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1 Evan Smith (Bar No. SBN 242352)
2 Ryan P. Cardona, Esquire (SBN 302113)
3 BRODSKY & SMITH, LLC
4 9595 Wilshire Blvd., Ste. 900
5 Beverly Hills, CA 90212
6 Telephone: (877) 534-2590
7 Facsimile: (310) 247-0160

8 *Attorneys for Plaintiff*

FILED
ALAMEDA COUNTY

MAR - 6 2017
CLERK OF THE SUPERIOR COURT
By *[Signature]*

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

12 ANTHONY FERREIRO,
13 Plaintiff,

14 v.

15 CORE PRODUCTS INTERNATIONAL, INC.,
16 Defendant.

Case No.: RG16843517

CONSENT JUDGMENT

Judge: ~~Robert B. Freedman~~ *Paul Herbert*

Dept.: 20

Hearing Date: March 3, 2017

Hearing Time: 2:00 PM

Reservation #: R-1813125

1 **1. INTRODUCTION**

2 1.1 **The Parties.** This Consent Judgment is entered into by and between Anthony
3 Ferreiro acting on behalf of the public interest (hereinafter "Ferreiro") and Core Products
4 International, Inc. ("Core Products International" or "Defendant") with Ferreiro and Defendant
5 collectively referred to as the "Parties" and each of them as a "Party." Ferreiro is an individual
6 residing in California who seeks to promote awareness of exposures to toxic chemicals and improve
7 human health by reducing or eliminating hazardous substances contained in consumer products.
8 Core Products International employs ten or more persons and is a person in the course of doing
9 business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

10 1.2 **Allegations and Representations.** Ferreiro alleges that Defendant has exposed
11 individuals to Di-isodecyl phthalate (DIDP) from *Core Products Vinyl AB Contour Pillows* without
12 providing clear and reasonable warnings under Proposition 65. DIDP is listed under Proposition
13 65 as a chemical known to the State of California to cause reproductive toxicity.

14 1.3 **Notice of Violation/Complaint.** On or about July 1, 2016, Ferreiro served Core
15 Products International, Sears Holdings Management Corporation, Sears Holdings Corporation
16 (collectively, "Sears"), and various public enforcement agencies with a document entitled "60-Day
17 Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that
18 Defendant was in violation of Proposition 65 for failing to warn consumers and customers that
19 *Core Products Vinyl AB Contour Pillows* exposed users in California to DIDP. No public enforcer
20 has brought and is diligently prosecuting the claims alleged in the Notice. On December 22, 2016,
21 Ferreiro filed a complaint in the matter as captioned above (the "Complaint").

22 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
24 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
25 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
26 claims which were or could have been raised in the Complaint based on the facts alleged therein
27 and/or in the Notice.

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

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term "Covered Products" means vinyl medical products,
11 such as mats and/or seating and cushions, including but not limited to *Core Products Vinyl AB*
12 *Contour Pillows*, UPC No. 7 82944 01101 3 that are manufactured, distributed and/or offered for
13 sale in California by Core Products International.

14 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
15 entered as a Judgment of the Court.

16 **3. INJUNCTIVE RELIEF: WARNINGS**

17 3.1 Commencing ninety (90) days after the Effective Date, Core Products International
18 shall not manufacture, import, or purchase for sale in California any Covered Product that contains
19 more than 1,000 parts per million DIDP, unless the Covered Product is accompanied by the
20 following warning: "WARNING: This product contains a chemical known to the State of California
21 to cause cancer, birth defects and other reproductive harm."

22 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
23 Covered Product's packaging or labeling. The warning shall be prominently affixed to or printed
24 on the packaging or labeling and displayed with such conspicuousness, as compared with other
25 words, statements, or designs as to render it likely to be read and understood by an ordinary
26 individual under customary conditions of purchase or use. A warning may be contained in the same
27 section of the packaging, labeling, or instruction booklet that states other safety warnings, if any,
28 concerning the use of the product and shall be at least the same size as those other safety warnings.

