, which has been agreed to by



1 the Parties, subject to Court approval, and which will be sent to potential Settlement  
2 Class Members in the U.S., by mail where a physical mailing address exists on the Class  
3 List but where an email address does not.

4 1.22 The term "Publication Notice" as used herein means a document  
5 substantially in the form attached hereto as Exhibit 5, which has been agreed to by  
6 the Parties, subject to Court approval, and which will be published in accordance with  
7 the terms of this Settlement.

8 1.23 The terms "Qualified Settlement Fund" or "QSF" as used herein means the  
9 Qualified Settlement Fund to be set up in accordance with the terms below.

10 1.24 The term "Releasing Settlement Class Members" as used herein means the  
11 Class Representatives and all Settlement Class Members, other than those who submit  
12 timely Requests to Opt Out.

13 1.25 The term "Request to Opt Out" as used herein means a request sent to the  
14 Claims Administrator by any Settlement Class Member wishing to opt out or exclude  
15 themselves from the Settlement.

16 1.26 The term "Settlement" as used herein means the compromise and  
17 settlement of the Litigation as contemplated by this Agreement.

18 1.27 The term "Settlement Class" as used herein and for purposes of Settlement  
19 only means all persons who in the State of California, and between July 17, 2011 and  
20 the present (the "Settlement Class Period"), purchased from a T.J. Maxx, Marshalls or  
21 HomeGoods store in California one or more items with a TJX price tag that included a  
22 Compare At price, and who have not received a refund or credit for all of their  
23 purchase(s). Excluded from the Settlement Class are the Settling Defendants, as well  
24 as their past and present officers, directors, employees, agents or affiliates, and any  
25 judge who presides over this Litigation.

26 1.28 The term "Settlement Class Member Released Claims" as used herein  
27 means the claims, rights, penalties, demands, damages, debts, accounts, duties, costs  
28 and expenses (other than those costs and expenses required to be paid pursuant to

1 this Agreement), liens, charges, complaints, causes of action, obligations, or liabilities  
2 that are released, acquitted and discharged as described below.

3 1.29 The term "Settlement Class Members," as used herein means the Class  
4 Representatives and all members of the Settlement Class.

5 1.30 The term "Settlement Class Period" as used herein and for purposes of  
6 Settlement only means the period of time between July 17, 2011 and the present.

7 1.31 The term "Settlement Effective Date" as used herein means the date after  
8 the Court has granted Final Approval and Entered Judgment, and the date upon which  
9 the latest of the following events occurs: (1) the expiration of the time for filing an  
10 appeal if there are any objections filed by any Class Member; (2) the conclusion of any  
11 appeal taken if there are any objections filed by any Class Member; (3) the withdrawal  
12 of the last objection to the Settlement; or (4) if there are no objections filed by any Class  
13 Member, the date the Court has entered judgment.

14 1.32 The term "Settlement Website" as used herein means an Internet  
15 website maintained by the Claims Administrator containing the Notice, Claim Form,  
16 Opt-Out Request Form, instructions on how to submit a Claim Form and/or on how to  
17 Opt-Out or Object to the Settlement, and where Merchandise Credits may be obtained.  
18 The Settlement Website is: [tjxSettlement.com](http://tjxSettlement.com).

19 1.33 The term "Verified Claims" as used herein means those Claims which  
20 are approved by the Claims Administrator for payment after the deadline for audits  
21 allowable has expired, or, if an audit or objection is made, after all audits or  
22 objections have been resolved in accordance with the provisions below.

## 23 2. Settlement Class

24 2.1 The Parties agree that, for purposes of this Agreement only, Class  
25 Representatives shall request, and TJX will not oppose, certification of the Settlement  
26 Class (defined above) pursuant to Federal Rule of Civil Procedure 23(b)(3), to which  
27 TJX will provide settlement consideration and from which TJX will obtain a release of  
28 claims, subject to the Court's preliminary approval of this Agreement, the provision of

1 Notice to members of the Settlement Class, and the Court's final approval of the Notice  
2 provided and this Agreement.

3 2.2 The Parties agree that, for purposes of this Agreement only, Class  
4 Representatives shall request, and TJX will not oppose, the Court's appointment of  
5 Class Counsel as counsel for the Settlement Class, and the appointment of the Class  
6 Representatives as representatives of the Settlement Class.

7 2.3 The Parties agree that the operative complaint in this Litigation can and  
8 shall be amended as necessary and/or as required by the Court to effectuate the terms  
9 of this Agreement.

10 2.4 The Settlement is conditioned on the Court certifying the Settlement  
11 Class. The Parties and Class Counsel agree that, if approved, certification of the  
12 Settlement Class is a conditional certification for settlement purposes only, and if for  
13 any reason the District Court does not grant final approval of the Settlement, or if  
14 final approval is not granted following appeal of any order by the District Court, the  
15 certification of the Settlement Class shall be deemed null and void, and each Party shall  
16 retain all their respective rights as they existed prior to the execution of the Agreement.

### 17 **3. Settlement Consideration**

#### 18 Monetary Component

19 3.1 Subject to the other terms and conditions of this Agreement, and subject to  
20 Court approval, TJX will contribute \$8,500,000 for the Monetary Component of the  
21 Settlement. This Monetary Component will be comprised of the following:

22 3.1.1 Following final approval of the Settlement by the Court and after  
23 the deductions described in Paragraphs 3.1.2 through 3.1.4 below, the remaining value  
24 of the Monetary Component will be distributed on a pro rata basis in the form of TJX  
25 Merchandise Credits to members of the Settlement Class who submit a valid Claim.  
26 The value of each Merchandise Credit shall be determined by dividing the remaining  
27 value of the Monetary Component by the number of Class Members who submit a valid  
28 Claim.

1           3.1.2    The actual Notice and Administration Costs incurred in  
2 accordance with this Agreement, up to \$1,000,000 ("Administrative Costs Portion").  
3 The Administrative Costs Portion shall be deposited by TJX into the QSF for purposes  
4 of paying Administrative Costs within a reasonable time period following preliminary  
5 approval of the Settlement by the District Court.

6           3.1.3    Class Counsel may apply to the Court for an award of  
7 reasonable Attorneys' Fees not to exceed 25% of the Monetary Component of the  
8 Settlement, and costs not to exceed \$50,000. TJX will not oppose an application for a  
9 reasonable award of Attorneys' Fees and Costs sought in accordance with this  
10 Agreement. In the event that the Court does not approve the award of Attorneys' Fees  
11 and Costs requested by Class Counsel, or if the Court awards Attorneys' Fees and Costs  
12 in an amount less than that requested by Class Counsel, the amount that is not awarded  
13 will be available for distribution to the Class, and the Court's decision shall not affect  
14 the validity and enforceability of the Settlement and shall not be a basis for anyone to  
15 seek to void the Settlement or for rendering the entire Settlement null, void, or  
16 unenforceable. Class Counsel retain their right to appeal any decision by the Court  
17 regarding the Court's award of Attorneys' Fees and Costs.

