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

15 DENNIS JOHNSON,
16 Plaintiff,

17 v.

18 THE ARISTER GROUP, INC.; THE TJX
19 COMPANIES, INC.; and DOES 1-150,
20 inclusive,

21 Defendants.

Case No. 23CV417173

[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 The Arister Group Inc., dba DesignStyles (“DesignStyles”), with Johnson, and
5 DesignStyles 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 DesignStyles employs ten or more persons and is a person in the course of doing business
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
13 Safety Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Johnson alleges that DesignStyles manufactures, sells, and distributes for sale in California
16 metal and glass lanterns containing lead. Lead is listed pursuant to Proposition 65 as chemicals
17 known to cause birth defects and other reproductive harm. Johnson alleges that DesignStyles failed
18 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 all Metal and Glass Lanterns
21 manufactured for sale, distributed for sale, or sold in California by DesignStyles (hereinafter
22 “Covered Products”).

23 **1.6 Notices of Violation**

24 On June 29, 2022, Johnson served The Arister Group Inc., dba DesignStyles, The TJX
25 Companies, Inc., and the requisite public enforcement agencies with a 60-Day Notice of Violation,
26 alleging that DesignStyles violated Proposition 65 when it failed to warn its customers and
27 consumers in California of the health hazards associated with exposures to lead in the Covered
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1 Products. No public enforcer has commenced and is diligently prosecuting the allegations set forth
2 in the Notice.

3 **1.7 Complaint**

4 On June 6, 2023, Johnson commenced the instant action, naming DesignStyles as one of the
5 defendants for the alleged violations of Proposition 65 related to the Covered Products.

6 **1.8 No Admission**

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

16 **1.9 Jurisdiction**

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

24 **2. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS**

25 **2.1 Reformulation Standards**

26 "Reformulated Products" are defined as those Products that contain no more than 90 parts
27 per million ("ppm") lead in any accessible component of the Products when analyzed pursuant to
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1 U.S. Environmental Protection Agency testing methodologies 3050B or equivalent methodologies
2 utilized by federal or state agencies for the purpose of determining lead content in a solid substance.

3 **2.2 Reformulation Commitment**


4 As of sixty (60) days after the Effective Date (“Compliance Date”), DesignStyles shall not
5 manufacture, import, distribute, sell and/or offer the Covered Products for sale in the State of
6 California unless they are Reformulated Products pursuant to Section 2.1 or contain appropriate
7 health-hazard warnings pursuant to Section 2.3. DesignStyles may rely on its supplier’s test result
8 for compliance with this Consent Judgment as long as said test results meet the requirements of 27
9 CCR §25900.

10 **2.3 Product Warnings**

11 As of the Compliance Date, all Covered Products DesignStyles sells and/or distributes for
12 sale in California that do not qualify as Reformulated Products, shall bear a clear and reasonable
13 warning pursuant to this Section. There shall be no obligation for DesignStyles to provide a
14 warning for Covered Products that enter the stream of commerce prior to the Compliance Date, as
15 they have been included in the calculation of civil penalties due pursuant to Section 3.1. For
16 purposes of this Consent Judgment, “enter the stream of commerce” means that the Covered
17 Product is no longer in the custody of DesignStyles. DesignStyles further agrees that the warning
18 shall be prominently placed with such conspicuousness when compared with other words,
19 statements, designs or devices as to render it likely to be read and understood by an ordinary
20 individual under customary conditions of use. For purposes of this Consent Judgment, a clear and
21 reasonable warning for the Products shall consist of a warning affixed directly to the product or
22 product packaging, label, or tag, for Products sold in California, and contain one of the following
23 statements:

24  **WARNING:** [Cancer and] Reproductive Harm- www.P65Warnings.ca.gov

25 **OR**

26  **WARNING:** This product can expose you to chemicals including lead, which
27 are known to the State of California to cause [cancer and] birth defects and other
28 reproductive harm. For more information go to www.P65Warnings.ca.gov.

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

14 Where a label or tag used to provide a warning statement includes consumer
15 information about a product in a language other than English, the warning must also be provided in
16 that language in addition to English.

17 **2.4** In lieu of the preceding warning content and methods set forth above, DesignStyles
18 may use any specific safe harbor warning content and method applicable to lead and the Covered
19 Products set forth in Title 27, California Code of Regulations, section 25600 et seq., as amended
20 August 30, 2018 and subsequently thereafter.

21 **2.5** DesignStyles’ Compliance with the terms of this Consent Judgement shall constitute
22 its compliance with Proposition 65 with respect to exposures to lead from the Covered Products.

23 **3. MONETARY SETTLEMENT TERMS**

24 **3.1 Civil Penalty Payment**

25 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims
26 alleged in the Notice or referred to in this Consent Judgment, DesignStyles agrees to pay \$3,000 in
27 civil penalties within ten (10) business days of the Effective Date. The penalty payment will be
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1 allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with
2 75% of the penalty amount remitted to the California Office of Environmental Health Hazard
3 Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Johnson and
4 delivered to the address in Section 3.3 herein. DesignStyles will provide its payment in two checks
5 as follows: (1) “OEHHA” in the amount of \$2,250; and (2) “Dennis Johnson” in the amount of
6 \$750.

