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ENDORSED
FILED
ALAMEDA COUNTY

DEC 22 2016

CLERK OF THE SUPERIOR COURT
By 
JANIE THOMAS, Deputy

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

11 ANTHONY FERREIRO,
12 Plaintiff,

13 v.

14 CORE PRODUCTS INTERNATIONAL,
15 INC.,
16 Defendant.

Case No.:

RG 16843517

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

(Violation of Health & Safety Code §25249.5
et seq.)

17 Plaintiff Anthony Ferreiro, by and through his attorneys, alleges the following cause of
18 action in the public interest of the citizens of the State of California.

19 **BACKGROUND OF THE CASE**

20 1. Plaintiff Anthony Ferreiro (“Plaintiff” or “Ferreiro”), brings this representative
21 action on behalf of all California citizens to enforce relevant portions of Safe Drinking Water
22 and Toxic Enforcement Act of 1986, codified at the Health and Safety Code § 25249.5 *et seq*
23 (“Proposition 65”), which reads, in relevant part, “[n]o person in the course of doing business
24 shall knowingly and intentionally expose any individual to a chemical known to the state to
25 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
26 individual ...”. Health & Safety Code § 25249.6.

1 2. This complaint is a representative action brought by Plaintiff in the public interest
2 of the citizens of the State of California to enforce the People’s right to be informed of the health
3 hazards caused by exposure to Di-isodecyl phthalate (DIDP), a toxic chemical found in *Core*
4 *Products* vinyl pillows, seat cushions and/or other therapeutic seating devices sold and/or
5 distributed by defendant Core Products International, Inc. (“Core Products” or “Defendant”) in
6 California.

7 3. DIDP is a harmful chemical known to the State of California to cause
8 reproductive toxicity. On April 20, 2007, the State of California listed DIDP as a chemical
9 known to the State to cause reproductive toxicity and it has come under the purview of
10 Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety
11 Code §§ 25249.8 & 25249.10(b).

12 4. Proposition 65 requires all businesses with ten (10) or more employees that
13 operate within California or sell products therein to comply with Proposition 65 regulations.
14 Included in such regulations is the requirement that businesses must label any product containing
15 a Proposition 65-listed chemical with a “clear and reasonable” warning before “knowingly and
16 intentionally” exposing any person to it.

17 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
18 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety
19 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin
20 the actions of a defendant which “violate[s] or threaten[s] to violate” the statute. Health &
21 Safety Code § 25249.7.

22 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
23 and/or offers for sale in California *Core Products’* vinyl pillows, seat cushions and/or other
24 therapeutic seating devices, including but not limited to, *Core Products Vinyl AB Contour*
25 *Pillows*, UPC No. 7 82944-01101 3 (the “Product” or “Products”) without the required
26 Proposition 65 warning that the Products contain DIDP.

27 7. Defendant’s failure to warn consumers and other individuals in California of the
28 health hazards associated with exposure to DIDP in conjunction with the sale, manufacture,

1 and/or distribution of the Products is a violation of Proposition 65 and subjects Defendant to the
2 enjoinder and civil penalties described herein.

3 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition
4 65 in accordance with Health and Safety Code § 25249.7(b).

5 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
6 Defendant to provide purchasers or users of the Product with the required warnings related to the
7 dangers and health hazards associated with exposure to DIDP pursuant to Health and Safety
8 Code § 25249.7(a).

9 **PARTIES**

10 10. Plaintiff is a citizen of the State of California acting in the interest of the general
11 public to promote awareness of exposures to toxic chemicals in products sold in California and
12 to improve human health by reducing hazardous substances contained in such items. He brings
13 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

14 11. Defendant Core Products is a suppliers of medical supplies and healthcare
15 products. Through its business, Core Products effectively manufactures, imports, distributes,
16 sells, and/or offers the Products for sale or use in the State of California, or it implies by its
17 conduct that it manufactures, imports, distributes, sells, and/or offers the Products for sale or use
18 in the State of California. Defendant maintains a registered agent for service of process at c/o
19 Philip H. Mattison, 808 Prospect Ave., Osceola, WI 54020.

20 12. Defendant Core Products is a “person” in the course of doing business within the
21 meaning of Health & Safety Code sections 25249.6 and 25249.11.

22 **VENUE AND JURISDICTION**

23 13. Venue is proper in the County of Alameda because one or more of the instances
24 of wrongful conduct occurred, and continue to occur in this county and/or because Defendant
25 conducted, and continues to conduct, business in the County of Alameda with respect to the
26 Product.

27 14. This Court has jurisdiction over this action pursuant to California Constitution
28 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those

1 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the
2 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,
3 this Court has jurisdiction over this lawsuit.

