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8  
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 HORI (U.S.A.), INC., BEST BUY CO., INC.,

15 Defendants.

Case No.: RG21101989

**CONSENT JUDGMENT**

Judge: Stephen Kaus

Dept.: 19

Hearing Date: March 29, 2023

Hearing Time: 3:00 PM

Reservation #: 450199715282

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 HORI (U.S.A.), Inc.  
4       (“HORI” or “Defendant”) with Ferreiro and Defendant collectively referred to as the “Parties” and  
5       each of them as a “Party.” Ferreiro is an individual residing in California that seeks to promote  
6       awareness of exposures to toxic chemicals and improve human health by reducing or eliminating  
7       hazardous substances contained in consumer products. HORI is alleged to be a person in the course  
8       of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

9           **1.2 Allegations and Representations.** Ferreiro alleges that Defendant has exposed  
10       individuals to Bisphenol A (BPA) from its sales of HORI Hybrid System Armor for Nintendo  
11       Switch Lite, UPC# 873124008708, without providing a clear and reasonable exposure warning  
12       pursuant to Proposition 65. BPA is listed under Proposition 65 as a chemical known to the State of  
13       California to cause reproductive toxicity.

14           **1.3 Notice of Violation/Complaint.** On or about October 19, 2020, Ferreiro served  
15       HORI, Best Buy Co., Inc., and various public enforcement agencies with documents entitled “60-  
16       Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging  
17       that Defendant violated Proposition 65 for failing to warn consumers and customers that use of the  
18       Products expose users in California to BPA. No public enforcer has brought and is diligently  
19       prosecuting the claims alleged in the Notice. May 13, 2021, Ferreiro filed a complaint (the  
20       “Complaint”) in the matter.

21           **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
22       jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that  
23       venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,  
24       and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all  
25       claims which were or could have been raised in the Complaint based on the facts alleged therein  
26       and/or in the Notice.

1           1.5 Defendant denies the material allegations contained in Ferreiro’s Notice and  
2 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment  
3 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of  
4 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission  
5 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being  
6 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the  
7 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

8           **2. DEFINITIONS**

9           2.1 **Covered Products.** The term “Covered Products” means HORI Hybrid System  
10 Armor for Nintendo Switch Lite with the UPC Numbers:

11           UPC# 873124008708 (Turquoise);

12           UPC# 873124008395 (Black);

13           UPC# 873124008692 (Yellow);

14           UPC# 873124008715 (Gray); and

15           Any other versions or colors of the HORI Hybrid System Armor, including any colors or  
16 versions released subsequent to the Effective Date, that are manufactured, distributed, sold, and/or  
17 offered for sale in California by HORI, that expose users to BPA.

18           2.2 **Effective Date.** The term “Effective Date” means the date this Consent Judgment is  
19 entered as a Judgment of the Court.

20           **3. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

21           3.1 **Reformulation of Products.** As of the date this Consent Judgment is signed by both  
22 Parties, and continuing thereafter, Covered Products that HORI directly manufactures, imports,  
23 distributes, sells, or offers for sale in California shall either: (a) be Reformulated Products pursuant  
24 to § 3.2, below; or (b) be labeled with a clear and reasonable exposure warning pursuant to §§ 3.3  
25 and 3.4, below. For purposes of this Consent Judgment, a “Reformulated Product” is a Covered  
26 Product that is in compliance with the standard set forth in § 3.2 below. The warning requirement  
27 set forth in §§ 3.3 and 3.4 shall not apply to any Reformulated Product.

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1           3.2    **Reformulation Standard.** “Reformulated Products” shall mean any Covered  
2 Products intended for retail sale in California that are demonstrated via an exposure assessment  
3 conducted in accordance with applicable Proposition 65 laws and regulations to result in a dermal  
4 exposure to BPA on any accessible component that will not exceed the Maximum Allowable Dose  
5 Level for BPA of 3 micrograms per day from solid materials. For purposes of this analysis, as part  
6 of the assessment, BPA migration/wipe testing shall be considered, and shall be performed by an  
7 accredited laboratory utilizing approved sampling and analytical methods to quantify BPA  
8 migration.

