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Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

HECTOR VELARDE,

Plaintiff,

v.

RECOVER INC.,

Defendant.

Case No.: RG18906216
CONSENT JUDGMENT

Judge: Stephen Pulido
Dept.: 517
Hearing Date: July 24, 2018
Hearing Time: 3:00 PM
Reservation #: R-1968292

JUN - 5 2018

BY FAX

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

10 1.2 **Allegations and Representations.** Velarde alleges that Defendant has exposed
11 individuals to Di(2-ethylhexyl) phthalate (DEHP) from Dress Your Tech Vinyl Laptop Skins
12 without providing clear and reasonable warnings under Proposition 65. DEHP is listed under
13 Proposition 65 as a chemical known to the State of California to cause cancer and reproductive
14 toxicity.

15 1.3 **Notices of Violation/Complaint.** On or about March 12, 2018, Velarde served
16 Urban Outfitters, Inc. (“Urban Outfitters”), Recover, and various public enforcement agencies with
17 documents entitled “60-Day Notice of Violation” pursuant to Health & Safety Code §25249.7(d)
18 (collectively, the “Notice”), alleging that Defendant and Urban Outfitters were in violation of
19 Proposition 65 for failing to warn consumers and customers that Dress Your Tech Vinyl Laptop
20 Skins exposed users in California to DEHP. No public enforcer has brought and is diligently
21 prosecuting the claims alleged in the Notice. On May 24, 2018, Velarde filed a complaint (the
22 “Complaint”) in the matter.

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

2 1.5 Defendant denies the material allegations contained in Velarde'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 Dress Your Tech Vinyl
11 Laptop Skins containing DEHP that are manufactured, distributed and/or offered for sale in
12 California by Recover or offered for sale in or into California by retailers to whom Recover sold
13 such products.

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 As of the date this Consent Judgment is signed by both Parties, Recover shall not
18 manufacture or order from any supplier any Covered Products intended for retail sale in California
19 that contains DEHP on any component to which consumers are exposed in excess of 0.1% (1,000
20 ppm) (hereinafter "Reformulated Products") unless the Covered Product is accompanied by a
21 warning that complies with Article 6 of Title 27 of the California Code of Regulations when offered
22 for sale in or into California. Covered Products sold by Recover before the date this Consent
23 Judgment is signed by both Parties may be sold by Downstream Releasees without a warning even
24 if not Reformulated Products. Until August 30, 2018, the warning shall consist of either:

- 25 (a) The statement: "WARNING: This product contains a chemical known to the State
26 of California to cause cancer and birth defects or other reproductive harm."; or
27

1 (b) (1) A symbol consisting of a black exclamation point in a yellow equilateral triangle
2 with a bold black outline to the left of the word "warning" in bold all capital letters, followed
3 by the statement "This product can expose you to chemicals including Di(2-ethylhexyl)
4 phthalate (DEHP), which is known to the State of California to cause cancer and birth
5 defects or other reproductive harm. For more information, go to
6 www.P65Warnings.ca.gov."; or (2) a warning consisting of a symbol that is a black
7 exclamation point in a yellow equilateral triangle with a bold black outline to the left of the
8 word "warning" in bold all capital letters, followed by the statement "Cancer and
9 Reproductive Harm - www.P65Warnings.ca.gov."¹

10 For products manufactured on and after August 30, 2018, the warning set forth in Section 3.1(b)
11 shall be used.

12 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
13 Covered Product's packaging or labeling, or on a placard, shelf tag, sign or electronic device or
14 automatic process, providing that the warning is displayed with such conspicuousness, as compared
15 with other words, statements, or designs as to render it likely to be read and understood by an
16 ordinary individual under customary conditions of purchase or use. A warning may be contained
17 in the same section of the packaging, labeling, or instruction booklet that states other safety
18 warnings, if any, concerning the use of the product and shall be at least the same size as those other
19 safety warnings.

20 4. MONETARY TERMS

21 4.1 **Civil Penalty.** Recover shall pay a Civil Penalty of \$1,000.00 pursuant to Health
22 and Safety Code section 25249.7(b), to be apportioned in accordance with California Health &
23 Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of
24 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the Civil Penalty
25 remitted to Velarde, as provided by California Health & Safety Code § 25249.12(d).

26
27 ¹ The triangular symbol need only be in yellow where the sign, label, shelf tag or other
28 transmission format is being printed in color for purposes of other language, symbols or designs.