18           3.1.4    Class Counsel intends to seek \$7,500.00 for each Class  
19 Representative as the Class Representative Enhancement Payment. TJX will not  
20 oppose the application. Any request made by Class Counsel in accordance with this  
21 Section is without prejudice to the Class Representative's right to file a Claim as a  
22 Settlement Class Member. In the event that the Court does not approve the Class  
23 Representative Enhancement Payment, or the Court awards an amount that is less  
24 than sought, the amount that is not awarded will be available for distribution to the Class  
25 and shall not affect the validity and enforceability of the Settlement and shall not be a  
26 basis for anyone to seek to void the Settlement or for rendering the entire Settlement  
27 null, void, or unenforceable.  
28

3.2 The payments identified in Paragraphs 3.1.1 through 3.1.4 of this Agreement shall be paid solely from the Monetary Component. The \$8,500,000 Monetary Component as described above shall be the total amount owed by TJX in settlement. TJX will not be obligated to pay any additional sums, and shall have no other monetary liability for any costs or expenses related to this Settlement, including without limitation the costs of administering the Settlement, preparation of Notice, oversight and reporting of the Notice program, establishing the appropriate website, any escrow or QSF expenses, tax filing and distributions. All such costs shall be included within and paid from the Notice and Administrative Costs Portion of the Monetary Component. For clarity, all costs of the QSF, as described in Paragraphs 9.1 through 9.8 of this Agreement, shall be paid from said Monetary Component.

3.3 Each Claimant who receives any value paid in accordance with this Agreement is responsible for any taxes associated with the monies received by that recipient. If required by applicable law, the QSF shall issue 1099s to Class Counsel (for payments of Attorneys' Fees and Costs awarded by the Court) and to the Class Representative for any Class Representative Enhancement Payment authorized by the Court.

#### Injunctive Relief

3.4 Amended Disclosure. TJX will change the disclosure/definition of its "Compare At" pricing on its T.J. Maxx, Marshalls and HomeGoods websites and California in-store signage. Consistent with the other conditions in this Agreement, including without limitation Paragraph 3.5 herein, TJX's amended disclosure shall include language indicating that:

(a) TJX's comparison prices are references to identical items or similar items.

(b) Where TJX's comparison price refers to an identical item, TJX is reasonably certain that the comparison price does not appreciably exceed the price at which substantial sales of the item are being made in the area.

1 (c) Where the Compare At price refers to a similar item, that item is of  
2 essentially similar quality and the comparison price does not appreciably exceed  
3 the price at which substantial sales of the similar item are being made in the area.  
4 Nothing herein requires TJX to use any particular words or phrases to convey the  
5 foregoing.

6 3.5 Compliance with Law. TJX agrees that its comparison pricing practices in  
7 California as of the date of this Agreement, and continuing forward, will not violate  
8 then-existing Federal or California law, including California's specific price-  
9 comparison advertising statutes and FTC regulations, including without limitation, the  
10 FTC Pricing Guides, 16 C.F.R. §233.2. TJX also agrees that any Compare At or other  
11 comparison price to which TJX refers in its price comparison advertising in California  
12 will comply and be consistent with the terms of this Agreement.

13 (a) To the extent that TJX chooses to engage in comparative value  
14 advertising as contemplated by the Federal Trade Commission Guideline 16  
15 C.F.R. § 233.2(a), it shall base comparison prices on the actual retail prices at  
16 which substantial sales of the identical item are being made in the area.

17 (b) To the extent that TJX chooses to engage in comparative value  
18 advertising as contemplated by the Federal Trade Commission Guideline 16  
19 C.F.R. § 233.2(c), it shall base comparison prices on the actual retail prices at  
20 which substantial sales of the similar item are being made in the area.

21 3.6 Additional Signage.

22 (a) "Compare At." To the extent that TJX continues to use the phrase  
23 "Compare At" on its price tags or in its other advertising, no later than thirty (30)  
24 days after the Settlement Effective Date (unless that date occurs between  
25 November 1, 2017 and February 1, 2018, in which case no later than February  
26 28, 2018), it shall:

27 (i) Post prominently a description of its comparison pricing  
28 practices at least (a) at or near the main entrance to all of its California stores



1 and (b) in a location where other store policies, such as the TJX's return  
2 policy, are posted in its California stores ("Primary Signage"), which  
3 description shall conform to Section 3.4 (above);

4 (ii) Augment its Primary Signage with additional signage in its  
5 California stores (*e.g.* on fixtures, in fitting rooms, or in other heavily  
6 trafficked areas) that directs customers with any questions or seeking  
7 additional detail about TJX's comparison pricing practices to the Primary  
8 Signage, and/or to the stores' respective website ("Auxillary Signage"); and

9 (iii) Not base any comparison price on an estimate not based on  
10 actual market prices, and instead shall base any comparison price on its buying  
11 staff's assessment of the market prices for the same or comparable goods.

12 (b) "Comparable Value." To the extent that TJX chooses to use the  
13 phrase "Comparable Value" in place of the phrase "Compare At" on its price tags  
14 or in its other advertising, TJX shall display a description of its comparison  
15 pricing practices at least (i) at or near the main entrance to all of its California  
16 stores and (ii) in a location where other store policies, such as the TJX's return  
17 policy, are posted in its California stores.

18 (c) Other comparison pricing terms or phrases. To the extent that TJX  
19 uses phrases other than "Compare At" or "Comparable Value" to describe  
20 comparison prices, TJX will fully comply with 16 C.F.R. § 233.2.

21 3.7 Monitoring, Training, and Auditing. TJX's compliance program shall  
22 consist of periodic (no less than once a calendar year) monitoring, training and auditing  
23 to ensure compliance in its California T.J. Maxx, Marshalls and HomeGoods stores with  
24 California and Federal price comparison laws.

25 3.8 No Restriction on Speech. Nothing in Paragraph 3.4 shall be interpreted  
26 to restrict TJX from communicating with its customers in a manner permitted by  
27 applicable law.

