

Brodsky & Smith, LLC
Attn: Smith, Evan J.
9595 Wilshire Boulevard
Suite 900
Beverly Hills, CA 90212

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Ferreiro Plaintiff/Petitioner(s) VS. The Parallax Group International, Inc.	No. <u>RG15789615</u> Order Motion Granted
Defendant/Respondent(s) (Abbreviated Title)	

The Motion was set for hearing on 03/08/2016 at 03:45 PM in Department 24 before the Honorable Frank Roesch. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The Motion to Approve Proposition 65 Settlement and Consent Judgment is **GRANTED**. The court will sign the proposed order and consent judgment submitted with the motion.

Dated: 03/08/2016

facsimile


Judge Frank Roesch

1 Evan J. Smith, Esquire (SBN 242352)
Ryan P. Cardona, Esquire (SBN 302113)
2 BRODSKY & SMITH, LLC
9595 Wilshire Blvd., Ste. 900
3 Beverly Hills, CA 90212
Telephone: (877) 534-2590
4 Facsimile: (310) 247-0160

5 *Attorneys for Plaintiff*

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

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COUNTY OF ALAMEDA

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10 ANTHONY FERREIRO,

11 Plaintiff,

12 vs.

13 THE PARALLAX GROUP
INTERNATIONAL, LLC,

14 Defendant.

Case No. RG15789615

[PROPOSED] CONSENT JUDGMENT

Date: March 8, 2016

Time: 3:45 PM

Dept.: 24

Judge: Hon. Frank Roesch

Reservation #: R-1698468

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1 **1. Introduction**

2 1.1 On May 26, 2015, Anthony Ferreiro (“Ferreiro”) served The Parallax Group
3 International, LLC (“Parallax Group”), Wal-Mart Stores, Inc. (“Walmart”), and various public
4 enforcement agencies with a document entitled “Notice of Violation of California Health &
5 Safety Code § 25249.6, *et seq.*” (the “Notice”). The Notice provided Parallax Group and such
6 others, including public enforcers, with notice that alleged that Parallax Group was in violation of
7 California Health & Safety Code § 25249.6 (“Proposition 65”), for failing to warn consumers and
8 customers that Dove Gray (Raised Coin) Garage Flooring, UPC No. 822384185605 (the
9 “Product”) exposed users in California to the chemical Di(2-ethylhexyl) phthalate (DEHP). No
10 public enforcer has diligently prosecuted the allegations set forth in the Notice.

11 1.2 On October 15, 2015, Ferreiro filed a Complaint for Civil Penalties and Injunctive
12 Relief (“Complaint”) in Alameda County Superior Court, Case No. RG15789615, against
13 Parallax Group alleging violations of Proposition 65. (Parallax Group and Ferreiro are
14 hereinafter referred to at times either collectively as the “Parties” or individually as a “Party”.)

15 1.3 Parallax Group does business in the State of California and offered or distributed
16 the Product for sale within the State of California.

17 1.4 Ferreiro’s Complaint alleges, among other things, that Parallax Group distributed
18 for sale or sold the Product in California and/or to California citizens, that the Product contains
19 DEHP, and that the resulting exposure violated provisions of Proposition 65, by knowingly and
20 intentionally exposing persons to a chemical known to the State of California to cause cancer both
21 cancer and reproductive toxicity without first providing a clear and reasonable warning to such
22 individuals.

23 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this Court
24 has jurisdiction over the allegations of violations contained in the Complaint and personal
25 jurisdiction over Parallax Group as to the acts alleged in the Complaint, that venue is proper in
26 the County of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a
27 resolution of the allegations contained in the Complaint.

28 1.6 Ferreiro and The Parallax Group enter into this Consent Judgment pursuant to a

1 full settlement of disputed claims between the parties as alleged in the Complaint for the purpose
2 of avoiding prolonged litigation. By execution of this Consent Judgment, Parallax Group denies
3 the material factual and legal allegations contained in the Complaint. Nothing in this Consent
4 Judgment shall be construed as an admission by Parallax Group of any fact, finding, issue of law,
5 or violation of law; nor shall compliance with this Settlement Agreement constitute or be
6 construed as an admission by Parallax Group of any fact, finding, conclusion, issue of law or
7 violation of law, such being specifically denied by Parallax Group. However, this section shall
8 not diminish or otherwise affect the obligations, responsibilities and duties under this Consent
9 Judgment. Notwithstanding the allegations in the Notice or Complaint, Parallax Group maintains
10 that it has not knowingly and intentionally manufactured, or caused to be manufactured, the
11 Product for sale in California which is in violation of Proposition 65.

