



14991273

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Evan Smith (Bar No. SBN 242352)
BRODSKY & SMITH, LLC.
9595 Wilshire Blvd., Ste. 900
Beverly Hills, CA 90212
Tel: (877) 534-2590
Fax: (310) 247-0160

Attorneys for Plaintiff
Hector Velarde

FILED
ALAMEDA COUNTY

SEP 12 2017

CLERK OF THE SUPERIOR COURT
By *R. L. Clarke*
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

HECTOR VELARDE,
Plaintiff,

v.

SHENZHEN DNS INDUSTRIES CO., LTD.,
Defendant.

Case No.: RG17854435
CONSENT JUDGMENT
Judge: Stephen M. Pulido
Dept.: 16
Hearing Date: June 13, 2017
Hearing Time: 3:00 PM
Reservation #: R-1842295

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Hector Velarde
3 acting on behalf of the public interest (hereinafter "Velarde") and Shenzhen DNS Industries Co.,
4 Ltd., (hereinafter "DNS"), with Velarde and DNS collectively referred to as the "Parties" and each
5 of them as a "Party." Velarde is an individual residing in California who 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. DNS employs ten or more persons and is a
8 person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code
9 §§ 25249.6 et seq.

10 **1.2 Allegations and Representations.** Velarde alleges that DNS has exposed
11 individuals to Diisononyl phthalate (DINP) from USB charging cables without providing clear and
12 reasonable warnings under Proposition 65. DINP is listed under Proposition 65 as a chemical
13 known to the State of California to cause cancer.

14 **1.3 Notices of Violation/Complaint.**

15 **1.3.1 Initial Notice of Violation.**

16 On or about November 11, 2015, Velarde served Homer TLC, Inc. and various
17 public enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to
18 Health & Safety Code §25249.7(d) (the "November 11 Notice"), alleging that Homer TLC, Inc.
19 was in violation of Proposition 65 for failing to warn consumers and customers that the USB
20 charging cables exposed users in California to DINP. No public enforcer has brought and is
21 diligently prosecuting the claims alleged in the November 11 Notice.

22 **1.3.2 Second Notice of Violation.**

23 Subsequently, on or about April 4, 2016, Velarde served Home Depot U.S.A., Inc.
24 ("Home Depot") and various public enforcement agencies with a document entitled "60-Day Notice
25 of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Home
26 Depot was in violation of Proposition 65 for failing to warn consumers and customers that the same
27

1 USB charging cables exposed users in California to DINP. No public enforcer has brought and is
2 diligently prosecuting the claims alleged in the Notice.

3 **1.3.3 Third Notice of Violation/Complaint.**

4 On January 4, 2017, Velarde issued for service on DNS and Home Depot and
5 various public enforcement agencies a document entitled "60-Day Notice of Violation" pursuant to
6 Health & Safety Code §25249.7(d) (the "Notice"), alleging that DNS (as the
7 manufacturer/distributor) and Home Depot (as the retailer) were in violation of Proposition 65 for
8 failing to warn consumers and customers that the same USB charging cables exposed users in
9 California to DINP. No public enforcer has brought and is diligently prosecuting the claims alleged
10 in the Notice. On or about March 27, 2017, Velarde filed a Complaint against DNS regarding the
11 allegations that are contained in the Notice (the "Complaint").

12 **1.4 Jurisdiction.** For purposes of this Consent Judgment only, the Parties stipulate that
13 this Court has jurisdiction over DNS as to the allegations contained in the Second Amended
14 Complaint, that venue is proper in the County of Alameda, and that this Court has jurisdiction to
15 approve, enter, and oversee the enforcement of this Consent Judgment as a full and final binding
16 resolution of all claims which were or could have been raised in the Second Amended Complaint
17 based on the facts alleged therein and/or in the Notice.

18 **1.5 No Admission of Liability.** DNS denies the material allegations contained in
19 Velarde's Notice and Second Amended Complaint and maintains that it has not violated
20 Proposition 65. Nothing in this Consent Judgment shall be construed as an admission by DNS of
21 any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent Judgment
22 constitute or be construed as an admission by DNS of any fact, finding, conclusion, issue of law,
23 or violation of law, such being specifically denied by DNS. However, this section shall not
24 diminish or otherwise affect the obligations, responsibilities, and duties of DNS under this Consent
25 Judgment.

26 **2. DEFINITIONS**

27 **2.1 Covered Products.** The term "Covered Products" means the CE TECH, Charging
28

1 Cable USB to Lightning, UPC No. 887429000299, SKU 1000001705, Model No.
2 SMDP50NH0016.

3 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
4 entered as a Judgment of the Court.

5 3. **INJUNCTIVE RELIEF; REFORMULATION**

6 3.1 **Reformulation Standards.** "Reformulated Products" are defined as those Products
7 containing a maximum of 1,000 parts per million ("ppm") of DINP by weight in any accessible
8 component (i.e., any component that can be touched or handled during reasonably foreseeable use)
9 when analyzed pursuant to Environmental Protection Agency analysis methodologies 3580A and
10 8270C or other methodology utilized by federal or state government agencies for the purpose of
11 determining DINP content in a solid substance.