1           3.9 Cure Provision. TJX shall use commercially reasonable efforts to comply  
2 with the provisions herein, including but not limited to instructing each of its California  
3 stores to comply with signage requirements. Any non-compliance with the Agreement  
4 may be reported to TJX's Legal or Customer Service Department. Non-compliance  
5 will not be considered a breach of this Agreement if cured within 30 days after it is first  
6 reported to TJX's Legal or Customer Service Department. All parties and signatories  
7 to the settlement agreement in this case shall make any such report directly to TJX's  
8 Legal Department.

9           **4. Notice to the Class**

10           4.1 Given the expected size of the Settlement Class, the Parties agree that  
11 direct notice via email is the best practicable notice for those Settlement Class Members  
12 for which such information exists. Where only a physical mailing address is available  
13 for a Settlement Class Member, or for all Settlement Class Members whose Email  
14 Notice was not deliverable and a physical mailing address is known, a Postcard Notice  
15 shall be mailed by first class mail. Recognizing that there are Settlement Class  
16 Members for whom neither email nor physical mailing addresses are available, notice  
17 by print publication and in-store posting as agreed to by the Parties and authorized by  
18 the Court will be used to supplement the Email and Postcard notices.

19           4.1.1 The Email and Postcard Notices shall advise Settlement Class  
20 Members of the deadline for submitting Claim Forms, their right to opt out of the  
21 Settlement or to object to the Settlement, the process by which such opt-outs or  
22 objections must be made, and the date set by the District Court for a hearing on final  
23 approval of the Settlement. Subject to Court approval, the Email and Postcard  
24 Notices shall be substantially in the form attached hereto as Exhibits 3 and 4,  
25 respectively.

26           4.1.2 Because the sales made during the Settlement Class Period do not  
27 have corresponding customer names or addresses associated with them, the Parties  
28 agree that notice by publication and in-store posting would be the best practicable notice

1 for the balance of the Settlement Class. This "Publication Notice" shall include  
2 instructions as to how to access the Settlement Website and how to request a Claim  
3 Form and instructions on how to submit it. The Publication Notice shall also advise  
4 Settlement Class Members of their right to opt out of the Settlement or to object to the  
5 Settlement, the process and deadlines by which such opt-outs or objections must be  
6 made and the date set by the Court for a hearing on final approval of the Settlement.  
7 Subject to Court approval, the Publication Notice shall be substantially in the form  
8 attached hereto as Exhibit 5.

9 4.1.3 Within fifty (50) days after the Court's preliminary approval of  
10 the Settlement, TJX will post near the exit in each of its California T.J. Maxx, Marshalls,  
11 and HomeGoods stores, a copy of the In-Store Notice (substantially in the form attached  
12 as Exhibit 7) containing instructions as to how to access the Settlement Website and  
13 how to request a Claim Form and instructions on how to submit it. These tear-away  
14 notices shall remain posted in TJX's California T.J. Maxx, Marshalls, and HomeGoods  
15 stores for at least ninety (90) days.

16 4.2 TJX will provide the Class List to the Claims Administrator in sufficient  
17 time for Notice to go out. TJX and Plaintiffs agree that all Class List information shall  
18 be treated as highly confidential proprietary information, and that the contents of the  
19 Class List shall not be shared with third parties other than the Claims Administrator and  
20 that the Claims Administrator and its agents, affiliates and/or subcontractor (if any) shall  
21 be required to strictly preserve the confidentiality of the Class List.

22 4.3 The Email Notice shall be sent to Settlement Class Members within  
23 thirty (30) days following the Court's preliminary approval of the Settlement, provided  
24 that any challenges or other barriers to the use of Email Notice have been resolved. The  
25 Postcard Notice shall be sent to Settlement Class Members within  
26 fifty (50) days following the Court's preliminary approval of the Settlement. The  
27 Publication Notice shall be published on the soonest practicable date after preliminary  
28

1 approval by the Court, but in no event shall it commence more than ten (10) days after  
2 the Postcard Notice is sent.

3 4.4 The Email and Postcard Notices, Claim Form, Opt-Out Request  
4 Form, CAC, this Agreement, and other materials as agreed to by the Parties shall be  
5 available on the Settlement Website. The Claims Administrator shall also establish a  
6 toll-free phone line and an email box to respond to inquiries from Settlement Class  
7 Members. The Settlement Website address, toll-free phone number, and email box  
8 address will be included in all notices to the Class.

9 **5. Submission of Claims**

10 5.1 In order to be eligible to receive a share of the Monetary Component, a  
11 Settlement Class Member must submit a completed Claim Form within ninety (90) days  
12 from the date Notice is disseminated. Only those Settlement Class Members who  
13 submit a valid and approved Claim Form shall be eligible to receive a Merchandise  
14 Credit. In order for a Claim Form to be considered timely, the Claims Administrator  
15 must receive the completed Claim Form by 11:59 p.m. Pacific Time on the ninetieth  
16 (90<sup>th</sup>) day from the date Notice is disseminated. These deadlines shall be set forth  
17 clearly in the Notice.

18 5.2 In order for a Claim Form to be approved, the Claimant must meet the  
19 following criteria:

20 5.2.1 Claim Forms shall be executed, but need not be notarized.

21 5.2.2 Claimants will be directed to submit their Claim Forms  
22 electronically on the Settlement Website, but also may submit them by regular mail.

23 5.3 Claim Forms and Opt-Out Request Forms shall be available on the  
24 Settlement Website. The Email Notice, the Postcard Notice and Publication Notice  
25 shall direct Settlement Class Members to the Settlement Website which shall contain  
26 the Claim Form, Opt-Out Request Form and other documentation concerning the  
27 Litigation and Settlement. Settlement Class Members may also request to receive a  
28 Claim Form or Opt-Out Request Form via U.S. Mail.

1           5.4 Submission of more than one Claim Form, or submission of an incomplete  
2 Claim Form, may render the Claim Form submitted by that Settlement Class Member  
3 invalid. The Claims Administrator shall send to all Settlement Class Members who  
4 have submitted an incomplete or duplicative Claim Form a notice of deficiency with  
5 instructions on how to cure the deficiency. Settlement Class Members will have thirty  
6 (30) days to cure deficiencies.

7           5.5 Within twenty (20) days after the deadline to submit Claim Forms,  
8 the Claims Administrator shall provide a spreadsheet to Class Counsel and to  
9 TJX that contains sufficient information for the Parties to determine the  
10 number of approved Claims made by the members of the Settlement Class. The Claims  
11 Administrator shall also provide information regarding rejected Claims,  
12 as well as the reasons why each Claim was rejected. The Claims Administrator  
13 shall retain the originals of all Claim Forms (including any envelopes with the  
14 postmarks) received from Claimants, and shall make copies of the originals  
15 available to TJX or Class Counsel within three (3) business days upon  
16 request.