7 **3.2 Attorney’s Fees and Costs**

8 The Parties acknowledge that Johnson and his counsel offered to resolve this dispute
9 without reaching terms on the amount of fees and costs to be reimbursed to Johnson’s counsel,
10 thereby leaving the issue to be resolved after the material terms of the agreement had been settled.
11 Shortly after the other settlement terms had been reached, DesignStyles expressed a desire to
12 resolve Johnson’s fees and costs. The Parties reached an accord on the compensation due to
13 Johnson’s counsel under general contract principles and the private attorney general doctrine
14 codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under
15 these legal principles, within ten (10) business days of the Effective Date, DesignStyles agrees to
16 pay \$20,500, in the form of a check made payable to “Voorhees & Bailey, LLP,” for all fees and
17 costs incurred investigating, bringing this matter to the attention of DesignStyles’ management, and
18 negotiating a settlement in the public interest, but exclusive of fees and costs on appeal, if any.

19 **3.3 Payment Address**

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

21 Voorhees & Bailey, LLP
22 839 Emerson Street
23 Palo Alto, CA 94301

24 **4. CLAIMS COVERED AND RELEASED**

25 **4.1 Johnson’s Release of Proposition 65 Claims**

26 Johnson, acting on his own behalf and in the public interest, releases DesignStyles and its
27 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
28 and attorneys (“Releasees”) and each entity to whom DesignStyles directly or indirectly distributes

1 or sells the Covered Products including, but not limited to, its downstream distributors, wholesalers,
2 customers, retailers including The TJX Companies, Inc., franchisers, cooperative members,
3 licensors and licensees, (“Downstream Releasees”) for any violations arising under Proposition 65
4 for unwarned exposures to lead in the Covered Products manufactured, imported, distributed or sold
5 by DesignStyles prior to the Compliance Date.

6 **4.2 Johnson’s Individual Release of Claims**

7 Johnson, in his individual capacity only and not in his representative capacity, also provides
8 a release to DesignStyles, Releasees, and Downstream Releasees which shall be effective as a full
9 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
10 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Johnson, of any
11 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of
12 alleged or actual exposures to lead in the Covered Products, manufactured, imported, distributed or
13 sold by DesignStyles before the Compliance Date.

14 **4.3 Waiver of California Civil Code Section 1542**

15 With respect to the foregoing waivers and releases in this Consent Judgment, Johnson
16 hereby specifically waives any and all rights and benefits which he now has, or in the future may
17 have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which
18 provides as follows:

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

22 **4.3 DesignStyles’ Release of Johnson**

23 DesignStyles, on its own behalf and on behalf of its past and current agents, representatives,
24 attorneys, successors and/or assignees, hereby waive any and all claims against Johnson and his
25 attorneys and other representatives, for any and all actions taken or statements made (or those that
26 could have been taken or made) by Johnson and his attorneys and other representatives, whether in
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1 the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or
2 with respect to the Covered Products.

3 **5. COURT APPROVAL**

4 This Consent Judgment is not effective until it is approved and entered by the Court and
5 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
6 after it has been fully executed by all Parties. Johnson and DesignStyles agree to support the entry
7 of this agreement as a judgment, and to obtain the Court’s approval of their settlement in a timely
8 manner. The Parties acknowledge that, pursuant to California Health and Safety Code section
9 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment, which
10 motion Johnson shall draft and file and DesignStyles shall support. This provision is a material
11 component of the Consent Judgment and shall be treated as such in the event of a breach.

12 **6. SEVERABILITY**

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

16 **7. GOVERNING LAW**

17 The terms of this Consent Judgment shall be governed by the laws of the State of California
18 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
19 rendered inapplicable by reason of law generally, or as to the Covered Products, then DesignStyles
20 may provide written notice to Johnson of any asserted change in the law and shall have no further
21 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
22 Covered Products are so affected.

23 **8. NOTICE**

24 Unless specified herein, all correspondence and notice required to be provided pursuant to
25 this Consent Judgment shall be in writing and sent by: (a) personal delivery; (b) first-class,
26 registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any
27 Party by the other at the following addresses:
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1 For DesignStyles:
2 Danny Hammond
3 The Arister Group Inc.
4 55 Hartz Way
5 Secaucus, NJ 07094

For Johnson:
Voorhees & Bailey, LLP
Proposition 65 Coordinator
839 Emerson Street
Palo Alto, CA 94301

6 David M. Barnes
7 HOGAN LOVELLS US LLP
8 Four Embarcadero Center, Suite 3500
9 San Francisco, CA 94111

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

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

13 This Consent Judgment may be executed in counterparts and by facsimile or portable
14 document format (PDF) signature, each of which shall be deemed an original, and all of which,
15 when taken together, shall constitute one and the same document.

16 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

19 **11. MODIFICATION**

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

23 **12. AUTHORIZATION**

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

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AGREED TO:

AGREED TO:

Date: 12/20/2023

Date:

By: 
DENNIS JOHNSON

By: _____
THE ARISTER GROUP INC., DBA
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