12 3.2 **Reformulation Commitment.** As of the Effective Date all Products manufactured
13 for sale in the State of California by DNS shall be Products that qualify as Reformulated Products
14 as defined in Section 3.1 above.

15 4. **MONETARY TERMS**

16 4.1 **Civil Penalty.** DNS shall pay a civil penalty of \$2,000.00 pursuant to Health and
17 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
18 Code § 25192, with 75% of these funds remitted to the State of California's Office of
19 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
20 Velarde, as provided by California Health & Safety Code § 25249.12(d).

21 4.1.1 Within thirty (30) days of the Effective Date, DNS shall issue two separate
22 checks for the civil penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and (b)
23 "Brodsky & Smith, LLC in Trust for Velarde" in the amount of \$500.00. Payment owed to
24 Velarde pursuant to this Section shall be delivered to the following payment address:

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

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

3 For United States Postal Service Delivery:

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

9 For Non-United States Postal Service Delivery:

10 Mike Gyurics
11 Fiscal Operations Branch Chief
12 Office of Environmental Health Hazard Assessment
13 1001 I Street
14 Sacramento, CA 95814

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

17 4.2 **Attorney Fees.** DNS shall pay \$25,500.00 to Brodsky & Smith, LLC ("Brodsky
18 Smith") as complete reimbursement for Plaintiff Velarde's attorneys' fees and costs incurred as a
19 result of investigating, bringing this matter to DNS's attention, litigating and negotiating and
20 obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil
21 Procedure section 1021.5. Payment shall be made within thirty (30) days of the Effective Date and
22 sent to the address for Brodsky & Smith set forth in section 4.1.1, above.

23 **5. RELEASE OF ALL CLAIMS**

24 5.1 This consent judgment is a full, final, and binding resolution between Velarde acting
25 in the public interest, and DNS and its parents, shareholders, divisions, subdivisions, subsidiaries,
26 partners, sister companies, and affiliates, and their successors and assigns ("Defendant Releasees"),
27 and all entities from whom they obtain and to whom they directly or indirectly distribute or sell
28 Covered Products, including but not limited to manufacturers, suppliers, distributors, wholesalers,
customers, licensors, licensees retailers, franchisees, and cooperative members ("Downstream
Defendant Releasees"), of all claims for violations of Proposition 65 based on exposure to DINP
from Covered Products as set forth in the Notices, with respect to any Covered Products

1 manufactured, distributed, or sold by DNS prior to the Effective Date. Compliance with the terms
2 of this consent judgment constitutes compliance with Proposition 65 with regard to the Covered
3 Products.

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

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

23 5.3 DNS waives any and all claims against Velarde, his attorneys and other
24 representatives; for any and all actions taken or statements made (or those that could have been
25 taken or made) by Velarde and his attorneys and other representatives, whether in the course of
26 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
27 and/or with respect to Covered Products.
28

1 **6. INTEGRATION**

2 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
3 any and all prior negotiations and understandings related hereto shall be deemed to have been
4 merged within it. No representations or terms of agreement other than those contained herein exist
5 or have been made by any Party with respect to the other Party or the subject matter hereof.

6 **7. GOVERNING LAW**

7 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
8 California and apply within the State of California. In the event that Proposition 65 is repealed or
9 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then DNS
10 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the
11 extent that, Covered Products are so affected.

12 **8. NOTICES**

13 8.1 Unless specified herein, all correspondence and notices required to be provided
14 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
15 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
16 by the other party at the following addresses:

17 For DNS:

18 DeHeng Chen, LLC
19 233 Broadway Suite 2200
20 New York, NY 10279

21 And

22 For Velarde:

23 Evan Smith
24 Brodsky & Smith, LLC
25 2 Bala Plaza, Suite 510
26 Bala Cynwyd, PA 19004

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

1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

2 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
3 which shall be deemed an original, and all of which, when taken together, shall constitute one and
4 the same document.

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

7 10.1 Velarde agrees to comply with the requirements set forth in California Health &
8 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment
9 and DNS agrees it shall support approval of such Motion.

10 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
11 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
12 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
13 thirty (30) days, the case shall proceed on its normal course.

14 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
15 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
16 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
17 its normal course on the trial court's calendar.

18 **11. MODIFICATION**

19 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
20 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

21 **12. ATTORNEY'S FEES**

22 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent
23 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless
24 the unsuccessful party has acted with substantial justification. For purposes of this Consent
25 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
26 Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 certifies 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: 4/16/17
By: [Signature]
HECTOR VELARDE

Date: 4/19/17
By: [Signature]
SHENZHEN DNS INDUSTRIES CO., LTD.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 9-12-2017

[Signature]
Judge of Superior Court
Stephen Pulido