17           5.6 Class Counsel and TJX shall each have the right to audit the information  
18 provided in any Claim Form, and to challenge the Claims Administrator's  
19 determinations regarding approval or denial of each Claim Form, in accordance with  
20 the following procedures:

21           5.6.1 Within fourteen (14) days of having received the  
22 information contemplated by Paragraph 5.5 of this Agreement, Class Counsel and  
23 TJX's counsel shall meet and confer regarding any issues that either Class Counsel or  
24 TJX believes need to be raised with the Claims Administrator. Class Counsel and TJX  
25 agree to use their best efforts to resolve any disputes. If Class Counsel and TJX cannot  
26 resolve these issues within twenty-eight (28) days of having received the information  
27 contemplated by Paragraph 5.5 of this Agreement, then Class Counsel or TJX may,  
28 within five (5) days of the expiration of the above twenty-eight (28) day period, provide

1 written notice of their intent to audit the Claims Administrator's determinations with  
2 respect to a particular Claim or Claims.

3 5.6.2 If the audit is filed with the Claims Administrator, the  
4 decision of the Claims Administrator may be appealed, within fourteen (14) days of  
5 receipt of the Claims Administrator's decision, to the District Court. All decisions by  
6 the District Court, or such person as the Court may direct, regarding audits shall be  
7 made expeditiously and are binding, final decisions which shall not be subject to appeal  
8 by any Party. If a decision by the Claims Administrators is not presented to  
9 the District Court or to such person as the Court may direct, within fourteen (14) days  
10 of issuance, the decision of the Claims Administrator becomes a binding, final decision  
11 not subject to further appeal.

12 5.6.3 Class Counsel and TJX may invoke their rights under these  
13 Paragraphs by providing written notice to each other and to the Claims  
14 Administrator. The notice shall identify the Claims that are the subject of the audit, and  
15 may be accompanied by supporting papers of no more than two (2) pages,  
16 double-spaced, 12-point type font (excluding exhibits).

17 5.6.4 Within fourteen (14) days of receipt of the notice and  
18 supporting papers, the non-auditing party may submit a written response of no more  
19 than two (2) pages, double-spaced, 12-point type font (excluding exhibits).

20 5.6.5 Given the cost of the audit process relative to the size of the  
21 individual claims, the Parties shall only appeal an audit decision to the Court, or to such  
22 person as the Court may direct, if the audit decision affects at least 10,000 Claims.  
23 Audit decisions by the Claims Administrator affecting less than 10,000  
24 Claims shall be final and non-appealable.

25 5.6.6 Notice of audits and any paperwork submitted in support of, or in  
26 response to, any audit, and the decisions by the Claims Administrator may be served by  
27 e-mail or United States Mail.  
28



1       **6. Opt-Out Process**

2           6.1 A Settlement Class Member who wishes to exclude himself or herself from  
3 this Settlement and from the release of claims pursuant to this Settlement shall submit  
4 a Request to Opt Out. For a Request to Opt Out to be accepted, it must be timely and  
5 valid. To be timely, it must be postmarked by the date which is ninety  
6 (90) days after the last date Notice is disseminated. To be valid, the Request to Opt Out  
7 must be signed and dated. Opt-Out Request Forms, substantially similar to the attached  
8 Exhibit 6, shall be available for download from the Settlement Website and, upon  
9 request by a Settlement Class Member, made available by the Claims Administrator  
10 through First Class Mail.

11           6.2 A Settlement Class Member who submits a Request to Opt Out is not  
12 eligible to recover a share of the Monetary Component, except that if any Settlement  
13 Class Member submits both a Request to Opt Out and a Claim Form, the Request to  
14 Opt Out will be rejected, the Settlement Class Member will be treated as if they are still  
15 a member of the class, and the Claim Form will be treated as valid, if it meets the  
16 requirements detailed above, and processed.

17           6.3 The Claims Administrator shall maintain a list of persons who have  
18 excluded themselves and shall provide such list to the Parties upon request. The Claims  
19 Administrator shall retain the originals of all Requests to Opt Out (including the  
20 envelopes with the postmarks) received from Settlement Class Members, and  
21 shall make copies of the originals available to TJX or Class Counsel within three (3)  
22 business days upon request.

23           6.4 TJX, at its sole discretion, has the right to terminate this Settlement  
24 if more than five thousand (5,000) Class Members opt out of the Settlement Class, and  
25 notify Class Counsel in writing that it has elected to terminate this Agreement. If this  
26 Agreement is terminated, it will be deemed null, void, and unenforceable.

**7. Objection Process**

7.1 A Settlement Class Member who wishes to object to the Settlement must notify the District Court of his or her objection, in writing, within ninety (90) days of the last date Notice is disseminated.

7.2 To be considered valid, an objection must be in writing, must include the objector's name and address, and must include the basis for the objection, along with any and all documents that support the objection. The objection must also indicate whether or not the objector intends to appear at the hearing on the motion for final approval of the Settlement. The objection must be filed with the Court on or before the deadline in Section 7.1. Additional instructions regarding how to object to the Settlement are contained in the Notices.

7.3 Settlement Class Members who do not file a timely written objection in accordance with the procedures set forth in this Agreement shall be deemed to have waived any objections to the Settlement and shall forever be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement, or any aspect of the Settlement, including, without limitation, the fairness, reasonableness, or adequacy of the Settlement, or any award of Attorneys' Fees and Costs, reimbursement of costs and expenses and/or the Class Representative Enhancement Payments.

**8. Distribution Process**

8.1 The Settlement shall be funded through the QSF in accordance with the provisions below. The timing of the payments by TJX to the QSF shall be as follows:

8.1.1 Within ten (10) business days following the date on which the District Court enters an order granting Preliminary Approval of the Settlement, or within ten (10) business days of the date on which the District Court enters an order approving the QSF, whichever is later, TJX shall transfer to the QSF 75% of the Administrative Costs Portion of the Monetary Component of the Settlement. TJX shall continue to periodically fund the QSF to cover additional Notice and Administration Costs, if required, up to the amount provided in Paragraph

1 3.1.2. In the event that the Settlement Effective Date does not occur, any  
2 amounts actually used by the Claim Administrator for notice and administration  
3 shall not be refundable to TJX. If, however, TJX has paid into the QSF  
4 monies for Notice and Administration, those amounts not used by the Claims  
5 Administrator shall be refunded to TJX.

6 8.1.2 Within ten (10) business days following the Settlement Effective  
7 Date, TJX shall transfer to the QSF amounts sufficient to cover that portion of the  
8 Monetary Component comprising the Attorneys' Fees and Costs and Class  
9 Representative Enhancement Payments awarded by the Court.