9           3.3    **Clear and Reasonable Warning.** As of the Effective Date, HORI agrees to  
10 manufacture, import, or purchase for sale in California only Products that are accompanied by either  
11 of the following warnings:

12           (a)    **Warning.** The “Warning” shall consist of the statement:

13           ⚠ **WARNING:** This product can expose you to chemicals including Bisphenol A  
14 (BPA), which is known to the State of California to cause birth defects or other  
reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

15           (b)    **Alternative Warning:** HORI may, but is not required to, use the alternative short-  
16 form warning as set forth in this § 3.3(b) (“**Alternative Warning**”) as follows:

17           ⚠ **WARNING:** Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

18           3.4    A **Warning** or **Alternative Warning** provided pursuant to § 3.3 must print the word  
19 “**WARNING:**” in all capital letters and in bold font, followed by a colon. The warning symbol to  
20 the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral  
21 triangle with a black outline, except that if the sign or label for the Covered Product does not use  
22 the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller  
23 than the height of the word “**WARNING:**”. The warning shall be affixed to or printed on the  
24 Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or  
25 automatic process, providing that the warning is displayed with such conspicuousness, as compared  
26 with other words, statements, or designs as to render it likely to be read and understood by an  
27 ordinary individual under customary conditions of purchase or use. A warning may be contained  
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1 in the same section of the packaging, labeling, or instruction booklet that states other safety  
2 warnings, if any, concerning the use of the Covered Product and shall be at least the same size as  
3 those other safety warnings.

4 If HORI sells Covered Products via an internet website to customers located in California,  
5 the warning requirements of this section shall be satisfied if the foregoing warning appears either:  
6 (a) on the same web page on which a Covered Product is displayed and/or described; (b) on the  
7 same page as the price for the Covered Product; or (c) on one or more web pages displayed to a  
8 purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a  
9 black exclamation point in a yellow or white equilateral triangle may appear adjacent to or  
10 immediately following the display, description, price, or checkout listing of the Covered Product,  
11 if the warning statement appears elsewhere on the same web page in a manner that clearly associates  
12 it with the product(s) to which the warning applies. HORI shall instruct any third party internet  
13 sellers to which it sells, ships or distributes the Covered Product to provide the warning as a  
14 condition of sale of the Covered Product.

15 **3.5 Compliance with Warning Regulations.** Defendant shall be deemed to be in  
16 compliance with this Consent Judgment by (1) adhering to §§ 3.3 and 3.4 of this Consent Judgment;  
17 and (2) complying with warning requirements adopted by the State of California’s Office of  
18 Environmental Health Hazard Assessment (“OEHHA”) applicable to the product and the exposure  
19 at issue after the Effective Date.

20 **4. MONETARY TERMS**

21 **4.1 Civil Penalty.** HORI shall pay \$7,000.00 as a Civil Penalty pursuant to Health and  
22 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety  
23 Code § 25192, with 75% of these funds remitted to OEHHA and the remaining 25% of the Civil  
24 Penalty remitted to Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

25 **4.1.1** Within ten (10) days of the Effective Date, HORI shall issue two separate checks  
26 for the Civil Penalty payment to (a) “OEHHA” in the amount of \$5,250.00; and to (b) “Brotsky  
27  
28

1 Smith in Trust for Ferreiro” in the amount of \$1,750.00. Payment owed to Ferreiro pursuant to  
2 this Section shall be delivered to the following payment address:

3 Evan J. Smith, Esquire  
4 Brodsky Smith  
5 Two Bala Plaza, Suite 805  
6 Bala Cynwyd, PA 19004

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

9 For United States Postal Service Delivery:  
10 Mike Gyurics  
11 Fiscal Operations Branch Chief  
12 Office of Environmental Health Hazard Assessment  
13 P.O. Box 4010  
14 Sacramento, CA 95812-4010

15 For Non-United States Postal Service Delivery:  
16 Mike Gyurics  
17 Fiscal Operations Branch Chief  
18 Office of Environmental Health Hazard Assessment  
19 1001 I Street  
20 Sacramento, CA 95814

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

23 4.2 **Attorneys’ Fees.** Within ten (10) days of the Effective Date, HORI shall pay  
24 \$70,000.00 to Brodsky Smith (“Brodsky Smith”) as complete reimbursement for Ferreiro’s  
25 attorneys’ fees and costs incurred as a result of investigating, bringing this matter to HORI  
26 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public  
27 interest, pursuant to Code of Civil Procedure § 1021.5.

