

1 Evan Smith (Bar No. SBN 242352)  
2 BRODSKY & SMITH, LLC.  
3 9595 Wilshire Blvd., Ste. 900  
4 Beverly Hills, CA 90212  
5 Tel: (877) 534-2590  
6 Fax: (310) 247-0160

7 *Attorneys for Plaintiff*

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA

10 PRECILA BALABBO,

11 Plaintiff,

12 v.

13 DESIGN SOURCE INTERNATIONAL, LLC, et  
14 al.,

15 Defendants.

Case No.: RG19041067

**CONSENT JUDGMENT**

Judge: Stephen Pulido

Dept.: 517

Hearing Date: January 5, 2021

Hearing Time: 3:00 PM

Reservation #: R-2220728

1 **1. INTRODUCTION**

2 1.1 **The Parties.** This Consent Judgment is entered into by and between Precila  
3 Balabbo acting on behalf of the public interest (hereinafter "Balabbo") and Design Source  
4 International, LLC ("Design Source" or "Defendant") with Balabbo and Defendant collectively  
5 referred to as the "Parties" and each of them as a "Party." Balabbo represents that she is an  
6 individual residing in California that seeks to promote awareness of exposures to toxic chemicals  
7 and improve human health by reducing or eliminating hazardous substances contained in  
8 consumer products. Balabbo alleges that Design Source is "a person in the course of doing  
9 business" for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health &  
10 Safety Code § 25249.6, et seq. ("Proposition 65").

11 1.2 **Allegations and Representations.** Balabbo further alleges that Design Source  
12 distributed for sale in California Elise & James bedding - packaging/cases containing the chemical  
13 di(2-ethylhexyl) phthalate (DEHP). On January 1, 1988, the State of California listed DEHP as a  
14 chemical known to the State to cause cancer, and on October 24, 2003, the State listed DEHP as a  
15 chemical known to the State to cause developmental toxicity in males. Balabbo alleges that Design  
16 Source failed to provide the health hazard warning required by Proposition 65 for exposures to  
17 DEHP from sales of the Elise & James bedding -packaging/cases.

18 1.3 **Notice of Violation/Complaint.** On or about April 23, 2019, Balabbo served  
19 Design Source and various public enforcement agencies with a document entitled "Notice of  
20 Violation of California Health & Safety Code § 25249.6, et seq." (the "Notice"). The Notice  
21 provided Design Source and such others, including public enforcers, with notice that alleged that  
22 Design Source was in violation of California Health & Safety Code § 25249.6, for failing to warn  
23 California customers that the Elise & James bedding - packaging/cases exposed users in California  
24 to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice. On  
25 October 29, 2019, Balabbo filed a complaint (the "Complaint") in the matter.

26 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
27 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter,  
28 that venue is proper in the County of Alameda, and that this Court has jurisdiction to approve,

1 enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution  
2 of all claims which were or could have been raised in the Complaint based on the facts alleged  
3 therein and/or in the Notice.

4 1.5 Defendant denies the material allegations contained in Balabbo's Notice and  
5 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent  
6 Judgment shall be construed as an admission by Defendant of any fact, finding, issue of law, or  
7 violation of law; nor shall compliance with this Consent Judgment constitute or be construed as an  
8 admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such  
9 being specifically denied by Defendant. However, this section shall not diminish or otherwise  
10 affect the obligations, responsibilities, and duties of Defendant under this Consent Judgment.

11 **2. DEFINITIONS**

12 2.1 **Covered Products.** The term "Covered Products" means the Elise & James  
13 bedding - packaging/cases imported, distributed and/or sold in California.

14 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is  
15 entered as a Judgment of the Court.

16 **3. INJUNCTIVE RELIEF: WARNINGS**

17 3.1 **Reformulation of Covered Products.** As of the date this Consent Judgment is  
18 signed by both Parties, and continuing thereafter, Covered Products that Design Source directly  
19 manufactures, imports, distributes, sells, or offers for sale in California shall either: (a) be  
20 Reformulated Products pursuant to § 3.2, below; or (b) be labeled with a clear and reasonable  
21 exposure warning pursuant to §§ 3.3 and 3.4, below. For purposes of this Consent Judgment, a  
22 "Reformulated Product" is a Covered Product that is in compliance with the standard set forth in §  
23 3.2 below. The warning requirements set forth in §§ 3.3 and 3.4 shall not apply to any  
24 Reformulated Product.

25 3.2 **Reformulation Standard.** "Reformulated Products" shall mean Covered Products  
26 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP  
27 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A  
28 and 8270C or other methodology utilized by federal or state government agencies for the purpose

1 of determining the phthalate content in a solid substance.