10 8.1.3 Within ninety (90) days following the Settlement Effective Date,  
11 TJX shall provide a sufficient number of plastic Merchandise Credits to the Claims  
12 Administrator for distribution to all Claimants. A Merchandise Credit will entitle a  
13 Claimant to a pro rata share of the Monetary Component of the Settlement as described  
14 in Paragraph 3.1.1 above, on the terms provided for in Paragraph 1.13 above. The  
15 Claims Administrator shall distribute the Merchandise Credits to Claimants within  
16 thirty (30) business days of receiving them from TJX.

17 8.2 Distributions from the QSF shall be handled as follows:

18 8.2.1 Other than for purposes of paying invoices submitted by the  
19 Claims Administrator, the QSF shall not distribute any payments required under this  
20 Agreement until after the Settlement Effective Date has occurred.

21 8.2.2 Attorneys' Fees and Costs awarded by the Court and the Class  
22 Representative Enhancement Payments awarded by the Court shall be paid to the  
23 individuals or entities specified by the Court within five (5) business days of receipt by  
24 the QSF under Section 8.1.2 (unless the award is appealed by the attorneys or the class  
25 representatives).

## 26 **9. Qualified Settlement Fund**

27 9.1 At the times required by this Agreement, TJX shall transfer to a trustee  
28 selected jointly by Class Counsel and TJX (the "Trustee") the required portions of the

1 Monetary Component to be held in the QSF, which shall be a separate trust organized  
2 and operated as a qualified settlement fund as described in Treasury Regulation §  
3 1.468B-1. Class Counsel and TJX jointly shall cause the Trustee and the Claims  
4 Administrator, as applicable, to take such steps as necessary to qualify the QSF as a  
5 qualified settlement fund under § 468B of the Internal Revenue Code, 26 U.S.C. § 468B,  
6 and the regulations promulgated pursuant thereto. TJX shall be considered the  
7 “transferor” within the meaning of Treasury Regulation § 1.468B-1(d)(1). The Claims  
8 Administrator shall be the “administrator” within the meaning of Treasury Regulation  
9 § 1.468B-2(k)(3). The Parties shall cooperate in securing an order of the Court to  
10 establish the QSF in accordance with the terms hereof in conjunction with its  
11 Preliminary Approval of the Settlement and Notice.

12 9.2 The Court shall retain jurisdiction over the administration of the QSF. TJX  
13 shall supply to the Claims Administrator the statement described in Treasury Regulation  
14 § 1.468B-3(e)(2) no later than February 15 of the year following each calendar year in  
15 which TJX makes a transfer to the QSF. In accordance with Treasury Regulation §  
16 1.468B-3(c), the transfers to the QSF will satisfy the “all  
17 events test” and the “economic performance” requirement of § 1.461(h)(1) of the  
18 Internal Revenue Code, and Treasury Regulation 1.461-1(a)(2). Accordingly, TJX shall  
19 not include the income of the QSF in its income. Rather, in accordance with Treasury  
20 Regulation § 1.468B-2, the QSF shall be taxed on its modified gross income, excluding  
21 the sums transferred to it, and shall make payment of resulting taxes from its own funds.  
22 In computing the QSF’s modified gross income, deductions shall be allowed for its  
23 administrative costs and other deductible expenses incurred in connection with the  
24 operation of the QSF as permissible pursuant to Treasury Regulation § 1.468B-2(b),  
25 including, without limitation, state and local taxes, and legal, accounting, and other fees  
26 relating to the operation of the QSF.

27 9.3 Upon establishment of the QSE, the Trustee or Claims Administrator,  
28 as appropriate, shall apply for an employer identification number for the QSF

1 utilizing Internal Revenue Service Form SS-4 and in accordance with Treasury  
2 Regulation § 1.468B-2(k)(4).

3 9.4 If requested by either TJX or the Claims Administrator, the Claims  
4 Administrator, the Trustee and TJX shall fully cooperate in filing a relation-back  
5 election under Treasury Regulation § 1.468B-1(j)(2) to treat the QSF as coming  
6 into existence as a settlement fund as of the earliest possible date.

7 9.5 Following its deposits as described in this Agreement, TJX shall have no  
8 responsibility, financial obligation, or liability whatsoever with respect to the  
9 notifications to the Class required hereunder, the processing of Claims and Opt-Out  
10 Requests, the allowance or disallowance of claims by Claimants, payments to Class  
11 Counsel, investment of QSF funds, payment of federal, state, and local income,  
12 employment, unemployment, excise, and other taxes imposed on the QSF or its  
13 disbursements, or payment of the administrative, legal, accounting, or  
14 other costs occasioned by the use or administration of the QSF, since it is agreed  
15 that such deposits shall fully discharge TJX's obligations to Claimants and Class  
16 Counsel and for expenses of administration in respect to the disposition of the Monetary  
17 Component hereunder. Rather, the Claims Administrator shall have sole authority and  
18 responsibility for the administration of such funds and income  
19 thereon, disbursement to Claimants and Class Counsel, and payment of taxes and  
20 administrative costs in accordance with the provisions hereof, subject only to the rights  
21 of TJX or Class Counsel to audit determinations of the Claims  
22 Administrator in accordance with this Agreement or to seek redress for  
23 any breach of the terms hereof.

24 9.6 The Claims Administrator shall cause to be timely and properly filed,  
25 on behalf of the QSF, all required federal, state, and local tax returns, information  
26 returns and tax withholdings statements in accordance with the provisions of  
27 Treasury Regulation § 1.468B-2(k) and Treasury Regulation § 1.468B-2(1)(2), as  
28 well as the timely and proper payments of any federal, state, or local taxes



(including estimated taxes) and associated tax-related penalties and interest for which the QSF may be liable. The Claims Administrator shall also be responsible for the timely and proper response to any questions from, or audits regarding, such taxes by the IRS or any state or local tax authority, as well as compliance with any other tax-related requirements. The Claims Administrator may, at its own expense, retain legal counsel and an independent, certified public accountant to consult with and advise the Claims Administrator or the Trustee with respect to the preparation and filing of such materials and the federal, state and local tax compliance of the QSF. Either TJX or the Claims Administrator, independently or jointly, may, but are not required to, apply to the Internal Revenue Service and/or any applicable state taxing authority for an advance ruling as to any issue pertinent to the qualification of the QSF under Internal Revenue Code § 468B and Treasury Regulations promulgated thereunder, its tax status under applicable state law, and/or its tax payment, reporting and withholding duties. – Settlement Class Members shall be responsible for payment of appropriate federal, state, and local income taxes on any claim paid out pursuant to this Agreement. If, in any such ruling or otherwise, it is determined that TJX has any responsibility whatsoever for payment of any federal, state or local tax on any claim paid out pursuant to this Agreement, then TJX shall have the right to terminate this Agreement. The Parties agree that no portion of any distributions from the QSF to the Settlement Class Members is made in satisfaction of any excluded liability as described in Treasury Regulation § 1.468B-1(g) related to Qualified Settlement Funds. Notwithstanding any effort, or failure, of the Parties, the Trustee or the Claims Administrator to treat the QSF as a qualified settlement fund within the meaning of Treasury Regulation § 1.468B-1, any additional tax liability, interest, or penalties incurred by TJX resulting from income earned by the QSF shall be reimbursed from the QSF in the amount of such additional tax liability, interest or penalties upon TJX's written request to the Claims Administrator.