12 1.7 For purposes of this Consent Judgment, the term "Effective Date" shall mean the
13 date that the Consent Judgment is entered by the Court.

14 **2. Injunctive Relief**

15 2.1 Parallax Group shall only ship, distribute, sell, or offer for sale in California, either
16 "Reformulated Garage Flooring" or "Garage Flooring" with a clear and reasonable warning
17 pursuant to Section 2.2. For purposes of this Settlement Agreement, "Garage Flooring" is the
18 Product and other similar garage flooring manufactured by Parallax Group in different styles or
19 colors as the Product that include the following UPC Nos.: 822384186619, 822384184660,
20 822384184677, 822384184615, 822384185605, 822384185612, 822384185650, 822384186602,
21 822384187616, 822384187609, 822384144404, 822384144411, 822384144473, 822384184455,
22 822384364888, 822384183069, 822384183052, 822384183007, 822384243626, 822384183014,
23 822384183021, 822384183045, and 822384183038. "Reformulated Garage Flooring" is Garage
24 Flooring that is "Phthalate Free." "Phthalate Free" means containing less than or equal to 1,000
25 parts per million ("ppm") of each of Di-isodecyl phthalate (DIDP), Diisononyl phthalate (DINP),
26 D-n-butylphthalate (DBP), Di-n-hexyl phthalate (DnHP), Benzylbutyl phthalate (BBP), Di(2-
27 ethylhexyl) phthalate (DEHP), and Di-n-octyl phthalate (DnOP), collectively "Phthalates", when
28 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and

1 8270C.

2 2.2 Commencing on the Effective Date, Parallax Group shall, for all Garage Flooring
3 it sells or distributes and which is intended for sale in California that is not a Reformulated
4 Garage Flooring, or which Parallax Group has reason to believe will be shipped or sold in
5 California, provide clear and reasonable warnings as set forth in subsections 2.2(a) and (b) below.
6 The warning shall be prominently placed with such conspicuousness as compared with other
7 words, statements, designs, or devices as to render it likely to be read and understood by an
8 ordinary individual under customary conditions before purchase or use. Each warning shall be
9 provided in a manner such that the consumer or user understands to which specific Garage
10 Flooring the warning applies, so as to minimize the risk of consumer confusion.

11 (a) **Retail Store Sales**

12 (i) **Product Labeling.** Parallax Group shall affix a warning to the
13 packaging, labeling or directly on Garage Flooring sold in retail outlets in
14 California by Parallax Group or any person selling the Product that states:

15 **[PROPOSITION 65] WARNING:**
16 This product contains a chemical known to the State of California to cause cancer,
17 birth defects or other reproductive harm.

18 The bracketed text may, but is not required to, be used.

19 (ii) **Point of Sale Warnings.** Alternatively, Parallax Group
20 may provide warning signs in the form below to its customers in California
21 with instructions to post the warnings in close proximity to the point of
22 display of Garage Flooring. Such instruction sent to Parallax Group
23 customers shall be sent by certified mail, return receipt requested.

24 **[PROPOSITION 65] WARNING:**
25 This product contains a chemical known to the State of California to cause cancer,
26 birth defects or other reproductive harm.

27 The bracketed text may, but is not required to, be used.

28 (b) **Mail Order Catalog Warning.** In the event that Parallax Group
directly sells Garage Flooring via mail order catalog directly to consumers located in California

1 after the Effective Date that is not a Reformulated Garage Flooring, Parallax Group shall provide
2 a warning for such Garage Flooring sold via mail order catalog to such California residents. A
3 warning that is given in a mail order catalog shall be in the same type size or larger than the
4 Garage Flooring description text within the catalog. The following warning shall be provided on
5 the same page and in the same location as the display and/or description of the Garage Flooring:

6 **[PROPOSITION 65] WARNING:**

7 This product contains a chemical known to the State of California to cause cancer,
birth defects or other reproductive harm.