1 4.1.1 Within fourteen (14) business days of the Effective Date, Recover shall
2 issue two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of
3 \$750.00; and (b) "Brodsky & Smith, LLC in Trust for Velarde" in the amount of \$250.00.
4 Payment owed to Velarde pursuant to this Section shall be delivered to the following payment
5 address:

6 Evan J. Smith, Esquire
7 Brodsky & Smith, LLC
8 Two Bala Plaza, Suite 510
9 Bala Cynwyd, PA 19004

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

12 For United States Postal Service Delivery:

13 Mike Gyurics
14 Fiscal Operations Branch Chief
15 Office of Environmental Health Hazard Assessment
16 P.O. Box 4010
17 Sacramento, CA 95812-4010

18 For Non-United States Postal Service Delivery:

19 Mike Gyurics
20 Fiscal Operations Branch Chief
21 Office of Environmental Health Hazard Assessment
22 1001 I Street
23 Sacramento, CA 95814

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

26 4.2 **Attorneys' Fees.** Within fourteen (14) business days of the Effective Date, Recover
27 shall pay \$18,500.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for
28 Plaintiff Velarde's attorneys' fees and costs incurred as a result of investigating, bringing this
matter to Recover's attention, litigating and negotiating and obtaining judicial approval of a
settlement in the public interest, pursuant to Code of Civil Procedure section 1021.5.

1 **5. RELEASE OF ALL CLAIMS**

2 5.1 This Consent Judgment is a full, final, and binding resolution between Velarde
3 acting on his own behalf, and on behalf of the public interest, and Recover, and its parents,
4 shareholders, members, directors, officers, managers, employees, representatives, agents,
5 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
6 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they
7 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
8 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
9 retailers, franchisees, and cooperative members including without limitation Urban Outfitters
10 (“Downstream Releasees”), of all claims for violations of Proposition 65 that were or could have
11 been asserted against Defendant Releasees or Downstream Releasees based on exposure to DEHP
12 from Covered Products or failure to warn as set forth in the Notice, with respect to any Covered
13 Products manufactured, distributed, or sold by Recover prior to the Effective Date. This Consent
14 Judgment shall have preclusive effect such that no other person or entity, whether purporting to act
15 in his, her, or its interests or the public interest shall be permitted to pursue and/or take any action
16 with respect to any violation of Proposition 65 that was alleged in the Complaint, or that could have
17 been brought pursuant to the Notice against Recover or its Downstream Releasees of the Product
18 including but not limited to Urban Outfitters (“Proposition 65 Claims”). Compliance with the terms
19 of this consent judgment constitutes compliance with Proposition 65 with regard to the Covered
20 Products.

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

6
7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
8 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
9 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
10 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
11 SETTLEMENT WITH THE DEBTOR.

12 5.3 Recover waives any and all claims against Velarde, his attorneys and other
13 representatives, for any and all actions taken or statements made by Velarde and his attorneys and
14 other representatives, whether in the course of investigating claims or otherwise seeking
15 enforcement of Proposition 65 against it in this matter, and/or with respect to Covered Products.

16 **6. INTEGRATION**

17 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
18 any and all prior negotiations and understandings related hereto shall be deemed to have been
19 merged within it. No representations or terms of agreement other than those contained herein exist
20 or have been made by any Party with respect to the other Party or the subject matter hereof.

21 **7. GOVERNING LAW**

22 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
23 California and apply within the State of California. In the event that Proposition 65 is repealed or
24 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products or the
25 listed chemical, then Defendant shall have no further obligations pursuant to this Consent Judgment
26 with respect to, and to the extent that, Covered Products are so affected. If Proposition 65 or
27 associated regulations are amended to require or allow different text, font, and/or methods of
28 warning than specified above, Recover, after providing written notice to Velarde, may substitute
such text, font, and/or methods of warning for product warnings required under this Consent
Judgment.

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 Ryan Kirkpatrick
8 Recover Inc.
9 729 SE Grant St
 Portland, OR 97214

10 and

11 Jeffrey Parker
12 Sheppard Mullin Richter & Hampton LLP
13 333 South Hope Street, 43rd Floor
 Los Angeles, CA 90071-1422

14 And

15 For Velarde:

16 Evan Smith
17 Brodsky & Smith, LLC
 9595 Wilshire Blvd., Ste. 900
 Beverly Hills, CA 90212

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

20 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

21 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
22 which shall be deemed an original, and all of which, when taken together, shall constitute one and
23 the same document.

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

26 10.1 Velarde agrees to comply with the requirements set forth in California Health &
27 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
28 Defendant agrees it shall support approval of such Motion.

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

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

11. MODIFICATION

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

12. ATTORNEY'S FEES

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

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.

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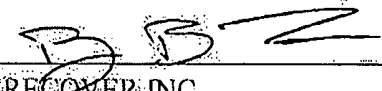
AGREED TO:

AGREED TO:

Date: 6/5/18


Date: 3/22/18

By: 
HECTOR VELARDE

By: 
RECOVER INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 7.26-2018


Judge of Superior Court

Stephen Pulido