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ENDORSED
FILED
ALAMEDA COUNTY
MAY 24 2018

CLERK OF THE SUPERIOR COURT,
By Lanette Duffin, Deputy

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

11 HECTOR VELARDE,
12 Plaintiff,
13 vs.
14 QUEST USA CORP.,
15 Defendant.

Case No.:

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

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

18906201

BY FAX

16 Plaintiff Hector Velarde (“Plaintiff”), by and through his attorneys, alleges the following
17 cause of action in the public interest of the citizens of the State of California.

18 **BACKGROUND OF THE CASE**

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

25 2. This complaint is a representative action brought by Plaintiff in the public interest
26 of the citizens of the State of California to enforce the People’s right to be informed of the health
27 and safety of the products they purchase and use.

1 hazards caused by exposure to Diisononyl phthalate (DINP), a toxic chemical found in
2 electronics cords and/or cables sold and/or distributed by defendant Quest USA Corp. (“Quest
3 USA” or “Defendant”) in California.

4 3. DINP is a harmful chemical known to the State of California to cause cancer. On
5 December 20, 2013, the State of California listed DINP as a chemical known to the State to
6 cause cancer and it has come under the purview of Proposition 65 regulations since that time.
7 Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

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

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

18 6. Plaintiff alleges that Defendant manufactures, distributes, sells and/or offers for
19 sale in California, without the requisite exposure warning, electronics cords and/or cables,
20 including but not limited to Klazzo Micro USB Cords (the “Products”) that expose persons to
21 DINP.

22 7. Defendant’s failure to warn consumers and other individuals in California of the
23 health hazards associated with exposure to DINP in conjunction with the sale and/or distribution
24 of the Products is a violation of Proposition 65 and subjects Defendant to the enjoinder and
25 civil penalties described herein.

26 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition
27 65 in accordance with Health and Safety Code § 25249.7(b).

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1 in the State of California, and/or has otherwise purposefully availed itself of the California
2 market. Such purposeful availment has rendered the exercise of jurisdiction by California courts
3 consistent and permissible with traditional notions of fair play and substantial justice.

4 **SATISFACTION OF NOTICE REQUIREMENTS**

5 16. On March 15, 2018, Plaintiff gave notice of alleged violation of Health and Safety
6 Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California citizens to
7 DINP contained in the Products without proper warning, subject to a private action to Defendant
8 and to the California Attorney General's office and the offices of the County District attorneys
9 and City Attorneys for each city with a population greater than 750,000 persons wherein the
10 herein violations allegedly occurred.

11 17. The Notice complied with all procedural requirements of Proposition 65 including
12 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at
13 least one person with relevant and appropriate expertise who reviewed relevant data regarding
14 DINP exposure, and that counsel believed there was meritorious and reasonable cause for a
15 private action.

16 18. After receiving the Notice, and to Plaintiff's best information and belief, none of
17 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted
18 a cause of action against Defendant under Proposition 65 to enforce the alleged violations which
19 are the subject of Plaintiff's notice of violation.

20 19. Plaintiff is commencing this action more than sixty (60) days from the date of his
21 notice to Defendant, as required by law.

22 **FIRST CAUSE OF ACTION**

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

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

26 21. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,
27 and/or retailer of the Product.

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1 22. The Products contain DINP, a hazardous chemical found on the Proposition 65
2 list of chemicals known to be hazardous to human health.

3 23. The Product does not comply with the Proposition 65 warning requirements.

4 24. Plaintiff, based on his best information and belief, avers that at all relevant times
5 herein, and at least since March 19, 2017, continuing until the present, that Defendant has
6 continued to knowingly and intentionally expose California users and consumers of the Product
7 to DINP without providing required warnings under Proposition 65.

8 25. The exposures that are the subject of this notice result from the purchase,
9 acquisition, handling and recommended use of the product. Consequently, the primary route of
10 exposure to these chemicals is through dermal absorption. Users may potentially be exposed to
11 DINP by dermal absorption through direct skin contact with the cord during routine use when the
12 cord is manipulated with bare hands. The product can be expected to emit gas phase DINP into
13 the air over the lifetime of the product. If the cable is stored or transported in a carrier DINP that
14 leaches from the cable may contaminate other articles contained within these closed spaces that
15 are subsequently handled, worn, or ingested by the user. Finally, while mouthing of the product
16 does not seem likely, some amount of exposure through ingestion can occur by touching the
17 product, with subsequent touching of the user's hand to mouth.

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

21 27. Defendant has knowledge that the normal and reasonably foreseeable use of the
22 Product exposes individuals to DINP, and Defendant intends that exposures to DINP will occur
23 by its deliberate, non-accidental participation in the manufacture, importation, distribution, sale
24 and offering of the Products to consumers in California

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

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

