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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

CONSUMER ADVOCACY GROUP,
INC.,

Plaintiff,

v.

GINSEY INDUSTRIES, INC.

Defendant.

Case No. CGC-11-516572

Assigned to the Hon. Tomar Mason, Dept. 610

CONSENT JUDGMENT

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1. INTRODUCTION

1.1. This Consent Judgment is entered into by the Consumer Advocacy Group, Inc. (“CAG”) and Ginsey Industries, Inc. (“Ginsey”), to settle all claims asserted by CAG against Ginsey as set forth in the complaint in the matter entitled *Consumer Advocacy Group, Inc. v. Ginsey Industries, Inc., et al.*, San Francisco County Superior Court Case No. CGC-11-516572.

1.2. On May 6, 2011, CAG served a 60-Day Notice of Violation under Proposition 65 (the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.5, *et seq.*) alleging that Ginsey violated Proposition 65 by exposing persons to Di (2-ethylhexyl) phthalate (“DEHP”) and Di-n-butyl phthalate (“DBP”) contained in bath mats, without first providing a clear and reasonable warning pursuant to Proposition 65.

1.3. Ginsey is a corporation that employs ten or more persons and manufactures, distributes, markets and/or sells Covered Products (as defined herein) in the State of California.

1.4. For purposes of this Consent Judgment only, CAG and Ginsey (the “Parties”) stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction over Ginsey as to the acts alleged in the Complaint, that venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which were or could have been raised in the Complaint based on the facts alleged therein with respect to Covered Products manufactured, distributed, marketed and/or sold by Ginsey.

1.5. CAG and Ginsey enter into this Consent Judgment as a full and final settlement of all claims that were raised in the Complaint, or which could have been raised in the Complaint, arising out of the facts or conduct related to Ginsey alleged therein. By execution of this Consent Judgment and agreeing to comply with its terms, the Parties do not admit any facts or conclusions of law including, but not limited to, any facts or conclusions of law suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law or equitable requirements relating to DEHP or DBP in bath mats. Nothing in this Consent Judgment is or shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or

1 violation of law. Ginsey denies the material, factual and legal allegations in CAG's Complaint and
2 Ginsey maintains that its Covered Products have at all times complied with all applicable laws, including
3 Proposition 65. Except as set forth herein, nothing in this Consent Judgment shall prejudice, waive or
4 impair any right, remedy, argument or defense the Parties may have in any other legal proceedings. This
5 Consent Judgment is the product of negotiation and compromise and is accepted by the Parties solely for
6 purposes of settling, compromising, and resolving issues disputed in this action.

7 **2. DEFINITIONS**

8 2.1. The term "Phthalate Limit" means a concentration of no more than 0.1 percent (100 parts
9 per million ("ppm")) by weight of either DEHP or DBP in any component of a Covered Product, or in
10 any material used in a Covered Product.

11 2.2. The term "Covered Product" means bath mats that are manufactured, distributed, sold,
12 imported, supplied and/or marketed by Ginsey for sale in California, either under its own name or brand
13 or under the name or brand of another (e.g., privately labeled products) and any other products within
14 the scope of the complaint.

15 2.3. The term "Date Code" means the six (6) digit code that appears on Covered Products that
16 provides the date each such Covered Product was produced. The Date Code may either be placed
17 directly on a Covered Product or on the packaging for a Covered Product. The digits are decoded as
18 follows:

19 First Digit: The year of production (0=2010, 1=2011, 2=2012, 3=2013, etc.)

20 Second and Third Digits: The week of the year of production (01-52 weeks per year)

21 Fourth Digit: The day of the week of production (1-7, with Monday =1 and Sunday=7)

22 Fifth and Sixth Digits: The factory location where the item is produced

23 EXAMPLE: 224501 is June 15, 2012 at factory 01

24 2.4. The term "Effective Date" means the date of entry of this Consent Judgment.

25 **3. INJUNCTIVE RELIEF**

26 3.1. **Reformulation of Covered Products.** Ginsey shall reformulate its Covered Products to
27 comply with the Phthalate Limit as of the date set forth in Section 3.2.

1 **3.2. Manufacturing Cutoff Date.** Commencing on June 15, 2012, Ginsey shall not
2 manufacture, distribute, sell, import, market, or supply to an unaffiliated third party any Covered
3 Product that exceeds the Phthalate Limit specified in Section 2.1 for sale in California. Each Covered
4 Product shall contain a Date Code that provides the date such Covered Product was produced. As
5 described in Section 2.3, the Date Code corresponding to the June 15, 2012 Manufacturing Cutoff Date
6 is 2245XX (with XX representing production location).

