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

11 EMA BELL,
12 Plaintiff,
13 v.
14 HOMEGOODS, INC.,
15 Defendant.

Case No.: RG20081184
CONSENT JUDGMENT
Judge: James R. Reilly
Dept.: 25
Hearing Date: June 23, 2021
Hearing Time: 9:00 AM
Reservation #: R-2253051

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1. INTRODUCTION

1.1 **The Parties.** This Consent Judgment is entered into by and between Ema Bell acting on behalf of the public interest (hereinafter “Bell”) and Homegoods, Inc. (“Homegoods” or “Defendant”) with Bell and Defendant collectively referred to as the “Parties” and each of them as a “Party.” Bell is an individual residing in California that seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Homegoods is alleged to be a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

1.2 **Allegations and Representations.** Bell alleges that Defendant has exposed individuals to lead from its sales of are Floral print ceramic plates/dishes without providing a clear and reasonable exposure warning pursuant to Proposition 65. lead is listed under Proposition 65 as a chemical known to the State of California to cause cancer and reproductive toxicity.

1.3 **Notice of Violation/Complaint.** On or about July 16, 2020, Bell served Homegoods and various public enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and customers that use of Floral print ceramic plates/dishes expose users in California to lead. No public enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On November 12, 2020, Bell filed a complaint (the “Complaint”) in the matter.

1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter, and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all claims which were or could have been raised in the Complaint based on the facts alleged therein and/or in the Notice.

1.5 Defendant denies the material allegations contained in Bell’s Notice and Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment shall be

1 construed as an admission by Defendant of any fact, finding, issue of law, or violation of law; nor
2 shall compliance with this Consent Judgment constitute or be construed as an admission by
3 Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically
4 denied by Defendant. However, this section shall not diminish or otherwise affect the obligations,
5 responsibilities, and duties of Defendant under this Consent Judgment.

6 **2. DEFINITIONS**

7 2.1 **Covered Products.** The term “Covered Products” means are Floral print ceramic
8 plates/dishes with Style #342854 that are manufactured, distributed and/or offered for sale in
9 California by Homegoods.

10 2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is
11 entered as a Judgment of the Court.

12 **3. INJUNCTIVE RELIEF: WARNINGS**

13 3.1 **Reformulation of Covered Products.** As of the Effective Date, and continuing
14 thereafter, Covered Products that Homegoods directly manufactures, imports, or purchases for sale
15 in California shall either: (a) be Reformulated Products pursuant to § 3.2, below; or (b) be labeled
16 with a clear and reasonable exposure warning pursuant to §§ 3.3 and 3.4, below.

17 3.2 **Reformulation Standard.** “Reformulated Products” shall mean Covered Products
18 that achieve a test result of 4.0 ug or less of lead as applied to all of the decorated portions of all
19 surfaces of the Covered Product performed as outlined in NIOSH method no. 9100.

20 3.3 **Clear and Reasonable Warning.** As of the Effective Date, and continuing
21 thereafter, a clear and reasonable exposure warning as set forth in this §§ 3.3 and 3.4 must be
22 provided for all Covered Products that Defendant manufacturers, imports, or purchases for sale in
23 California that is not a Reformulated Products. There shall be no obligation for Defendant to
24 provide a warning for Covered Products that enter the stream of commerce prior to the Effective
25 Date. The warning shall consist of either the **Warning** or **Alternative Warning** described in §§
26 3.3(a) or (b), respectively:

27 (a) **Warning.:**

1 ⚠ **WARNING:** This product can expose you to chemicals including lead, which
2 is known to the State of California to cause cancer and birth defects or other
reproductive harm. For more information go to www.P65Warnings.ca.gov.

3 (b) **Alternative Warning:**

4 ⚠ **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

5 3.4 A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word
6 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to
7 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral
8 triangle with a black outline, except that if the sign or label for the Covered Product does not use
9 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller
10 than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the
11 Covered Products’ packaging or labeling, or on a placard, shelf tag, sign or electronic device or
12 automatic process, providing that the warning is displayed with such conspicuousness, as compared
13 with other words, statements, or designs as to render it likely to be read and understood by an
14 ordinary individual under customary conditions of purchase or use. A warning may be contained
15 in the same section of the packaging, labeling, or instruction booklet that states other safety
16 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as
17 those other safety warnings.

