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7 DENNIS JOHNSON

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 CITY AND COUNTY OF SANTA CLARA
12 UNLIMITED CIVIL JURISDICTION
13

14 DENNIS JOHNSON,
15 Plaintiff,

16 v.

17 HOME ESSENTIALS & BEYOND, INC.; and
18 DOES 1-150, inclusive,

19 Defendants.
20
21

Case No. 20-CV-370737

[PROPOSED] CONSENT JUDGMENT

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

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Dennis Johnson (“Johnson”)
4 and defendant Home Essentials & Beyond, Inc., (“Home Essentials”), with Johnson and Home
5 Essentials each referred to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Home Essentials employs ten or more persons and is a person in the course of doing
12 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California
13 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Johnson alleges that Home Essentials manufactures, sells, and distributes for sale in
16 California spoon rests containing lead. Lead is listed pursuant to Proposition 65 as a chemical
17 known to cause birth defects and other reproductive harm. Johnson alleges that Home Essentials
18 failed to provide the health hazard warnings required by Proposition 65 for exposures to lead.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are ceramic spoon rests containing lead that
21 are manufactured, sold, or distributed for sale in California by Home Essentials including, but not
22 limited to, the “*Molly Hatch Spoon Rest; SKU 26-198733*, (hereinafter “Products”).

23 **1.6 Notice of Violation**

24 On February 19, 2020, Johnson served Home Essentials and the requisite public
25 enforcement agencies with a 60-Day Notice of Violation, alleging that Home Essentials violated
26 Proposition 65 when it failed to warn its customers and consumers in California of the health
27 hazards associated with exposures to the Products. No public enforcer has commenced and is
28 diligently prosecuting the allegations set forth in the Notices.

1 **1.7 Complaint**

2 On September 14, 2020, Johnson commenced the instant action, naming Home Essentials as
3 one of the defendants for alleged violations of Proposition 65 related unwarned exposures to lead
4 on the Products (“Complaint”).

5 **1.8 No Admission**

6 Home Essentials denies the material, factual, and legal allegations contained in the Notice
7 and maintains that all of the products that it has sold and distributed in California, including the
8 Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall
9 be construed as an admission by Home Essentials of any fact, finding, conclusion, issue of law, or
10 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
11 admission by Home Essentials of any fact, finding, conclusion, issue of law, or violation of law,
12 such being specifically denied by Home Essentials. This Section shall not, however, diminish or
13 otherwise affect Home Essentials’ obligations, responsibilities, and duties under this Consent
14 Judgment.

15 **1.9 Jurisdiction**

16 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
17 jurisdiction over Home Essentials as to the allegations contained in the Complaint, that venue is
18 proper in the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the
19 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure
20 section 664.6.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that
23 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5,
24 including any unopposed Tentative Ruling approving this Consent Judgment.

25 **2. INJUNCTIVE RELIEF: REFORMULATION**

26 **2.1 Reformulation Standards**

27 “Reformulated Products” are defined as those Products that: (a) contain no more than 90
28 parts per million (“ppm”) lead in any decoration, colored artwork, designs and/or marking on the

1 surface of the Products when analyzed pursuant to U.S. Environmental Protection Agency testing
2 methodologies 3050B or equivalent methodologies utilized by federal or state agencies for the
3 purpose of determining lead content in a solid substance, *and* (b) yield no more than 1.0 microgram
4 of lead on any surface sampled and analyzed pursuant to the NIOSH 9100 testing protocol.

5 If the decoration is tested after it is affixed to the Lead Products, the percentage of the lead
6 by weight must related only to the decorating materials and must not include any quantity
7 attributable to non-decorating material (e.g., glass or ceramic substrate).

8 **2.2 Reformulation Commitment**

9 As of the Effective Date, Home Essentials shall not sell or offer the Products for sale in the
10 State of California unless they are Reformulated Products. The Parties agree and intend that
11 compliance with the terms of this Consent Judgment shall constitute compliance with Proposition
12 65 with respect to exposures to lead on the Products.

13 **3. MONETARY SETTLEMENT TERMS**

14 **3.1 Civil Penalty Payment**

15 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims
16 alleged in the Notice or referred to in this Consent Judgment, Home Essentials agrees to pay \$2,000
17 in civil penalties within two (2) business days of the Effective Date. The penalty payment will be
18 allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with
19 75% of the penalty amount remitted to the California Office of Environmental Health Hazard
20 Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Johnson and
21 delivered to the address in Section 3.3 herein. Home Essentials will provide its payment in two
22 checks as follows: (1) “OEHHA” in the amount of \$1,500; and (2) “Dennis Johnson” in the amount
23 of \$500.

24 **3.2 Attorneys’ Fees and Costs**

25 The Parties acknowledge that Johnson and his counsel offered to resolve this dispute
26 without reaching terms on the amount of attorney’s fees and costs to be reimbursed, thereby leaving
27 the issue to be resolved after the material terms of the agreement had been settled. Shortly after the
28 other settlement terms had been reached, Home Essentials expressed a desire to resolve the

1 attorney's fees and costs. The Parties reached an accord on the compensation due to Johnson's
2 counsel under general contract principles and the private attorney general doctrine codified at Code
3 of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal
4 principles, within two (2) business days of the Effective Date, Home Essentials agrees to pay
5 \$20,000, in the form of a check made payable to "Voorhees & Bailey, LLP," for all fees and costs
6 incurred investigating, bringing this matter to the attention of Home Essentials' management, and
7 negotiating a settlement in the public interest, but exclusive of fees and costs on appeal, if any.