2       **3.3 Clear and Reasonable Warning.** As of the date this Consent Judgment is signed  
3 by both Parties, and continuing thereafter, a clear and reasonable exposure warning as set forth in  
4 this §§ 3.3 and 3.4 must be provided for all Covered Products that Defendant manufacturers,  
5 imports, distributes, sells, or offers for sale in California that are not Reformulated Products. There  
6 shall be no obligation for Defendant to provide a warning for Covered Products that enter the  
7 stream of commerce prior to the date this Consent Judgment is signed by both Parties. The  
8 warning shall consist of either the **Warning** or **Alternative Warning** described in §§ 3.3(a) or (b),  
9 respectively:

10       (a) **Warning:** Design Source may use the following warning ("**Warning**"):

11       ⚠ **WARNING:** This product can expose you to chemicals including di(2-  
12 ethylhexyl) phthalate (DEHP), which is known to the State of California to cause  
13 cancer and birth defects or other reproductive harm. For more information go to  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

14       (b) **Alternative Warning:** Design Source may, but is not required to, use an  
15 alternative short-form warning ("**Alternative Warning**") as follows:

16       ⚠ **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

17       **3.4 A Warning or Alternative Warning** provided pursuant to § 3.3 must print the  
18 word "**WARNING:**" in all capital letters and in bold font, followed by a colon. The warning  
19 symbol to the left of the word "**WARNING:**" must be a black exclamation point in a yellow  
20 equilateral triangle with a black outline, except that if the sign or label for the Covered Product  
21 does not use the color yellow, the symbol may be in black and white. The symbol must be in a size  
22 no smaller than the height of the word "**WARNING:**". The warning shall be affixed to or printed  
23 on the Covered Product's packaging or labeling, or on a placard, shelf tag, sign or electronic  
24 device or automatic process, providing that the warning is displayed with such conspicuousness,  
25 as compared with other words, statements, or designs as to render it likely to be read and  
26 understood by an ordinary individual under customary conditions of purchase or use. A warning  
27 may be contained in the same section of the packaging, labeling, or instruction booklet that states  
28 other safety warnings, if any, concerning the use of the Covered Product and shall be at least the

1 same size as those other safety warnings.

2 If Design Source sells Covered Products via an internet website to customers located in  
3 California, the warning requirements of this section shall be satisfied if the **Warning** or  
4 **Alternative Warning** appears either: (a) on the same web page on which a Covered Product is  
5 displayed and/or described; (b) on the same page as the price for the Covered Product; or (c) on  
6 one or more web pages displayed to a purchaser prior to purchase during the checkout process.  
7 Alternatively, a symbol consisting of a black exclamation point in a yellow or white equilateral  
8 triangle may appear adjacent to or immediately following the display, description, price, or  
9 checkout listing of the Covered Product, if the warning statement appears elsewhere on the same  
10 web page in a manner that clearly associates it with the product(s) to which the warning applies.

11 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in  
12 compliance with providing warnings pursuant to this Consent Judgment by either adhering to §§  
13 3.3 and 3.4 of this Consent Judgment or by complying with warning requirements adopted by the  
14 State of California's Office of Environmental Health Hazard Assessment ("OEHHA") after the  
15 Effective Date.

16 4. **MONETARY TERMS**

17 4.1 **Civil Penalty.** Design Source shall pay \$1,000.00 as a Civil Penalty pursuant to  
18 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California  
19 Health & Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining  
20 25% of the Civil Penalty remitted to Balabbo, as provided by California Health & Safety Code  
21 § 25249.12(d).

22 4.1.1 Within twenty (20) days of the Effective Date, Design Source shall issue  
23 two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$750.00; and  
24 to (b) "Brodsky & Smith, LLC in Trust for Balabbo" in the amount of \$250.00. Payment owed to  
25 Balabbo pursuant to this Section shall be delivered to the following payment address:

26 Evan J. Smith, Esquire  
27 Brodsky & Smith, LLC  
28 Two Bala Plaza, Suite 805  
Bala Cynwyd, PA 19004

1 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly  
2 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

3 For United States Postal Service Delivery:

4 Mike Gyurics  
5 Fiscal Operations Branch Chief  
6 Office of Environmental Health Hazard Assessment  
7 P.O. Box 4010  
8 Sacramento, CA 95812-4010

9 For Non-United States Postal Service Delivery:

10 Mike Gyurics  
11 Fiscal Operations Branch Chief  
12 Office of Environmental Health Hazard Assessment  
13 1001 I Street  
14 Sacramento, CA 95814

15 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith, LLC at the address  
16 set forth above as proof of payment to OEHHA.

17 4.2 **Attorneys' Fees.** Within twenty (20) days of the Effective Date, Design Source  
18 shall pay \$14,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for  
19 Balabbo's attorneys' fees and costs incurred as a result of investigating, bringing this matter to  
20 Design Source's attention, litigating, and negotiating and obtaining judicial approval of a  
21 settlement in the public interest, pursuant to Code of Civil Procedure § 1021.5.