1           9.7 The taxable year of the QSF shall be the calendar year in accordance  
2 with Treasury Regulation § 1.468B-2(j). The QSF shall utilize the accrual method  
3 of accounting within the meaning of § 446 (c) of the Internal Revenue Code.

4           9.8 The Claims Administrator may amend, either in whole or in part,  
5 any administrative provision of this Section or the trust instrument through which  
6 the QSF is established to maintain the qualification of the QSF pursuant to the  
7 above described authorities provided that the rights and liabilities of the Parties  
8 hereto and the Class are not altered thereby in any material respect.

9       **10. Comprehensive Waiver, Release, and Dismissal**

10           10.1 Settlement Class Member Released Claims - Released by Settlement Class  
11 Members:

12           10.1.1 Subject to final approval by the Court of the Settlement  
13 Agreement, and for good and valuable consideration set forth herein, the receipt and  
14 sufficiency of which is hereby acknowledged, all Releasing Settlement Class Members  
15 do hereby irrevocably release, acquit, and forever discharge TJX (and all past and  
16 present affiliates, parents or subsidiaries, officers, directors, employees, agents, and  
17 attorneys) against any and all claims, rights, penalties, demands, damages, costs and  
18 expenses (including attorneys' fees and costs, other than those costs and expenses  
19 required to be paid pursuant to this Agreement), causes of action, or liability of any kind  
20 arising out of or in connection with all of the claims or causes of action that were made  
21 or could have been made in this Litigation or in any other forum relating, in whole or  
22 in part, to the alleged acts, omissions, facts, matters, transactions, circumstances  
23 asserted in the Litigation, including assertions that TJX has used false or misleading  
24 Compare At price advertising on TJX price tags on items sold at TJX stores in California  
25 during the Class Period.

26           10.1.2 The Settlement Class Member Released Claims includes a release  
27 of all claims for Attorneys' Fees and Costs incurred by Releasing Settlement Class  
28

1 Members or by Class Counsel or any other attorney in connection with the Litigation  
2 and this Settlement.

3 10.1.3 Releasing Settlement Class Members understand and agree that  
4 the release of the Settlement Class Member Released Claims is a full and final  
5 general release applying to both those Settlement Class Member Released Claims that  
6 are currently known, anticipated, or disclosed to Releasing Settlement Class Members  
7 and to all those Settlement Class Member Released Claims that are presently unknown,  
8 unanticipated, or undisclosed to any Releasing Settlement Class Members arising out  
9 of the alleged facts, circumstances, and occurrences underlying: (i) the claims set forth  
10 in the Litigation; or (ii) TJX's conduct with respect to the Litigation. Releasing  
11 Settlement Class Members acknowledge that the facts could be different than they now  
12 know or suspect to be the case, but they are nonetheless releasing all such unknown  
13 claims. In exchange for the good and valuable consideration set forth herein, all  
14 Releasing Settlement Class Members further waive any and all rights or benefits that  
15 they as individuals or the class may now have as a result of the alleged facts,  
16 circumstances, and occurrences underlying the claims set forth in the Litigation under  
17 the terms of § 1542 of the California Civil Code (or similar statute in effect in any other  
18 jurisdiction), which provides as follows:

19 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**  
20 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO**  
21 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**  
22 **THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST**  
23 **HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT**  
24 **WITH DEBTOR.**

25 10.2 TJX's Released Claims - Release by TJX:

26 10.2.1 Subject to final approval by the Court of the Settlement, and for  
27 good and valuable consideration set forth herein, the receipt and sufficiency of which  
28 is hereby acknowledged, TJX does hereby irrevocably release, acquit, and forever

1 discharge all Releasing Settlement Class Members of and from any and all claims,  
2 rights, penalties, demands, damages, debts, accounts, duties, attorneys' fees, costs and  
3 expenses, liens, charges, complaints, causes of action, obligations, or liability that could  
4 have been asserted but were not asserted as a compulsory counterclaim against  
5 Releasing Settlement Class Members in this Litigation.

6 10.2.2 TJX understands and agrees that the release of the TJX's Released Claims  
7 is a full and final general release applying to both those TJX's Released Claims that are  
8 currently known, anticipated, or disclosed to TJX and to all those TJX's Released  
9 Claims that are presently unknown, unanticipated, or undisclosed to TJX arising out of  
10 the alleged facts, circumstances, and occurrences, underlying any compulsory  
11 counterclaim that could have been asserted in the Litigation. TJX acknowledges that  
12 the facts could be different than it now knows or suspects to be the case, but it is  
13 nonetheless releasing all such unknown counterclaims. In exchange for the good and  
14 -valuable consideration set forth herein, TJX further waives any and all rights or benefits  
15 that it may now have as a result of the alleged facts, circumstances, and occurrences  
16 underlying such a potential compulsory counterclaim under the terms of § 1542 (a) of  
17 the California Civil Code (or similar statute in effect in any other jurisdiction), which  
18 provides as follows:

19 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**  
20 **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO**  
21 **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**  
22 **THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST**  
23 **HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT**  
24 **WITH DEBTOR.**

25 10.3 The Parties acknowledge that this Settlement, including the releases  
26 provided in this section, reflects a compromise of disputed claims.

27 10.4 The Final Judgment shall dismiss the Litigation with prejudice as to TJX  
28 and shall incorporate the terms of this release.

