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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 PRECILA BALABBO,
12 Plaintiff,

13 v.

14 THE ARISTER GROUP, INC. dba
15 DESIGNSTYLES,
16 Defendant.

Case No.: CGC-22-602750

**[PROPOSED] CONSENT
JUDGMENT**

Judge: Richard B. Ulmer
Dept.: 302
Hearing Date: May 1, 2023
Hearing Time: 9:30 AM
Complaint Filed: November 3, 2022

1 **1. INTRODUCTION**

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3 1.1 **The Parties.** This Consent Judgment is entered into by and between Precila Balabbo
4 acting on behalf of the public interest (hereinafter “Balabbo”) and The Arister Group, Inc. dba
5 DesignStyles (“DesignStyles” or “Defendant”) with Balabbo and Defendant collectively referred
6 to as the “Parties” and each of them as a “Party.” Balabbo is an individual residing in California
7 who seeks to promote awareness of exposures to toxic chemicals and improve human health by
8 reducing or eliminating hazardous substances contained in consumer products. DesignStyles is
9 alleged to be a person in the course of doing business for purposes of Proposition 65, Cal. Health
10 & Safety Code §§ 25249.6 et seq.

11 1.2 **Allegations and Representations.** Balabbo alleges that Defendant has exposed
12 individuals to di(2-ethylhexyl) phthalate (DEHP) from its sales of certain home décor products
13 without providing a clear and reasonable exposure warning pursuant to Proposition 65. DEHP is
14 listed under Proposition 65 as a chemical known to the State of California to cause cancer and
15 reproductive toxicity.

16 1.3 **Notice of Violation/Complaint.** On November 11, 2021, Balabbo served
17 DesignStyles, CVB, Inc., HomeGoods, Inc., and various public enforcement agencies with
18 documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d)
19 (the “Notice”), alleging that Defendant violated Proposition 65 for failing to warn consumers and
20 customers that use of certain home décor products expose users in California to DEHP. No public
21 enforcer has brought and is diligently prosecuting the claims alleged in the Notice. On November
22 3, 2022, Balabbo filed a complaint (the “Complaint”) in the matter.

23 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
25 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
26 and enforce this Consent Judgment as a full and final binding resolution of all claims which were
27 or could have been raised in the Complaint based on the facts alleged therein and/or in the Notice.

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1 1.5 Defendant denies the material allegations contained in Balabbo's Notice and
2 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
3 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
4 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
5 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
6 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
7 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

8 **2. DEFINITIONS**

9 2.1 **Covered Products.** The term "Covered Products" means small storage and
10 organization products for the home, including Becki Owens magazine holders that are
11 manufactured, distributed and/or offered for sale in California by DesignStyles.

12 2.2 **Effective Date.** The term "Effective Date" means the date Balabbo serves notice of
13 entry of this Consent Judgment.

14 2.3 **Compliance Date.** The term "Compliance Date" means one hundred twenty (120)
15 days after the Effective Date.

16 **3. INJUNCTIVE RELIEF: REFORMULATION AND/OR WARNINGS**

17 3.1 **Reformulation of Covered Products.** As of the Compliance Date and continuing
18 thereafter, Covered Products that DesignStyles directly manufactures, imports, distributes, sells, or
19 offers for sale in California shall either: (a) be Reformulated Products pursuant to § 3.2, below; or
20 (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 3.3 and 3.4, below.
21 DesignStyles may rely on its supplier's test results for compliance with this Consent Judgment. The
22 warning requirement set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated Product.

23 3.2 **Reformulation Standard.** "Reformulated Products" shall mean Covered Products
24 that contain concentrations less than or equal to 0.1% (1,000 parts per million (ppm)) of DEHP
25 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
26 and 8270C or other methodology utilized by federal or state government agencies for the purpose
27 of determining the phthalate content in a solid substance.

1 3.3 **Clear and Reasonable Warning.** As of the Compliance Date and continuing
2 thereafter, the warnings as set forth in this §§ 3.3 and 3.4 must be provided for any Covered Product
3 that Defendant manufacturers, imports, distributes, sells, or offers for sale in California that is not
4 a Reformulated Product. There shall be no obligation for Defendant to provide a warning for
5 Covered Products that enter the stream of commerce prior to the Compliance Date For purposes of
6 this Consent Judgment, “enter the stream of commerce” means that the Covered Product is no
7 longer in the custody of DesignStyles.