1 **4. MONETARY TERMS**

2 4.1 **Civil Penalty.** Core Products International shall pay a civil penalty of \$2,000.00
3 pursuant to Health and Safety Code section 25249.7(b), to be apportioned in accordance with
4 California Health & Safety Code § 25192, with 75% of these funds remitted to the State of
5 California's Office of Environmental Health Hazard Assessment and the remaining 25% of the
6 penalty remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

7 4.1.1 Within ten (10) business days of the Effective Date, Core Products
8 International shall issue two separate checks for the civil penalty payment to (a) "OEHHA" in the
9 amount of \$1,500.00; and (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of
10 \$500.00. Payment owed to Ferreiro pursuant to this Section shall be delivered to the following
11 payment address:

12 Evan J. Smith, Esquire
13 Brodsky & Smith, LLC
14 Two Bala Plaza, Suite 510
15 Bala Cynwyd, PA 19004

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

18 For United States Postal Service Delivery:

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

24 For Non-United States Postal Service Delivery:

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

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

1 4.2 **Attorney Fees.** Core Products International shall pay \$23,000.00 to Brodsky &
2 Smith, LLC ("Brodsky Smith") as complete reimbursement for Plaintiff Ferreiro's attorneys' fees
3 and costs incurred as a result of investigating, bringing this matter to Core Products International'
4 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
5 interest, pursuant to Code of Civil Procedure section 1021.5. Payment shall be made within ten
6 (10) business days of the Effective Date and sent to the address for Brodsky & Smith set forth in
7 section 4.1.1, above.

8 4.3 Core Products International shall pay the civil penalty and attorney fees in Sections
9 4.1 and 4.2 within ten (10) days of the Effective Date.

10 **5. RELEASE OF ALL CLAIMS**

11 5.1 This consent judgment is a full, final, and binding resolution between Ferreiro acting
12 in the public interest, and Core Products International, and its parents, shareholders, divisions,
13 subdivisions, subsidiaries, partners, sister companies, and affiliates, and their successors and
14 assigns ("Defendant Releasees"), and all entities from whom they obtain and to whom they directly
15 or indirectly distribute or sell Covered Products, including but not limited to Sears, manufacturers,
16 suppliers, distributors, wholesalers, customers, licensors, licensees retailers, franchisees, and
17 cooperative members ("Downstream Defendant Releasees"), of all claims for violations of
18 Proposition 65 based on exposure to DIDP from Covered Products as set forth in the Notice, with
19 respect to any Covered Products manufactured, distributed, or sold by Core Products International
20 prior to the Effective Date. Compliance with the terms of this consent judgment constitutes
21 compliance with Proposition 65 with regard to the Covered Products.

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

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9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
10 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR
11 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY
12 HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH
13 THE DEBTOR.

14 5.3 Core Products International waives any and all claims against Ferreiro, his attorneys
15 and other representatives, for any and all actions taken or statements made (or those that could have
16 been taken or made) by Ferreiro and his attorneys and other representatives, whether in the course
17 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
18 and/or with respect to Covered Products.

19 **6. INTEGRATION**

20 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
21 any and all prior negotiations and understandings related hereto shall be deemed to have been
22 merged within it. No representations or terms of agreement other than those contained herein exist
23 or have been made by any Party with respect to the other Party or the subject matter hereof.

24 **7. GOVERNING LAW**

25 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
26 California and apply within the State of California. In the event that Proposition 65 is repealed or
27 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
28 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
8 Melissa A. Jones
9 Stoel Rives LLP
 500 Capitol Mall, Ste. 1600
 Sacramento, CA 95814

10 And

11 For Ferreiro:

12 Evan Smith
13 Brodsky & Smith, LLC
14 2 Bala Plaza, Suite 510
 Bala Cynwyd, PA 19004

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 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

18 9.1 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 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
22 **APPROVAL**

23 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
24 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment
25 and Defendant agrees it shall support approval of such Motion.

26 10.2 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,
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1 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
2 30 days, the case shall proceed on its normal course.

3 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
4 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
5 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
6 its normal course on the trial court's calendar.

7 **11. MODIFICATION**

8 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
9 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

10 **12. ATTORNEY'S FEES**

11 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent
12 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless
13 the unsuccessful party has acted with substantial justification. For purposes of this Consent
14 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
15 Discovery Act of 1986, Code of Civil Procedure Section 2016, *et seq.*

16 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
17 pursuant to law.

18 **13. RETENTION OF JURISDICTION**

19 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
20 Consent Judgment.

21 **14. AUTHORIZATION**

22 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
23 respective Parties and have read, understood and agree to all of the terms and conditions of this
24 document and certifies that he or she is fully authorized by the Party he or she represents to execute
25 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
26 explicitly provided herein each Party is to bear its own fees and costs.
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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: 1/16/17

Date: 01/16/2017

By: Anthony Ferrero
ANTHONY FERREIRO

By: Royce A Keer
CORE PRODUCTS INTERNATIONAL,
INC.
Royce A KEER

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 3/6/2017

Paul D. Herbert
Judge of Superior Court

PAUL D. HERBERT