7 **4. ENFORCEMENT**

8 **4.1. General Enforcement Provisions.** CAG may, after meeting and conferring, by motion
9 or application for an order to show cause before this Court, enforce the terms and conditions contained
10 in this Consent Judgment. Any action to enforce alleged violations of the Phthalate Limit shall be
11 brought exclusively pursuant to this Section 4.

12 **4.2. Enforcement of Materials Violation.**

13 **4.2.1. Notice of Violation.** In the event that, at any time following July 15, 2012, CAG
14 confirms, pursuant to the requirements set forth in Section 4.2.2.3, that a Covered Product bearing a
15 production Date Code of June 15, 2012 or later contains DEHP or DBP in excess of the Phthalate Limit,
16 CAG may issue a Notice of Violation pursuant to this Section 4.

17 **4.2.2. Service of Notice of Violation and Supporting Documentation.**

18 **4.2.2.1.** The Notice of Violation shall be served on Ginsey by CAG following
19 laboratory confirmation by CAG, pursuant to Section 4.2.2.3., of an exceedance of the Phthalate Limit
20 regarding a Covered Product bearing a Date Code of June 15, 2012 or later, offered for sale to California
21 consumers.

22 **4.2.2.2.** The Notice of Violation shall be sent to the person(s) identified in
23 Section 8 to receive notices for Ginsey, and must be served within 45 days of the date CAG confirmed,
24 pursuant to Section 4.2.2.3, the Covered Product bearing a Date Code of June 15, 2012 or later exceeded
25 the Phthalate Limit, provided, however, that CAG simultaneously provide Ginsey with all of the
26 supporting documentation required by Section 4.2.2.3 below.
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4.2.2.3. The Notice of Violation shall, at a minimum, set forth and include all supporting documentation for each Covered Product regarding: (a) the date the alleged violation was confirmed by laboratory analysis as set forth in this Section 4.2.2.3; (b) the location at which the Covered Product was offered for sale; (c) a description of the Covered Product giving rise to the alleged violation, including evidence establishing the bath mat actually was manufactured, distributed, sold, imported, supplied and/or marketed by Ginsey, or supplied by Ginsey to an unaffiliated third party for sale in California; (d) all test data obtained by CAG regarding the Covered Product and supporting documentation sufficient for validation of the test results, including any laboratory reports, quality assurance reports and quality control reports associated with testing of the Covered Products; and (e) the actual printed or embossed Date Code from the packaging on the tested Covered Product(s) or the section(s) from the tested Covered Product(s) containing the embossed Date Code. Such Notice of Violation shall be based upon laboratory testing from an independent state-certified laboratory using the test method for the determination of phthalates approved by the United States Consumer Product Safety Commission at the time of the alleged violation. Service of such Notice of Violation shall be deemed to occur on the date all of the documentation set forth in this Section 4.2.2.3. is provided to Ginsey.

4.2.2.4. CAG shall promptly make available for inspection and/or copying, upon request by Ginsey, any supporting documentation in addition to that set forth in Section 4.2.2.3. related to the testing of the Covered Products and associated quality control samples, including chain of custody records, all laboratory logbook entries for laboratory receiving, sample preparation, and instrumental analysis, and all printouts from all analytical instruments relating to the testing of Covered Product samples and any and all calibration tests performed or relied upon in conjunction with the testing of the Covered Products, obtained by or available to CAG that pertains to the Covered Product's alleged exceedance of the Phthalate Limit, and, if available, any exemplars of Covered Products tested

4.2.3. **Notice of Election of Response.** No more than 45 days after service of a Notice of Violation, Ginsey shall provide written notice to CAG whether it elects to contest the allegations contained in a Notice of Violation ("Notice of Election"). Failure to provide a Notice of Election within 45 days of service of a Notice of Violation shall be deemed an election to contest the Notice of Violation.

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2 4.2.3.1. If a Notice of Violation is contested, the Notice of Election shall include
3 all then-available documentary evidence regarding the alleged violation, including all test data, if any. If
4 Ginsey or CAG later acquires additional test or other data regarding the alleged violation, it shall notify
5 the other party and promptly provide all such data or information to the party. Any test data used to
6 contest a Notice of Violation shall meet the criteria of Section 4.2.2.3.