18 If Homegoods sells Covered Products via an internet website to customers located in
19 California, the warning requirements of this section shall be satisfied if the foregoing warning
20 appears either: (a) on the same web page on which a Covered Product is displayed and/or described;
21 (b) on the same page as the price for the Covered Product; or (c) on one or more web pages
22 displayed to a purchaser prior to purchase during the checkout process. Alternatively, a symbol
23 consisting of a black exclamation point in a yellow or white equilateral triangle may appear adjacent
24 to or immediately following the display, description, price, or checkout listing of the Covered
25 Product, if the warning statement appears elsewhere on the same web page in a manner that clearly
26 associates it with the product(s) to which the warning applies.

1 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
2 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
3 Judgment or by complying with warning requirements adopted by the State of California’s Office
4 of Environmental Health Hazard Assessment (“OEHHA”) after the Effective Date.

5 **4. MONETARY TERMS**

6 4.1 **Civil Penalty.** Homegoods shall pay \$1,000.00 as a Civil Penalty pursuant to Health
7 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
8 Safety Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the
9 Civil Penalty remitted to Bell, as provided by California Health & Safety Code § 25249.12(d).

10 4.1.1 Within fifteen (15) business days of the Effective Date or receipt of a
11 completed W-9 form from Ema Bell, whichever is later, Homegoods shall issue two separate
12 checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$750.00; and to (b)
13 “Brodsky & Smith, LLC in Trust for Bell” in the amount of \$250.00. Payment owed to Bell
14 pursuant to this Section shall be delivered to the following payment address:

15 Evan J. Smith, Esquire
16 Brodsky & Smith, LLC
17 Two Bala Plaza, Suite 805
18 Bala Cynwyd, PA 19004

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

21 For United States Postal Service Delivery:

22 Mike Gyurics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
25 P.O. Box 4010
26 Sacramento, CA 95812-4010

27 For Non-United States Postal Service Delivery:

28 Mike Gyurics
 Fiscal Operations Branch Chief
 Office of Environmental Health Hazard Assessment
 1001 I Street
 Sacramento, CA 95814

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

3 4.2 **Attorneys' Fees.** Within fifteen (15) business of the Effective Date or receipt of a
4 completed W-9 form from Brodsky & Smith, LLC, whichever is later, Homegoods shall pay
5 \$15,000.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for Bell's
6 attorneys' fees and costs incurred as a result of investigating, bringing this matter to Homegoods
7 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
8 interest, pursuant to Code of Civil Procedure § 1021.5.

9 **5. RELEASE OF ALL CLAIMS**

10 5.1 This Consent Judgment is a full, final, and binding resolution between Bell acting
11 on her own behalf, and on behalf of the public interest, and Homegoods, and its parents,
12 shareholders, members, directors, officers, managers, employees, representatives, agents,
13 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
14 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
15 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
16 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
17 retailers, franchisees, and cooperative members ("Downstream Releasees"), of all claims for
18 violations of Proposition 65 based on exposure to lead from Covered Products as set forth in the
19 Notice, with respect to any Covered Products manufactured, distributed, or sold by Homegoods
20 prior to the Effective Date. It is the Parties' intention that this Consent Judgment shall have
21 preclusive effect such that no other actions by private enforcers, whether purporting to act in his,
22 her, or its interests or the public interest shall be permitted to pursue and/or take any action with
23 respect to any violation of Proposition 65 that was alleged in the Complaint, or that could have
24 been brought pursuant to the Notice against Homegoods and/or the Downstream Releasees of the
25 Covered Products ("Proposition 65 Claims"). Compliance with the terms of this Consent Judgment
26 constitutes compliance with Proposition 65 with regard to the Covered Products.
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1 5.2 In addition to the foregoing, Bell, on behalf of herself, her past and current agents,
2 representatives, attorneys, and successors and/or assignees, and *not* in her representative capacity,
3 hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action
4 and releases Homegoods, Defendant Releasees, and Downstream Releasees from any and all
5 manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
6 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of
7 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
8 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered
9 Products manufactured, distributed, or sold by Homegoods, Defendant Releasees or Downstream
10 Releasees. With respect to the foregoing waivers and releases in this paragraph, Bell hereby
11 specifically waives any and all rights and benefits which she now has, or in the future may have,
12 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as
13 follows:

14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
15 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
16 EXIST IN her OR HER FAVOR AT THE TIME OF EXECUTING THE
17 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
MATERIALLY AFFECTED HIM OR HER SETTLEMENT WITH THE
DEBTOR OR RELEASED PARTY.