22 **5. RELEASE OF ALL CLAIMS**

23 5.1 This Consent Judgment is a full, final, and binding resolution between Balabbo  
24 acting on her own behalf, and on behalf of the public interest, and Design Source, and its parents,  
25 shareholders, members, directors, officers, managers, employees, representatives, agents,  
26 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their  
27 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they  
28 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but  
not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees  
retailers, franchisees and cooperative members including, but not limited to, HomeGoods, Inc. and  
its parents, shareholders, members, directors, officers, managers, employees, representatives,

1 agents, attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates,  
2 and their predecessors, successors and assigns ("Downstream Releasees"), of all claims for  
3 violations of Proposition 65 based on exposure to DEHP from Covered Products as set forth in the  
4 Notice, with respect to any Covered Products manufactured, distributed, or sold by Design Source  
5 prior to the Effective Date. This Consent Judgment shall have preclusive effect such that no other  
6 person or entity, whether purporting to act in his, her, or its interests or the public interest shall be  
7 permitted to pursue and/or take any action with respect to any violation of Proposition 65 that was  
8 alleged in the Complaint, or that could have been brought pursuant to the Notice against Design  
9 Source and/or the Downstream Releasees of the Covered Products ("Proposition 65 Claims").  
10 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65  
11 with regard to the Covered Products.

12       5.2     In addition to the foregoing, Balabbo, on behalf of herself, her past and current  
13 agents, representatives, attorneys, and successors and/or assignees, and not in her representative  
14 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
15 legal action, and releases Design Source, Defendant Releasees, and Downstream Releasees from  
16 any and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,  
17 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and  
18 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or  
19 contingent, now or in the future, with respect to any alleged violations of Proposition 65 related to  
20 or arising from Covered Products manufactured, distributed, or sold by Design Source, Defendant  
21 Releasees or Downstream Releasees. With respect to the foregoing waivers and releases in this  
22 paragraph, Balabbo hereby specifically waives any and all rights and benefits which she now has,  
23 or in the future may have, conferred by virtue of the provisions of § 1542 of the California Civil  
24 Code, which provides as follows:

25           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
26           CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
27           EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE  
28           AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY  
             AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED  
             PARTY.

1           5.3     Design Source waives any and all claims against Balabbo, her attorneys and other  
2 representatives, for any and all actions taken or statements made (or those that could have been  
3 taken or made) by Balabbo and her attorneys and other representatives, whether in the course of  
4 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
5 and/or with respect to Covered Products.

6     **6.     INTEGRATION**

7           6.1     This Consent Judgment contains the sole and entire agreement of the Parties and  
8 any and all prior negotiations and understandings related hereto shall be deemed to have been  
9 merged within it. No representations or terms of agreement other than those contained herein exist  
10 or have been made by any Party with respect to the other Party or the subject matter hereof.

11    **7.     GOVERNING LAW**

12           7.1     The terms of this Consent Judgment shall be governed by the laws of the State of  
13 California and apply within the State of California. In the event that Proposition 65 is repealed or  
14 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then  
15 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and  
16 to the extent that, Covered Products are so affected.

17    **8.     NOTICES**

18           8.1     Unless specified herein, all correspondence and notices required to be provided  
19 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-  
20 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party  
21 by the other party at the following addresses:

22    For Defendant:

23           Kristen Larson  
24           Stradling Yocca Carlson & Rauth  
25           A Professional Corporation  
26           800 Anacapa Street, Suite A  
27           Santa Barbara, CA 93101  
28



1 And

2 For Balabbo:

3 Evan Smith  
4 Brodsky & Smith, LLC  
5 9595 Wilshire Blvd., Ste. 900  
6 Beverly Hills, CA 90212

7 Any party, from time to time, may specify in writing to the other party a change of address to  
8 which all notices and other communications shall be sent.

9 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

10 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of  
11 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
12 the same document.

13 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**  
14 **APPROVAL**

15 10.1 Balabbo agrees to comply with the requirements set forth in California Health &  
16 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
17 Defendant agrees it shall support approval of such Motion.

18 10.2 This Consent Judgment shall not be effective until it is approved and entered by the  
19 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,  
20 the Parties agree to meet and confer on how to proceed and if such agreement is not reached  
21 within 30 days, the case shall proceed on its normal course.

22 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
23 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
24 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on  
25 its normal course on the trial court's calendar.

26 **11. MODIFICATION**

27 11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
28 and the approval of the Court or upon the granting of a motion brought to the Court by either  
Party.

12. **ATTORNEYS' FEES**

12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent Judgment shall be required to pay the prevailing party's reasonable attorneys' fees and costs.

12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

13. **RETENTION OF JURISDICTION**

13.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

14. **AUTHORIZATION**

14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

**AGREED TO:**

Date: 10/28/2020

By:   
PRECILA BALABBO

**AGREED TO:**

Date: 10/29/20

By:   
DESIGN SOURCE  
INTERNATIONAL, LLC

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

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

\_\_\_\_\_  
Judge of Superior Court

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