7 4.2.4. **Meet and Confer.** If a Notice of Violation is contested, within 45 days of Ginsey
8 contesting such Notice of Violation, CAG and Ginsey shall meet and confer to attempt to resolve their
9 dispute. At any time, CAG may withdraw a Notice of Violation, in which case for purposes of this
10 Section 4 the result shall be as if CAG never issued any such Notice of Violation and CAG shall not be
11 entitled to any payments for reimbursement of any of its costs associated with the Notice of Violation . If
12 no informal resolution of a Notice of Violation results within 45 days of a Notice of Election to contest,
13 CAG may file an enforcement motion or application pursuant to Section 4.1. In any such proceeding,
14 CAG may seek whatever fines, costs, penalties, attorneys' fees or remedies are provided by law for failure
15 to comply with the Consent Judgment.

16 4.2.5. **Non-Contested Matters.** If Ginsey elects not to contest the allegations in a
17 Notice of Violation, it shall undertake corrective action pursuant to Section 4.2.6 and shall make any
18 payments required by Section 4.2.7.

19 4.2.6. **Corrective Action in Non-Contested Matters.** If Ginsey elects not to contest the
20 allegations in a Notice of Violation, it shall include in its Notice of Election a detailed description with
21 supporting documentation of the corrective action that it has undertaken or proposes to undertake to
22 address the alleged violation. Any such correction shall, at a minimum, provide reasonable assurance that
23 Covered Products bearing a Date Code of June 15, 2012 or later that exceed the Phthalate Limit will no
24 longer be offered for sale in California. If there is a dispute over the corrective action, the Parties shall
25 meet and confer pursuant to Section 4.2.4 before seeking any remedy in court.

26 4.2.7. **Payments in Non-Contested Matters.** In non-contested matters, in addition to
27 the corrective action, Ginsey shall be required to make a payment as specified below, as reimbursement
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1 for reasonable costs for investigating, preparing, sending and prosecuting Notices of Violation, and to
2 reimburse reasonable attorneys' fees and costs incurred in connection with these activities:

3 4.2.7.1. If Ginsey has not previously received a Notice of Violation, or has only
4 received one or more Notices of Violation that were successfully contested or withdrawn, and if Ginsey
5 serves a Notice of Election not to contest the allegations in the instant Notice of Violation, it shall not be
6 required to make a payment under this Section.

7 4.2.7.2. If Ginsey previously received a Notice of Violation that was not
8 successfully contested or withdrawn, and Ginsey serves a Notice of Election not to contest the allegations
9 in the instant Notice of Violation, it shall be required to make a payment of \$7,500. This payment shall,
10 however, be:

11 A. Waived if Ginsey produces test data with its Notice of Election, pursuant
12 to the requirements in Section 4.2.2.3 that was conducted within one year prior to the date
13 the Covered Product that is the subject of the Notice of Violation was purchased or
14 obtained by CAG, showing that the Covered Product that is the subject of the Notice of
15 Violation did not exceed the Phthalate Limit.

16 B. Waived if the Attorney General or other public enforcer has, prior to the
17 date the Notice of Violation was issued, brought an action or proceeding regarding the
18 same violation;

19 4.2.7.3. The payment shall be made by check payable to the Consumer
20 Advocacy Group and shall be paid within 30 days of service of a Notice of Election not to contest a Notice
21 of Violation pursuant to Section 4.2.7.2 triggering a payment.

22 4.2.7.4. Ginsey's liability for payments shall be limited as follows:

23 A. Ginsey shall be liable for no more than one required payment for any
24 particular Covered Product within any 30-day period.

25 B. Ginsey's monetary liability to make required payments pursuant to
26 Section 4.2.7.2 shall be limited to no more than \$3,000 for each 75-day period.
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1 **5. PAYMENTS**

2 **5.1. Payments From Ginsey.** Within thirty (30) days of entry of this Consent Judgment,
3 Ginsey shall pay a total of \$52,000 in settlement of CAG's Complaint referenced in Section 1.1 above.