8 Where it is impracticable to provide the warning on the same page and in the same location as the
9 display and/or description of the Garage Flooring, Parallax Group may utilize a designated
10 symbol to cross reference the applicable warning and shall define the term "designated symbol"
11 with the following language on the inside of the front cover of the catalog or on the same page as
12 any order form for the Garage Flooring:
13

14 **[PROPOSITION 65] WARNING:** Certain products identified with this symbol
15 ▼ and offered for sale in this catalog contain a chemical known to the State of
California to cause cancer, birth defects or other reproductive harm.

16 The designated symbol must appear on the same page and in close proximity to the
17 display and/or description of the Garage Flooring. On each page where the designated symbol
18 appears, Parallax Group must provide a header or footer directing the consumer to the warning
19 language and definition of the designated symbol.

20 (c) **Internet Sales Warning.** In the event that Parallax Group directly sells
21 Garage Flooring via the internet directly to consumers located in California after the Effective
22 Date that is not a Reformulated Garage Flooring, Parallax Group shall provide a warning for such
23 Garage Flooring sold via the internet to such California residents. A warning that is given on the
24 internet shall be in the same type size or larger than the Garage Flooring description text and shall
25 be given in conjunction with the direct sale of the Garage Flooring. The warning shall appear
26 either: (a) on the same web page on which the Garage Flooring is displayed; (b) on the same web
27 page as the order form for the Garage Flooring; (c) on the same page as the price for the Garage
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1 Flooring; or (d) on one or more web pages displayed to a purchaser during the checkout process.

2 The following warning shall be provided:

3 **[PROPOSITION 65] WARNING:**

4 This product contains a chemical known to the State of California to cause cancer, birth
5 defects or other reproductive harm.

6 2.4 The Parallax Group shall only supply to Walmart Reformulated Garage Flooring,
7 pursuant to Section 2.1, and Garage Flooring with proper warnings, pursuant to Section 2.2.

8 2.5 The warning requirements set forth in Section 2.2 shall not apply to any
9 Reformulated Garage Flooring.

10 **3. Entry of Consent Judgment**

11 3.1 The Parties hereby request that the Court promptly enter this Consent Judgment.

12 3.2 In the event that the Attorney General objects or otherwise comments on one or
13 more provisions of this Consent Judgment, Ferrero and Parallax Group agree to negotiate
14 reasonable terms that may satisfy such concerns or objections. This Consent Judgment may only
15 be entered following approval by or in the absence of an objection by the Attorney General.

16 **4. Matters Covered By This Consent Judgment**

17 **4.1 Ferreiro's Public Release of Proposition 65 Claims**

18 Ferreiro, acting on his own behalf and in the public interest, releases Parallax Group, and
19 its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents,
20 members, employees, attorneys, representatives ("Releasees") and each entity to whom Parallax
21 Group directly or indirectly distributes or sells the Product, and all Garage Flooring, including but
22 not limited to, downstream distributors, wholesalers, customers, retailers, (including but not
23 limited Walmart and its affiliates and subsidiaries), franchisees, cooperative members and
24 licensees ("Downstream Releases"), from all claims for violations of Proposition 65 up through
25 the Effective Date based on exposure to DEHP from the Product as set forth in the Notice and
26 Complaint, and from all Phthalates from all Garage Flooring as set forth in this Consent
27 Judgment. Compliance with the terms of this Consent Judgment constitutes compliance with
28 Proposition 65 with respect to exposures to DEHP from the Product as set forth in the Notice, and

1 all Phthalates from all Garage Flooring as set forth in this Consent Judgment.

2 **4.2 Ferreiro's Individual Release of Claims**

3 Ferreiro, in his individual capacity only and *not* his representative capacity, also provides
4 a release to Parallax Group, the Releasees, and Downstream Releasees (including but not limited
5 to Walmart and its affiliates and subsidiaries) which shall be effective as a full and final accord
6 and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys'
7 fees, damages, losses, claims, liabilities and demands of Ferreiro of any nature, character or kind,
8 whether known or unknown, suspected or unsuspected, arising out of alleged or actual exposures
9 to DEHP in the Product, or all Phthalates in all Garage Flooring, sold or distributed for sale by
10 Parallax Group, any of the Releasees, or any of the Downstream Releasees, (including but not
11 limited to Walmart and its affiliates and subsidiaries), before the Effective Date.