8 **3.3 Payment Address**

9 All payments under this Consent Judgment shall be delivered to the following address:

10 Voorhees & Bailey, LLP
11 990 Amarillo Avenue
12 Palo Alto, CA 94303

12 **4. CLAIMS COVERED AND RELEASED**

13 **4.1 Johnson's Release of Proposition 65 Claims**

14 Johnson, acting on his own behalf and in the public interest, releases Home Essentials and
15 its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
16 and attorneys ("Releasees") and each entity to whom Home Essentials directly or indirectly
17 distributes or sells the Products including, but not limited to, its downstream distributors,
18 wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees,
19 ("Downstream Releasees") for any violations arising under Proposition 65 for unwarned exposures
20 to lead in the Products, manufactured, imported, distributed or sold by Home Essentials prior to the
21 Effective Date, as set forth in the Notice. The Parties further understand and agree that this Section
22 4.1 release shall not extend upstream to any entities that manufactured the Products or any
23 component parts thereof, or any distributors or suppliers who sold the Products or any component
24 parts thereof to Home Essentials.

25 **4.2 Johnson's Individual Release of Claims**

26 Johnson, in his individual capacity only and *not* in his representative capacity, also provides
27 a release to Home Essentials, Releasees, and Downstream Releasees which shall be effective as a
28 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,

1 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Johnson ,and Johnson
2 of any nature, character or kind, whether known or unknown, suspected or unsuspected, arising out
3 of alleged or actual exposures to lead in the Products manufactured, imported, distributed or sold by
4 Home Essentials before the Effective Date. The Parties further understand and agree that this
5 Section 4.2 release shall not extend upstream to any entities that manufactured the Products, or any
6 component parts thereof, or any distributors or suppliers who sold the Products, or any component
7 parts thereof to Home Essentials. Nothing in this Section affects Johnson's right to commence or
8 prosecute an action under Proposition 65 against a Releasee that does not involve Home Essentials'
9 Products.

10 **4.3 Home Essentials' Release of Johnson**

11 Home Essentials, on its own behalf and on behalf of its past and current agents,
12 representatives, attorneys, successors and/or assignees, hereby waive any and all claims against
13 Johnson and his attorneys and other representatives, for any and all actions taken or statements
14 made (or those that could have been taken or made) by Johnson or his attorneys and other
15 representatives, whether in the course of investigating claims, seeking to enforce Proposition 65
16 against it in this matter, or with respect to the Products.

17 **5. COURT APPROVAL**

18 This Consent Judgment is not effective until it is approved and entered by the Court and
19 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
20 after it has been fully executed by all Parties. Johnson and Home Essentials agree to support the
21 entry of this agreement as a judgment, and to obtain the Court's approval of their settlement in a
22 timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code
23 section 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment,
24 which motion Johnson and Johnson shall draft and file and Home Essentials shall support,
25 appearing at the hearing if so requested. If any third-party objection to the motion is filed, Johnson
26 and Home Essentials agree to work together to file a reply and appear at any hearing. This
27 provision is a material component of the Consent Judgment and shall be treated as such in the event
28 of a breach.

1 **6. SEVERABILITY**

2 If, subsequent to the execution of this Consent Judgment, any provision of this Consent
3 Judgment is deemed by a court to be unenforceable, the validity of the remaining provisions shall
4 not be adversely affected.

5 **7. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of California
7 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
8 rendered inapplicable by reason of law generally, or as to the Products, then Home Essentials may
9 provide written notice to Johnson of any asserted change in the law and shall have no further
10 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
11 Products are so affected.

12 **8. NOTICE**

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

17 For Home Essentials:	For Johnson:
18 Avrom R. Vann, Esq.	Voorhees & Bailey, LLP
19 Avrom R. Vann, P.C.	Proposition 65 Coordinator
20 Attorney at Law	535 Ramona Street; Suite 5
1211 Avenue of the Americas; 40th Floor	Palo Alto, CA 94301
New York, NY 10036	

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

23 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

24 This Consent Judgment may be executed in counterparts and by facsimile or portable
25 document format (PDF) signature, each of which shall be deemed an original, and all of which,
26 when taken together, shall constitute one and the same document.
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1 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

2 Johnson and his attorneys agree to comply with the reporting form requirements referenced
3 in California Health and Safety Code section 25249.7(f).

4 **11. MODIFICATION**

5 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
6 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
7 any party and the entry of a modified Consent Judgment by the Court thereon.

8 **12. AUTHORIZATION**

9 The undersigned are authorized to execute this Consent Judgment on behalf of their
10 respective Parties and have read, understand, and agreed to all of the terms and conditions of this
11 Consent Judgment.

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AGREED TO:

AGREED TO:

Date: **January 24, 2022**

Date:

By: 
DENNIS JOHNSON

By: _____
_____, President/CEO
HOME ESSENTIALS

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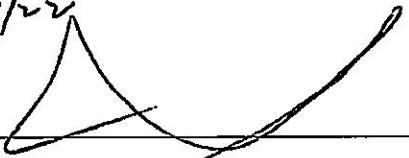
AGREED TO:

AGREED TO:

Date: January 24, 2022

Date: 2/1/22

By: 
DENNIS JOHNSON

By: 
ISIDORE GWONGWA, President/CEO
HOME ESSENTIALS