4 **5.2. Allocation of Payments.** Ginsey's total settlement amount of \$52,000 shall be paid in 4
5 separate checks delivered to the offices of Yeroushalmi & Associates (Attention: Reuben Yeroushalmi),
6 9100 Wilshire Boulevard, Suite 610E, Beverly Hills, California 90212, and made payable and allocated
7 as follows:

8 **5.2.1.** Ginsey shall pay \$2,000 as a Penalty pursuant to Health & Safety Code
9 §25249.7(b), to be apportioned in accordance with California Health & Safety Code §25249.12(c) & (d),
10 with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard
11 Assessment ("OEHHA") and the remaining 25% of the penalty remitted to CAG. Accordingly, one
12 penalty payment check for the amount of \$1,500 shall be made payable to "OEHHA" for the Safe
13 Drinking Water and Toxic Enforcement Fund and be attributed to taxpayer identification number to be
14 provided prior to issuance of the check. A second penalty payment check in the amount of \$500 shall
15 made payable to the "Consumer Advocacy Group, Inc." and associated with taxpayer identification
16 number to be provided prior to issuance of the check.

17 **5.2.2.** Ginsey also shall separately pay \$2,000 to CAG as Payment In Lieu of Civil
18 Penalty pursuant to Health & Safety Code §25249.7(b), and California Code of Regulations, Title 11,
19 §3202(b). CAG will restrict the use of such funds to the following purposes: (a) monitoring compliance
20 with the reformulation requirements of this and other similar Consent Judgments; and (b) preparing and
21 compiling the information and documentation necessary to support enforcement efforts under this Consent
22 Judgment. The payment in lieu of penalty check shall be made payable to the "Consumer Advocacy
23 Group, Inc." and associated with taxpayer identification number to be provided prior to issuance of the
24 check.

25 **5.2.3.** Ginsey also shall separately pay \$48,000 to Yeroushalmi & Associates as
26 reimbursement for a portion of reasonable attorneys' fees and costs. The attorneys' fees and cost
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1 reimbursement check shall be made payable to the “Yeroushalmi & Associates” and associated with
2 taxpayer identification number to be provided prior to issuance of the check.

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4 **6. MODIFICATION AND DISPUTE RESOLUTION**

5 6.1. **Modification.** This Consent Judgment may be modified from time to time by express
6 written agreement of the Parties with the approval of the Court, or by an order of this Court upon motion
7 and in accordance with law.

8 6.2. **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment shall
9 attempt in good faith to meet and confer with all affected Parties prior to filing a motion to modify the
10 Consent Judgment.

11 **7. CLAIMS COVERED AND RELEASE**

12 7.1. This Consent Judgment is a full, final, and binding resolution between CAG, on behalf of
13 itself and the public interest, and Ginsey and Ginsey's parents, shareholders, divisions, subdivisions,
14 subsidiaries, independent sales representatives, partners, sister companies, licensors and their successors
15 and assigns (“Defendant Releasees”), and each entity to whom Defendant Releasees directly or
16 indirectly distribute or sell Covered Products including, but not limited to, distributors, wholesalers,
17 customers, retailers, franchisees, cooperative members, licensors and licensees (“Downstream Defendant
18 Releasees”), of any violation of Proposition 65 that has been or could have been asserted in the public
19 interest against Ginsey, Defendant Releasees, and Downstream Defendant Releasees, regarding the
20 failure to warn about exposure to DEHP or DBP only arising in connection with Covered Products
21 manufactured, distributed, or sold by Ginsey prior to June 15, 2012.

22 7.2. CAG releases, waives, and forever discharges any and all claims against Ginsey,
23 Defendant Releasees, and Downstream Defendant Releasees arising from any violation of Proposition
24 65 or any other statutory or common law claims that have been or could have been asserted regarding
25 the failure to warn about exposure to DEHP or DBP arising in connection with Covered Products
26 manufactured, distributed, sold, imported, supplied and or marketed by Ginsey, either under its own
27 name or brand or under the name or brand of another (e.g., privately labeled products) prior to June 15,
28 2012.

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2 7.3. CAG, for itself and acting on behalf of the public interest pursuant to Health & Safety
3 Code §25249.7(d), releases, waives, and forever discharges Ginsey, Defendant Releasees, and
4 Downstream Defendant Releasees from all claims for violations of Proposition 65 regarding the failure
5 to warn about exposure to DEHP or DBP arising in connection with Covered Products manufactured,
6 distributed, sold, imported, supplied and or marketed by Ginsey, either under its own name or brand or
7 under the name or brand of another (e.g., privately labeled products) prior to June 15, 2012.