12 **4.3 Section 1542 of the California Civil Code**

13 In furtherance of the foregoing, as to alleged exposures from Garage Flooring, Ferreiro
14 waives any and all rights and benefits which he now has, or in the future may have, conferred
15 upon him with respect to the Claims by virtue of the provisions of § 1542 of the California Civil
16 Code, which provides as follows:

17 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
18 CREDITOR DOES NOT KNOW OR SUSPECT EXIST IN HIS OR HER
19 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
20 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
21 OR HER SETTLEMENT WITH THE DEBTOR.

22 Ferreiro understands and acknowledges that the significance and consequence of this waiver of
23 California Civil Code § 1542 is that even if Ferreiro suffers future damages arising out of or
24 resulting from, or related directly or indirectly to, in whole or in part, the Product or Garage
25 Flooring, including but not limited to any exposure to, or failure to warn with respect to exposure
26 to, the Product or Garage Flooring, Ferreiro will not be able to make any claim for those damages
27 against Parallax Group, Releasees and Downstream Releasees.

28 **5. Enforcement of Judgment**

1 5.1 The terms of this Consent Judgment shall be enforced exclusively by the Parties
2 hereto, other than as to the releases provided herein which can also be enforced by or asserted as a
3 defense any of the Releasees or Downstream Releasees. The Parties may, by noticed motion or
4 order to show cause before the Superior Court of Alameda County, giving the notice required by
5 law, enforce the terms and conditions contained herein. In any proceeding brought by either Party
6 to enforce this Consent Judgment, such party may seek whatever fines, costs, penalties or
7 remedies as may be provided by law for any violation of Proposition 65 or this Consent
8 Judgment.

9 **6. Modification of Judgment**

10 6.1 This Consent Judgment may be modified only by written agreement of the Parties
11 upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any Party as
12 provided by law and upon an entry of a modified Consent Judgment by the Court.

13 6.2 Should any court enter final judgment in a case brought by Ferreiro or the People
14 involving the Product and Garage Flooring that sets forth standards defining when Proposition 65
15 warnings will or will not be required (“Alternative Standards”), or if the California Attorney
16 General’s office otherwise provides written endorsement (i.e., a writing that is circulated by the
17 Attorney General that is not intended for the purpose of soliciting further input or comments) of
18 Alternative Standards applicable to the products that are of the same general type and function as
19 the Product and Garage Flooring and constructed from the same materials, Parallax Group shall
20 be entitled to seek a modification of this Consent Judgment on forty-five (45) days’ notice to
21 Ferreiro so as to be able to utilize and rely on such Alternative Standards in lieu of those set forth
22 in this Consent Judgment. Ferreiro shall not unreasonably contest any proposed application to
23 effectuate such a modification.

24 **7. Settlement Payment**

25 7.1 In settlement of all the claims referred to in this Consent Judgment, and without
26 any admission of liability therefore, Parallax Group shall make the following monetary payments:

27 7.1.1 Parallax Group shall pay a total of \$3,000.00 in civil penalties in
28 accordance with this Section. The civil penalty payment will be allocated in accordance with

1 California Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the funds remitted to the
2 California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining
3 25% of the civil penalty remitted to Ferreiro. Each penalty payment shall be delivered to the
4 addresses listed in Section 7.1.3 below. Parallax Group shall be liable for payment of interest, at
5 a rate of 10% simple interest, for all amounts due and owing that are not received within two
6 business days of the date they are due.