8 The warning shall consist of either the **Warning** or **Alternative Warning** described in §§
9 3.3(a) or (b), respectively:

10 (a) **Warning.** The “Warning” shall consist of the statement:

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.

14 (b) **Alternative Warning:** DesignStyles may, but is not required to, use the alternative
15 short-form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

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

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

3 In addition to affixing the **Warning** or **Alternative Warning** to the Covered Product's
4 packaging or labeling, the **Warning** or **Alternative Warning** shall be posted on websites where
5 DesignStyles sells Covered Products to consumers in California and the consumer is able to
6 complete the purchase on the website. The requirements of this Section shall be satisfied if the
7 **Warning** or **Alternative Warning**, or a clearly marked hyperlink using the word "WARNING,"
8 appears on the product display page, or by otherwise prominently displaying the warning to the
9 purchaser prior to completing the purchase. To comply with this Section, DesignStyles shall (a)
10 post the **Warning** or **Alternative Warning** on its own website, if the website allows for the
11 California consumer to complete the purchase on the website, and (b) if it has the ability to do so,
12 on the websites of its third-party internet sellers where DesignStyles controls the content of the
13 product display page. If DesignStyles does not have the ability to post the **Warning** or **Alternative**
14 **Warning** on the websites of third-party distributors or retail sellers with whom has written
15 agreements to sell the Covered Products on the internet, DesignStyles shall provide such third-party
16 distributors or retail sellers with written notice in accordance with Title 27, California Code of
17 Regulations, Section 25600.2.

18 3.5 **Compliance with Warning Regulations.** Defendant shall be deemed to be in
19 compliance with this Consent Judgment by either adhering to §§ 3.3 and 3.4 of this Consent
20 Judgment or by complying with warning requirements adopted by the State of California's Office
21 of Environmental Health Hazard Assessment ("OEHHA") applicable to the Covered Product and
22 the exposures at issue after the Effective Date.

23 **4. MONETARY TERMS**

24 4.1 **Civil Penalty.** DesignStyles shall pay \$2,000.00 as a Civil Penalty pursuant to
25 Health and Safety Code section 25249.7(b), to be apportioned in accordance with California Health
26 & Safety Code § 25249.12(c)(1) and (d), with 75% of these funds remitted to OEHHA and the
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1 remaining 25% of the Civil Penalty remitted to Balabbo, as provided by California Health & Safety
2 Code § 25249.12(d).

3 4.1.1 Within ten (10) business days of the Effective Date, DesignStyles shall
4 issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of
5 \$1,500.00; and to (b) "Precila Balabbo" in the amount of \$500.00. Payment owed to Balabbo
6 pursuant to this Section shall be delivered to the following payment address:

7 Evan J. Smith, Esquire
8 Brodsky & Smith
9 Two Bala Plaza, Suite 805
Bala Cynwyd, PA 19004

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

12 For United States Postal Service Delivery:

13 Mike Gyurics
14 Fiscal Operations Branch Chief
15 Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

16 For Non-United States Postal Service Delivery:

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

20 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith at the address set
21 forth above as proof of payment to OEHHA.

22 4.2 **Attorneys' Fees.** Within ten (10) business days of the Effective Date, DesignStyles
23 shall pay \$20,000.00 to Brodsky & Smith ("Brodsky & Smith") as complete reimbursement for
24 Balabbo's attorneys' fees and costs incurred as a result of investigating, bringing this matter to
25 DesignStyles attention, litigating and negotiating and obtaining judicial approval of a settlement in
26 the public interest, pursuant to Code of Civil Procedure § 1021.5.