4 15. This Court has jurisdiction over Defendant because it is either a citizen of the
5 State of California, has sufficient minimum contacts with the State of California, is registered
6 with the California Secretary of State as foreign corporations authorized to do business in the
7 State of California, and/or has otherwise purposefully availed itself of the California market.
8 Such purposeful availment has rendered the exercise of jurisdiction by California courts
9 consistent and permissible with traditional notions of fair play and substantial justice.

10 **SATISFACTION OF NOTICE REQUIREMENTS**

11 16. On July 1, 2016, Plaintiff gave notice of alleged violation of Health and Safety
12 Code § 25249.6 (the “Notice”) to Core Products concerning the exposure of California citizens
13 to DIDP contained in the Product without proper warning, subject to a private action to Core
14 Products and to the California Attorney General’s office and the offices of the County District
15 attorneys and City Attorneys for each city with a population greater than 750,000 persons
16 wherein the herein violations allegedly occurred.

17 17. The Notice complied with all procedural requirements of Proposition 65 including
18 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at
19 least one person with relevant and appropriate expertise who reviewed relevant data regarding
20 DIDP exposure, and that counsel believed there was meritorious and reasonable cause for a
21 private action.

22 18. After receiving the Notice, and to Plaintiff’s best information and belief, none of
23 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted
24 a cause of action against Core Products under Proposition 65 to enforce the alleged violations
25 which are the subject of Plaintiff’s notice of violation.

26 19. Plaintiff is commencing this action more than sixty (60) days from the date of the
27 Notice to Core Products, as required by law.

28

1 FIRST CAUSE OF ACTION

2 **(By Plaintiff against Defendant for the Violation of Proposition 65)**

3 20. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of
4 this complaint as though fully set forth herein.

5 21. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,
6 and/or retailer of the Products.

7 22. The Products contain DIDP, a hazardous chemical found on the Proposition 65
8 list of chemicals known to be hazardous to human health.

9 23. The Products do not comply with the Proposition 65 warning requirements.

10 24. Plaintiff, based on his best information and belief, avers that at all relevant times
11 herein, and at least since May 19, 2016 continuing until the present, that Core Products has
12 continued to knowingly and intentionally expose California users and consumers of the Products
13 to DIDP without providing required warnings under Proposition 65.

14 25. The exposures that are the subject of the Notice result from the purchase,
15 acquisition, handling and recommended use of the product. Consequently, the primary route of
16 exposure to these chemicals is through direct skin exposure. The vinyl pillow cover is expected
17 to be in direct contact with a user's head/face/ears during normal intended use and therefore
18 direct skin exposure is likely to occur. The user may also manipulate or grasp the pillow during
19 sleep and dermal exposure through the hands is possible. DIDP from the pillow cover can
20 contaminate bedding that subsequently contacts the user's bare skin. The product can be
21 expected to emit gas phase DIDP into the air over the lifetime of the product. This gas phase
22 DIDP can potentially be inhaled or can be absorbed to dust that can be resuspended and
23 potentially ingested. During use, the gas phase DIDP is likely to be generated within the
24 proximity of the user's nasal and oral breathing area that can be inhaled during sleep. DIDP
25 vapor will also be present in the proximity of the user's eyes that may cause eye irritation. The
26 eyes are particularly sensitive to chemicals. For instance, decreased human corneal endothelial
27 cell line B4G12 proliferation was observed for DBP, BBP, and DEHP, and cell toxicity was
28 observed for DBP and BBP. Finally, mouthing of the product can potentially occur during sleep

1 if the user's closed or open mouth comes into contact with the vinyl pillow cover. Additionally,
2 some amount of exposure through ingestion can occur by handling the pillow during use with
3 subsequent touching of the user's hand to mouth.

4 26. Plaintiff, based on his best information and belief, avers that such exposures will
5 continue every day until clear and reasonable warnings are provided to Product purchasers and
6 users or until this known toxic chemical is removed from the Product.

7 27. Defendant has knowledge that the normal and reasonably foreseeable use of the
8 Products exposes individuals to DIDP, and Defendant intends that exposures to DIDP will occur
9 by their deliberate, non-accidental participation in the manufacture, importation, distribution,
10 sale and offering of the Products to consumers in California

11 28. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
12 Complaint.

13 29. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
14 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

15 30. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
16 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

17 **PRAYER FOR RELIEF**


18 WHEREFORE, Plaintiff demands judgment against Defendant and requests the
19 following relief:

- 20 A. That the court assess civil penalties against Defendant in the amount of
21 \$2,500 per day for each violation in accordance with Health and Safety
22 Code § 25249.7(b);
- 23 B. That the court preliminarily and permanently enjoin Defendant mandating
24 Proposition 65 compliant warnings on the Product;
- 25 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 26 D. That the court grant any further relief as may be just and proper.

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28 Dated: December 22, 2016

BRODSKY & SMITH, LLC

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