28 **5. RELEASE OF ALL CLAIMS**

5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro  
acting on his own behalf, and on behalf of the public interest, and HORI, and its parents,  
shareholders, members, directors, officers, managers, employees, representatives, agents,  
attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their  
predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they  
obtain and to whom they directly or indirectly distribute or sell Covered Products, including but

1 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees  
2 retailers, franchisees, and cooperative members (“Downstream Releasees”), of all claims for  
3 violations of Proposition 65 based on exposure to BPA from Covered Products as set forth in the  
4 Notice, with respect to any Covered Products manufactured, distributed, or sold by HORI prior to  
5 the Effective Date, provided that this release will not extend to online sales to consumers that occur  
6 after the Effective Date as to retailers who do not provide a warning in compliance with Section  
7 3.4 of this Judgment. It is the Parties’ intention that this Consent Judgment shall have preclusive  
8 effect such that no other actions by private enforcers, whether purporting to act in his, her, or its  
9 interests or the public interest shall be permitted to pursue and/or take any action with respect to  
10 any violation of Proposition 65 that was alleged in the Complaint, or that could have been brought  
11 pursuant to the Notice against HORI and/or the Downstream Releasees of the Covered Products  
12 (“Proposition 65 Claims”). Compliance with the terms of this Consent Judgment constitutes  
13 compliance with Proposition 65 with regard to exposure to BPA from use of the Covered Products.

14           5.2     In addition to the foregoing, Ferreiro, on behalf of himself, his past and current  
15 agents, representatives, attorneys, and successors and/or assignees, and *not* in his representative  
16 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
17 legal action and releases HORI, Defendant Releasees, and Downstream Releasees from any and all  
18 manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,  
19 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys’ fees, of  
20 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the  
21 future, with respect to any alleged violations of Proposition 65 related to or arising from exposure  
22 to BPA from Covered Products manufactured, distributed, or sold by HORI, Defendant Releasees  
23 or Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,  
24 Ferreiro hereby specifically waives any and all rights and benefits which he now has, or in the  
25 future may have, conferred by virtue of the provisions of § 1542 of the California Civil Code, which  
26 provides as follows:

27           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
28           CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO

1 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE  
2 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE  
3 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE  
4 DEBTOR OR RELEASED PARTY.

5 5.3 HORI waives any and all claims against Ferreiro, his attorneys and other  
6 representatives, for any and all actions taken or statements made (or those that could have been  
7 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of  
8 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
9 and/or with respect to exposure to BPA From Covered Products.

10 **6. INTEGRATION**

11 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and  
12 any and all prior negotiations and understandings related hereto shall be deemed to have been  
13 merged within it. No representations or terms of agreement other than those contained herein exist  
14 or have been made by any Party with respect to the other Party or the subject matter hereof.

15 **7. GOVERNING LAW**

16 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
17 California and apply within the State of California. In the event that Proposition 65 is repealed or  
18 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then  
19 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and  
20 to the extent that, Covered Products are so affected.

21 **8. NOTICES**

22 8.1 Unless specified herein, all correspondence and notices required to be provided  
23 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-  
24 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party  
25 by the other party at the following addresses:

26 For Defendant:

27 Ryo Mihara  
28 HORI (U.S.A.), Inc.  
24330 Garnier St.  
Torrance, CA 90505

For Plaintiff:

Evan J. Smith, Esquire  
Brodsky Smith  
Two Bala Plaza, Suite 805  
Bala Cynwyd, PA 19004



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

3 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

4 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of  
5 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
6 the same document.

7 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**  
8 **APPROVAL**

9 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &  
10 Safety Code § 25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.  
11 Defendant agrees it shall support approval of such Motion.

12 10.2 This Consent Judgment shall not be effective until it is approved and entered by the  
13 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case, the  
14 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30  
15 days, the case shall proceed on its normal course.

16 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
17 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
18 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on  
19 its normal course on the trial court's calendar.

20 **11. MODIFICATION**

21 11.1 This Consent Judgment may be modified only by further stipulation of the Parties  
22 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

23 **12. ATTORNEY'S FEES**

24 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent  
25 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

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

**13. RETENTION OF JURISDICTION**

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

**14. AUTHORIZATION**

14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this document and certify that he or she is fully authorized by the Party he or she represents to 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: 2/10/23

Date: 7-28-22

By: *Anthony Ferreiro*  
ANTHONY FERREIRO

By: *[Signature]*  
HORI (U.S.A.), INC.

**IT IS SO ORDERED, ADJUDGED AND DECREED:**

Dated: \_\_\_\_\_

\_\_\_\_\_  
Judge of Superior Court