1 **5. RELEASE OF ALL CLAIMS**

2 5.1 This Consent Judgment is a full, final, and binding resolution between Balabbo
3 acting on her own behalf, and on behalf of the public interest, and DesignStyles, and its parents,
4 shareholders, members, directors, officers, managers, employees, representatives, agents,
5 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
6 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they
7 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
8 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
9 retailers (including Home Goods, Inc., franchisees, and cooperative members (“Downstream
10 Releasees”), of all claims for violations of Proposition 65 based on exposure to DEHP from
11 Covered Products as set forth in the Notice and Complaint, with respect to any Covered Products
12 manufactured, distributed, or sold by DesignStyles prior to the Compliance Date. It is the Parties’
13 intention that this Consent Judgment shall have preclusive effect such that no other actions by
14 private enforcers, whether purporting to act in his, her, or its interests or the public interest shall be
15 permitted to pursue and/or take any action with respect to any violation of Proposition 65 that was
16 alleged in the Complaint, or that could have been brought pursuant to the Notice against
17 DesignStyles, Defendant Releasees and/or the Downstream Releasees of the Covered Products
18 (“Proposition 65 Claims”). Compliance with the terms of this Consent Judgment constitutes
19 compliance with Proposition 65 with regard to exposure to DEHP from use of the Covered
20 Products.

21 5.2 In addition to the foregoing, Balabbo, on behalf of herself, her past and current
22 agents, representatives, attorneys, and successors and/or assignees, and *not* in her representative
23 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
24 legal action and releases DesignStyles, Defendant Releasees, and Downstream Releasees from any
25 and all manner of actions, causes of action, claims, demands, rights, suits, obligations, debts,
26 contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
27 attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
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1 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
2 from exposure to DEHP from Covered Products manufactured, distributed, or sold by
3 DesignStyles, Defendant Releasees or Downstream Releasees. With respect to the foregoing
4 waivers and releases in this paragraph, Balabbo hereby specifically waives any and all rights and
5 benefits which she now has, or in the future may have, conferred by virtue of the provisions of §
6 1542 of the California Civil Code, which provides as follows:

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

14 5.3 DesignStyles waives any and all claims against Balabbo, her attorneys and other
15 representatives, for any and all actions taken or statements made by Balabbo and her attorneys and
16 other representatives, whether in the course of investigating claims or otherwise seeking
17 enforcement of Proposition 65 against it in this matter, and/or with respect to exposure to DEHP
18 from Covered Products.

19 5.4 Balabbo represents and warrants that she is not aware of any other violation or
20 alleged violation of Proposition 65 by DesignStyles.

21 **6. INTEGRATION**

22 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
23 any and all prior negotiations and understandings related hereto shall be deemed to have been
24 merged within it. No representations or terms of agreement other than those contained herein exist
25 or have been made by any Party with respect to the other Party or the subject matter hereof.

26 **7. GOVERNING LAW**

27 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
28 California and apply within the State of California. In the event that Proposition 65 is repealed or
is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
Defendant shall have no further obligations pursuant to this Consent Judgment with respect to; and
to the extent that, Covered Products are so affected.

1 **8. NOTICES**

2 8.1 Unless specified herein, all correspondence and notices required to be provided
3 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
4 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
5 by the other party at the following addresses:

6 For Defendant:

7 Peg Carew Toledo
8 David Barnes
9 Arnold & Porter Kaye Scholer LLP
10 Three Embarcadero Center, 10th Floor
11 San Francisco, CA 94111-4024

12 For Balabbo:

13 Evan Smith
14 Brodsky & Smith
15 9595 Wilshire Blvd., Ste. 900
16 Beverly Hills, CA 90212

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

19 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

20 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
21 which shall be deemed an original, and all of which, when taken together, shall constitute one and
22 the same document.

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

25 10.1 Balabbo agrees to comply with the requirements set forth in California Health &
26 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
27 Defendant agrees it shall support approval of such Motion.

28 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the
Parties agree to meet and confer on how to proceed and if such agreement is not reached within
thirty (30) days, the case shall proceed on its normal course.

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11. MODIFICATION

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

12. ATTORNEY'S 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 attorney's 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, modify, and/or enforce 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:

AGREED TO:

Date: 3/15/23

Date: 12/27/2022

By: *Precila Balabbo*
PRECILA BALABBO

By: *Shelby Weick*
THE ARISTER GROUP, INC. DBA
DESIGNSTYLES

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of Superior Court