8 7.4. Compliance with the terms of this Consent Judgment by Ginsey shall constitute
9 compliance with Proposition 65 by Ginsey, the Defendant Releasees and their Downstream Defendant
10 Releasees with respect to any alleged failure to warn about DEHP or DBP in Covered Products
11 manufactured, distributed, sold imported, supplied and or marketed by Ginsey, either under its own
12 name or brand or under the name or brand of another (e.g., privately labeled products) by Ginsey after
13 June 15, 2012.

14 7.5. **Waiver of California Civil Code Section 1542.** The Parties agree that the release set
15 forth in this Agreement is a general release. CAG expressly waives any benefits that California Civil
16 Code section 1542 or any other laws, legal decisions and/or legal principles of similar effect might
17 provide now or in the future, and agrees that the releases described in Sections 7.1 through 7.4 above
18 extends to all claims, whether or not claimed or suspected by CAG, subject to the representations and
19 warranties provided by the Parties herein. California Civil Code section 1542 reads as follows:

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

25 CAG certifies that it has read the provisions of California Civil Code section 1542, and that the
26 effect and import of those provisions have been explained to CAG by its own counsel. CAG further
27 acknowledges and agrees that this waiver of rights under California Civil Code section 1542 has been
28 separately bargained for and is an essential and material term of this Agreement and, without such waiver,
this Agreement would not have been entered into. CAG understands that the facts with respect to which
this Agreement are given may hereafter prove to be different from the facts now known or believed by

1 CAG , and CAG hereby accepts and assumes the risk thereof and agrees that this Agreement shall be and
2 shall remain, in all respects, effective and not subject to termination or rescission by reason of any such
3 difference in facts. CAG understands and acknowledges the significance and consequence of such specific
4 waiver of unknown claims and hereby assumes full responsibility for any injuries, damages, losses or
5 liabilities that may hereinafter be incurred or discovered from the waiver of these unknown claims.
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7 **8. PROVISION OF NOTICE**

8 8.1. When any Party is entitled to receive any notice under this Consent Judgment, the notice
9 shall be sent by first class and electronic mail as follows:

10 8.1.1. **Notices to Ginsey.** Notices to Ginsey pursuant to this Consent Judgment shall be
11 sent to:

12 Mary Fullam
13 Sr. Vice President Marketing and Brand
14 Development
15 281 Benigno Boulevard
16 Bellmawr, NJ 08031
17 mfullam@ginsey.com

18 With a copy to:

19 AnnMarie Sanford
20 Pepper Hamilton, LLP
21 4000 Town Center, Suite 1800
22 Southfield, MI 48075
23 sanforda@pepperlaw.com

24 8.1.2. **Notices to Plaintiff.** Notices to CAG pursuant to this Consent Judgment shall be
25 sent to:

26 Reuben Yeroushalmi
27 Yeroushalmi & Associates
28 9100 Wilshire Boulevard, Suite 610E
Beverly Hills, CA 90212
reuben@yeroushalmi.com

8.2. Any Party may modify the person and address to whom the notice is to be sent by sending
the other Party notice by first class and electronic mail.

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9. COURT APPROVAL

9.1. This Consent Judgment shall become effective on the Effective Date, provided however, that CAG shall prepare and file a Motion for Approval of this Consent Judgment and Ginsey shall support approval of such Motion.

9.2. If this Consent Judgment is not entered by the Court, it shall be of no force or effect and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

10. GOVERNING LAW AND CONSTRUCTION

10.1. The terms of this Consent Judgment shall be governed by the laws of the State of California.

11. ENTIRE AGREEMENT

11.1. This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Consent Judgment have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the extent that they are expressly incorporated herein. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

12. RETENTION OF JURISDICTION

12.1. This Court shall retain jurisdiction of this matter to implement, enforce or modify the Consent Judgment.

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13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

13.1. Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the Party represented and legally to bind that Party.

14. EXECUTION IN COUNTERPARTS

14.1. The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile or pdf, which taken together shall be deemed to constitute one document.

IT IS SO ORDERED, ADJUDGED, AND DECREED

Dated: April __, 2012

Judge of the Superior Court of the State of California

IT IS SO STIPULATED:

Dated: April 26, 2012

CONSUMER ADVOCACY GROUP, INC.

Lyn H Marcus

Lyn H Marcus
Printed Name

President
Title

Dated: April 18, 2012

GINSEY INDUSTRIES, INC.

Mary Fullam

MARY FULLAM
Printed Name

SR. VICE PRESIDENT
Title