7 7.1.2 In addition to the payment above, Parallax Group shall pay \$27,000.00 to
8 Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for Plaintiff Ferreiro's
9 attorneys' fees and costs, including any investigation and laboratory costs or expert fees, incurred
10 in the course of bringing the Ferreiro action, and in enforcing Proposition 65, including without
11 limitation, preparation of the 60-Day Notice letter and discussions with the office of the Attorney
12 General. Within seven (7) calendar days of the Effective Date, Parallax Group shall issue one
13 check to "Brodsky & Smith, LLC" for \$7,000.00 be delivered to the address listed in Section
14 7.1.3 below. Thereafter, and for the ensuing four (4) months, Parallax Group shall make payment
15 of \$5,000.00 to "Brodsky & Smith, LLC" on each one month anniversary of the Effective Date
16 until all monies owed to Brodsky Smith have been paid. Parallax Group shall be liable for
17 payment of interest, at a rate of 10% simple interest, for all amounts due and owing that are not
18 received within two business days of the date they are due.

19 7.1.3 Within seven (7) days of the Effective Date, Parallax Group shall issue two
20 separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of \$2,250.00;
21 and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$750.00. Payment owed
22 to Ferreiro pursuant to this Section shall be delivered to the following payment address:

23 Evan J. Smith, Esquire
24 Brodsky & Smith, LLC
25 Two Bala Plaza, Suite 510
26 Bala Cynwyd, PA 19004

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

28 For United States Postal Service Delivery:

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2 Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 P.O. Box 4010
6 Sacramento, CA 95812-4010

7 For Non-United States Postal Service Delivery:

8 Mike Gyurics
9 Fiscal Operations Branch Chief
10 Office of Environmental Health Hazard Assessment
11 1001 I Street
12 Sacramento, CA 95814

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

15 **8. Notices**

16 8.1 Any and all notices between the Parties provided for or permitted under this
17 Agreement, or by law, shall be in writing and personally delivered or sent by: (i) first-class
18 (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on any
19 party by the other party to the following addresses:

20 For Parallax Group:

21 Matthew E. Cohn
22 ARNSTEIN & LEHR LLP
23 120 South Riverside Plaza
24 Suite 1200
25 Chicago, IL 60606
26 T: 312.876.7188

27 For Ferreiro:

28 Evan J. Smith
BRODSKY & SMITH, LLC
9595 Wilshire Blvd., Suite 900
Beverly Hills, CA 90212
T: 877.354.2590

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

9. Authority to Stipulate

9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of

1 the party represented and legally to bind that party.

2 **10. Counterparts**

3 10.1 This Stipulation may be signed in counterparts and shall be binding upon the
4 parties hereto as if all said parties executed the original hereof.

5 **11. Retention of Jurisdiction**

6 11.1 This Court shall retain jurisdiction of this matter to implement the Consent
7 Judgment.

8 **12. Service on the Attorney General**

9 12.1 Ferreiro shall serve a copy of this Consent Judgment, signed by both parties, on the
10 California Attorney General on behalf of the parties so that the Attorney general may review this
11 Consent Judgment prior to its submittal to the Court for Approval. No sooner than forty-five (45)
12 days after the Attorney General has received the aforementioned copy of this Consent Judgment,
13 and in the absence of any written objection by the Attorney General to the terms of this Consent
14 Judgment, the parties may then submit it to the Court for Approval.

15 **13. Entire Agreement**

16 13.1 This Consent Judgment contains the sole and entire agreement and understanding
17 of the parties with respect to the entire subject matter hereof, and any and all discussions,
18 negotiations, commitment and understandings related thereto. No representations, oral or
19 otherwise, express or implied, other than those contained herein have been made by any party
20 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed
21 to exist or to bind any of the parties.

22 **14. Governing Law and Construction**

23 14.1 The validity, construction and performance of this Consent Judgment shall be
24 governed by the laws of the State of California, without reference to any conflicts of law
25 provisions of California law.

26 **15. Court Approval**

27 15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or
28 effect, and cannot be used in any proceeding for any purpose.

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15.2 The Effective Date of this Consent Judgment shall be the date on which it is entered by the Court.

IT IS SO STIPULATED:

Dated: October 23, 2015 Dated: _____

By: Anthony Ferreira By: _____
Anthony Ferreira Parallax Group

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____ Judge of Superior Court

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15.2 The Effective Date of this Consent Judgment shall be the date on which it is entered by the Court.

IT IS SO STIPULATED:

Dated: _____ Dated: 10/23/2015

By: _____ By: 
Anthony Ferreiro Parallax Group

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____
Judge of Superior Court