**11. Duties of The Parties With Respect to Preliminary Court Approval**

11.1 On or before September 18, 2017, or such other date as the Court approves, Class Counsel shall apply to the District Court for the entry of an order granting Preliminary Approval of the Settlement substantially in the following form:

11.1.1 Conditionally certifying the Settlement Class;

11.1.2 Preliminarily approving the Settlement;

11.1.3 Approving as to form and content the proposed notices and notice plan, including the Email, Postcard and Publication Notices, Claim Form and Opt-Out Request Form;

11.1.4 Scheduling a fairness hearing on the question of whether the proposed Settlement should be finally approved as fair, reasonable, and adequate as to the Settlement Class;

11.1.5 Approving Staci Chester, Robin Berkoff, Daniel Friedman, and Theresa Metoyer as Settlement Class Representatives;

11.1.6 Approving as Class Counsel for the Settlement Class, Douglas Caiafa of DOUGLAS CAIAFA, A Professional Law Corporation, Christopher J. Morosoff of the LAW OFFICE OF CHRISTOPHER J. MOROSOFF, and Greg K. Hafif of the LAW OFFICE OF HERBERT HAFIF; and

11.1.7 Approving JND as Claims Administrator.

11.2 TJX shall cooperate with Class Counsel as reasonably necessary to obtain Preliminary Approval.

**12. Duties of The Parties Following Preliminary Court Approval**

12.1 Following preliminary approval by the District Court of the Settlement, and prior to the final fairness hearing, Class Counsel will submit a proposed Final Judgment that will be agreed to by the Parties. The proposed Final Judgment shall:

12.1.1 Approve the Settlement, adjudging the terms thereof to be fair, reasonable, and adequate, and directing consummation of its terms and provisions;

1 12.1.2 Approve Class Counsel's application for an award of  
2 Attorneys' Fees and Costs;

3 12.1.3 Approve the Class Representative Enhancement Payments;

4 12.1.4 Certify the Settlement Class for Settlement purposes only in  
5 accordance with applicable legal standards and this Agreement; and

6 12.1.5 Dismiss this Litigation between the Class Representatives and the  
7 Settlement Class Members, on the one hand, and TJX on the other hand, on the merits  
8 and with prejudice and permanently bar the Class Representatives, and all Settlement  
9 Class Members (other than those who timely filed valid Opt-Out  
10 Requests) from further prosecuting any of the Settlement Class Member Released  
11 Claims against TJX.

12 12.2 TJX shall cooperate with Class Counsel as necessary to obtain final  
13 approval and the dismissal with prejudice of the Litigation as to TJX.

14 12.3 The Final Judgment shall not be considered final until the occurrence of  
15 the Settlement Effective Date.

16 **13. Mutual Full Cooperation**

17 13.1 The Parties agree to cooperate fully with each other to accomplish the  
18 terms of this Settlement, including but not limited to execution of all necessary  
19 documents, and to take such other action as may reasonably be necessary to implement  
20 the terms of this Settlement. The Parties shall use their best efforts, including all efforts  
21 contemplated by this Settlement and any other efforts that may become necessary by  
22 order of the Court or otherwise, to effectuate the terms of this Settlement. As soon as  
23 practicable after execution of this Agreement, Class Counsel shall, with the assistance  
24 and cooperation of TJX and its counsel, take all necessary steps to secure the Court's  
25 Final Judgment.

26 **14. Statement of No Admission**

27 14.1 Nothing contained in this Agreement or Settlement shall be construed or  
28 deemed an admission of liability, culpability, or wrongdoing. TJX expressly denies

1 liability for the claims asserted and specifically denies and does not admit any of the  
2 pleaded facts not admitted in its pleadings in the Litigation. Nor shall this Agreement  
3 or Settlement constitute an admission by TJX as to any interpretation of laws or as to  
4 the merits, validity, or accuracy of any claims made against it in the Litigation.  
5 Likewise, nothing in this Agreement shall be construed or deemed an admission by  
6 Class Representatives or the Settlement Class with regard to the validity of any of TJX's  
7 defenses or affirmative defenses. Each of the Parties has entered into this Agreement  
8 and Settlement with the intention to avoid further disputes and litigation with the  
9 attendant inconvenience and expenses.

10 14.2 This Agreement, and all related documents, the certification for settlement  
11 purposes entered pursuant to this Agreement, and any Claim Forms, Requests to Opt-  
12 Out or Objections submitted by Settlement Class Members and all other actions taken  
13 in implementation of the Settlement, including any statements, discussions, or  
14 communications, and any materials prepared, exchanged, issued, or used during the  
15 course of the negotiations leading to this Agreement, are settlement documents and shall  
16 be inadmissible in evidence and shall not be used for any purpose in this Litigation or  
17 any other judicial, arbitral, administrative, investigative, or other court tribunal, forum,  
18 or proceeding, or any other litigation against TJX, for any purpose, except in an action  
19 or proceeding to approve, interpret, or enforce the terms of this Agreement.

20 14.3 The Claim Forms, Opt-Out Requests or Objections, or other evidence  
21 produced or created by any Settlement Class Member in connection with the claims  
22 resolution procedures pursuant to this Settlement, and any actions taken by TJX in  
23 response to such Claim Forms, Opt-Out Requests, Objections, or other evidence, do not  
24 constitute, and will not be deemed to constitute an admission by TJX of any violation  
25 of any federal, state, or local law, statute, ordinance, regulation, rule, or executive order,  
26 or any obligation or duty at law or in equity.  
27  
28



**15. Voiding The Agreement**

15.1 In the event that this Settlement is not approved, or if for any reason the Settlement Effective Date does not occur, the Agreement shall be deemed null, void, and unenforceable and shall not be used nor shall it be admissible in any subsequent proceedings either in this Court or in any other judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding, or other litigation against TJX, except in an action or proceeding to approve, interpret, or enforce the terms of this Agreement.

15.2 In the event that the Court does not approve the Attorneys' Fees and Costs in the amount requested by Class Counsel, or in the event that the Attorneys' Fees and Costs requested by Class Counsel are reduced, that finding shall not be a basis for rendering the entire Agreement null, void, or unenforceable. Class Counsel retains their right to appeal any decision by the Court regarding the Attorneys' Fees and Costs or Enhancement Award.

**16. Authority to Execute**

16.1 The respective signatories to this Agreement each represent that they are fully authorized to enter into this Settlement on behalf of the respective Parties for submission to the Court for preliminary and final approval.

**17. No Prior Assignments**

17.1 The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber, to any person or entity any portion of any liability, claim, demand, action, cause of action, or right released and discharged in this Settlement.

**18. Miscellaneous Provisions**

18.1 Construction. The Parties agree that the terms and conditions of this Settlement are the result of lengthy, intensive, arms-length negotiations between the Parties and that this Settlement shall not be construed in favor of or against any party

1 by reason of the extent to which any party or her or his counsel participated in the  
2 drafting of this Settlement.