18 **6. ENFORCEMENT**

19 6.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
20 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
21 California, County of Alameda, giving the required notice, enforce the terms and conditions
22 contained in this Consent Judgment. A Party may enforce any of the terms and conditions of this
23 Consent Judgment only after that Party first provides 60 days' notice to the Party allegedly failing
24 to comply with the terms and conditions of this Consent Judgment and attempts to resolve such
25 Party's failure to comply.

26 6.2 Notice of Violation. Prior to bringing any motion, order to show cause, or other
27 proceeding to enforce the terms of this Consent Judgment. Bell shall provide a Notice of Violation
28 ("NOV") to Homegoods. The NOV shall include the date(s) the alleged violation(s) was observed

1 and the location at which the Covered Product was offered for sale and shall be accompanied by
2 all test data obtained by Bell regarding the Covered Products, and any evidence or support of the
3 allegations in the NOV.

4 6.3 Bell shall take no further action regarding the alleged violation if, within 60 days of
5 receiving such NOV, Homegoods serves a notice that meets one of the following conditions:

6 6.3.1 The Covered Products were shipped by Homegoods for sale in California
7 before the Effective Date; or

8 6.3.2 Since receiving the NOV, Homegoods has taken corrective action by either
9 (i) removing the Covered Products identified in the NOV from sale in California, or (ii) providing
10 a clear and reasonable warning for the Covered Products identified in the NOV pursuant to Section
11 3 above with written confirmation to Bell.

12 7. INTEGRATION

13 7.1 This Consent Judgment contains the sole and entire agreement of the Parties and
14 any and all prior negotiations and understandings related hereto shall be deemed to have been
15 merged within it. No representations or terms of agreement other than those contained herein exist
16 or have been made by any Party with respect to the other Party or the subject matter hereof.

17 8. GOVERNING LAW

18 8.1 The terms of this Consent Judgment shall be governed by the laws of the State of
19 California and apply within the State of California. In the event that Proposition 65 is repealed or
20 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
21 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
22 to the extent that, Covered Products are so affected.

23 9. NOTICES

24 9.1 Unless specified herein, all correspondence and notices required to be provided
25 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
26 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
27 by the other party at the following addresses:
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1 For Defendant:

2 General Counsel
3 770 Cochituate Rd
4 Framingham, MA 01701

5 With copy to:

6 Jeffrey Margulies
7 Norton Rose Fulbright US LLP
8 555 South Flower Street, Forty-First Floor
Los Angeles, CA 90071

9 And

10 For Bell:

11 Evan Smith
12 Brodsky & Smith, LLC
13 9595 Wilshire Blvd., Ste. 900
14 Beverly Hills, CA 90212

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

17 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

18 10.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
19 which shall be deemed an original, and all of which, when taken together, shall constitute one and
20 the same document.

21 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
22 **APPROVAL**

23 11.1 Bell agrees to comply with the requirements set forth in California Health & Safety
24 Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
25 Defendant agrees it shall support approval of such Motion.

26 11.2 This Consent Judgment shall not be effective until it is approved and entered by the
27 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
28 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30
days, the case shall proceed on its normal course.

1 11.3 If the Court approves this Consent Judgment and is reversed or vacated by an
2 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
3 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
4 its normal course on the trial court's calendar.

5 **12. MODIFICATION**

6 12.1 This Consent Judgment may be modified only by further stipulation of the Parties
7 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

8 **13. ATTORNEY'S FEES**

9 13.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
10 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

11 13.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
12 pursuant to law.

13 **14. RETENTION OF JURISDICTION**

14 14.1 This Court shall retain jurisdiction of this matter to implement or modify the
15 Consent Judgment.

16 **15. AUTHORIZATION**

17 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
18 respective Parties and have read, understood and agree to all of the terms and conditions of this
19 document and certify that he or she is fully authorized by the Party he or she represents to execute
20 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
21 explicitly provided herein each Party is to bear its own fees and costs.
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AGREED TO:

AGREED TO:

Date: 5/5/2024
By: 
EMA BELL

Date: _____
By: _____
HOMEGOODS, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court

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AGREED TO:

AGREED TO:

Date: _____

Date: 4/7/21

By: _____
EMA BELL

By: J.A.P.
HOMEGOODS, INC.
Jennifer A. Peoples
VP, Legal for the TJX Companies, Inc.
(Ultimate parent of HomeGoods, Inc.)

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court