3 18.2 Captions and Interpretations. Paragraph titles or captions contained in this  
4 Agreement are a matter of convenience and for reference, and in no way define, limit,  
5 extend, or describe the scope of this Settlement or any provision of this Agreement.  
6 Each term of this Agreement is contractual and not merely a recital.

7 18.3 Modification. This Agreement may not be changed, altered, or modified,  
8 except in a writing signed by the Parties and approved by the Court. Notwithstanding  
9 the foregoing, the Parties agree that any dates contained in this Agreement may be  
10 modified by agreement of the Parties without Court approval if the Parties agree and  
11 cause exists for such modification. This Settlement may not be discharged except by  
12 performance in accordance with its terms or by a writing signed by the Parties.

13 18.4 Integration Clause. This Agreement, the Exhibits hereto, and any other  
14 documents delivered pursuant hereto contain the entire agreement between the Parties  
15 relating to the resolution of the Litigation, and all prior or contemporaneous agreements,  
16 understandings, representations, and statements, whether oral or written and whether by  
17 a Party or such Party's legal counsel, are merged in this Agreement. No rights under  
18 this Settlement may be waived except in writing and signed by the Party against whom  
19 such waiver is to be enforced.

20 18.5 Binding on Assigns. This Settlement shall be binding upon, and inure  
21 to the benefit of, the Parties and their respective heirs, trustees, executors,  
22 administrators, successors, and assigns.

23 18.6 Binding on Settlement Class Members. It is agreed that because the  
24 Settlement Class is large, it is impossible or impractical to have each Settlement Class  
25 Member execute this Agreement. The Email, Postcard, and Publication Notices will  
26 provide all Settlement Class Members with a summary of the Settlement, and will  
27 advise all Settlement Class Members of the binding nature of the release. Excepting  
28 only those Settlement Class Members who timely submit an Opt-Out Request, the

1 Email, Postcard, and Publication Notice shall have the same force and effect as if this  
2 Agreement was executed by each Settlement Class Member.

3 18.7 Counterparts. This Agreement may be executed by .pdf signature and in  
4 any number of counterparts, and when each Party has signed and delivered to each other  
5 at least one such counterpart, each counterpart shall be deemed an original, and, when  
6 taken together with other signed counterparts, shall constitute one and the same  
7 Agreement, which shall be binding upon and effective as to all Parties.

8 18.8 Applicable Law. This Agreement shall be governed by California law  
9 without regard to its choice of law or conflicts of law principles or provisions.

## 10 19. Disputes

11 19.1 Mediation. The Parties agree that they will first attempt to resolve any  
12 disagreements or disputes over the implementation of the terms of the Settlement, this  
13 Agreement, or any other documents necessary to effectuate the Settlement through  
14 mediation with Hon. Margaret Nagle (Ret.) or through another mediator who is  
15 mutually agreeable to the Parties. In the event that one or more of the Parties institutes  
16 a legal action, arbitration or other proceeding against any other Party or Parties to  
17 enforce the provisions of this Settlement or to declare rights and/or obligations under  
18 this Settlement, they will bear their own costs, expenses and attorney's fees.

## 19 20. Confidentiality

20 20.1 Any and all negotiations related to this Agreement (including the  
21 negotiations related to the drafting of this Agreement, and any negotiations prior to  
22 preliminary approval or between the time of preliminary and final approval) will remain  
23 strictly confidential and shall not be discussed with anyone other than the Class  
24 Representatives and TJX, their retained attorneys, their accountants and financial or tax  
25 advisers, the retained consultants, the Court, and the mediator Hon. Margaret Nagle  
26 (Ret.) and her staff, unless otherwise agreed to by Class Counsel and TJX or unless  
27 otherwise ordered by the Court. The Parties will not issue any press release or  
28 equivalent, nor make any public statement, nor will they respond to any press or media

1 inquiry, other than to state that the case has been settled and to direct any member of  
2 the press or media to the Settlement Website, this Agreement, and the documents  
3 publicly filed in the Litigation. This provision does not prohibit the Parties from  
4 presenting to the Court as much information about their settlement negotiations as they  
5 mutually agree is necessary, or as the Court requires, to procure approval of this  
6 Settlement.

7 **21. Documents and Discovery**

8 21.1 Within thirty (30) days after a final, non-appealable Judgment is  
9 entered disposing of all claims in the Litigation, Class Counsel agrees to take steps  
10 necessary to destroy or erase all documents and data provided by TJX in the Litigation.  
11 Upon request from TJX, Class Counsel shall certify in writing to TJX their compliance  
12 with this provision. Nothing in this provision or Agreement shall prohibit Class  
13 Counsel from retaining a case file, including all pleadings, motion papers, court filings,  
14 deposition transcripts, legal memoranda, correspondence, notes, and work product, so  
15 long as any exhibits to such documents which contain documents or data marked  
16 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" continue to be treated as such  
17 under the Protective Order in this case.

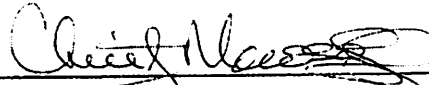
FOR PLAINTIFFS AND THE PLAINTIFF CLASS

Dated: 9/15/17

By: 

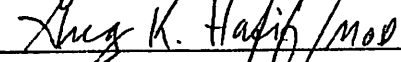
Douglas Caiafa  
Douglas Caiafa, A Professional Law  
Corporation Counsel for the Class

Dated: September 15, 2017

By: 

Christopher J. Morosoff  
Law Office of Christopher J. Morosoff  
Counsel for the Class

Dated: Sept. 15, 2017

By: 

Greg K. Hafif  
Law Office of Herbert Hafif  
Counsel for the Class

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Staci Chester

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Robin Berkoff

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By: \_\_\_\_\_

Daniel Friedman

Dated: \_\_\_\_\_

By: \_\_\_\_\_

Theresa Metoyer

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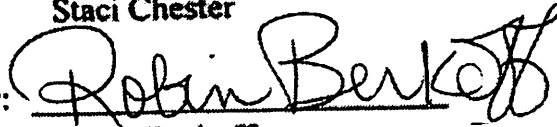
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Dated: \_\_\_\_\_

By: \_\_\_\_\_

Daniel Friedman


Dated: 9-15-17

By: Theresa Metoyer

Theresa Metoyer

1 FOR DEFENDANTS

2  
3 Dated: 9.14.17

By:   
The TJX Companies, Inc.  
T.J. Maxx of CA, LLC  
Marshalls of CA, LLC,  
HomeGoods, Inc.

7 By: Alicia C. Kelly

8 Its: Executive Vice  
9 President, General  
10 Counsel & Secretary