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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

FILED
ALAMEDA COUNTY
AUG 28 2018

CLERK OF THE SUPERIOR COURT
By *Camille Salas*
Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

HECTOR VELARDE,
Plaintiff,
v.
QUEST USA CORP.,
Defendant.

Case No.: RG18906201

CONSENT JUDGMENT

Judge: Julia Spain
Dept.: 520
Hearing Date: August 29, 2018
Hearing Time: 2:00 PM
Reservation #: R- 1974317

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 Quest USA Corp. (“Quest” 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 who 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. Quest is a person in the course of doing business for
8 purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

9 1.2 **Allegations and Representations.** Velarde alleges that Defendant has exposed
10 individuals to Diisononyl phthalate (DINP) from electronics cords without providing clear and
11 reasonable warnings under Proposition 65. DINP is listed under Proposition 65 as a chemical
12 known to the State of California to cause cancer.

13 1.3 **Notice of Violation/Complaint.** On March 15, 2018, Velarde served Quest, and
14 various public enforcement agencies, with a document entitled “60-Day Notice of Violation”
15 pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant was in
16 violation of Proposition 65 for failing to warn consumers and customers that Quest sold electronics
17 cords that allegedly exposed users in California to DINP. No public enforcer has brought and is
18 diligently prosecuting the claims alleged in the Notice. On May 24, 2018, Velarde filed a complaint
19 (the “Complaint”) in the matter.

20 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
21 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
22 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
23 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
24 claims which were or could have been raised in the Complaint based on the facts alleged therein
25 and/or in the Notice.

26 1.5 Defendant denies the material allegations contained in Velarde’s Notice and
27 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
28 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of

1 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
2 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
3 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
4 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

5 **2. DEFINITIONS**

6 2.1 **Covered Products.** The term "Covered Products" means electronics cords and/or
7 cables that are manufactured, distributed and/or offered for sale in California by Quest.

8 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
9 entered as a Judgment of the Court.

10 **3. INJUNCTIVE RELIEF**

11 3.1 Commencing within ninety (90) days after the Effective Date, Quest shall not
12 manufacture, import, or purchase for sale in California any Covered Products with any accessible
13 component that contains DINP in excess of 0.1% (1,000 ppm) (hereinafter "Reformulated
14 Products") unless the Covered Product is accompanied by the following warning: "WARNING:
15 This product contains chemicals known to the State of California to cause cancer." In lieu of the
16 preceding warning, Quest may use any warning language that complies with Title 27, California
17 Code of Regulations, § 25600 et seq., as amended August 30, 2016 or subsequently thereafter.
18 Quest may rely upon its suppliers' test results in order to determine whether the products are
19 Reformulated Products.

20 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
21 Covered Product's packaging. The warning shall be displayed with such conspicuousness, as
22 compared with other words, statements, or designs, as to render it likely to be read and understood
23 by an ordinary individual under customary conditions of purchase or use. The warning may be
24 contained in the same section of the packaging, labeling, or instruction booklet that states other
25 safety warnings, if any, concerning the use of the product and shall be at least the same size as those
26 other safety warnings.

27 3.3 The reformulation and warning requirements of Section 3.1 shall not apply to any
28 Covered Products in the stream of commerce or in Quest's inventory as of the Effective Date.

1 **4. MONETARY TERMS**

2 **4.1 Civil Penalty.** Quest shall pay a Civil Penalty of \$2,000.00 pursuant to California
3 Health and Safety Code § 25249.7(b), to be apportioned in accordance with California Health &
4 Safety Code § 25249.12(c), with 75% of these funds remitted to the State of California's Office of
5 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
6 Velarde, as provided by California Health & Safety Code § 25249.12(d).

7 **4.1.1** Within fourteen (14) business days of the Effective Date, Quest shall issue
8 two separate checks for the Civil Penalty payment to (a) "OEHHA" in the amount of \$1,500.00;
9 and (b) "Brodsky & Smith, LLC in Trust for Velarde" in the amount of \$500.00. Payment owed
10 to Velarde pursuant to this Section shall be delivered to the following payment address:

11 Evan J. Smith, Esquire
12 Brodsky & Smith, LLC
13 Two Bala Plaza, Suite 510
14 Bala Cynwyd, PA 19004

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

17 For United States Postal Service Delivery:

18 Mike Gyurics
19 Fiscal Operations Branch Chief
20 Office of Environmental Health Hazard Assessment
21 P.O. Box 4010
22 Sacramento, CA 95812-4010

23 For Non-United States Postal Service Delivery:

24 Mike Gyurics
25 Fiscal Operations Branch Chief
26 Office of Environmental Health Hazard Assessment
27 1001 I Street
28 Sacramento, CA 95814

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

4.2 Attorney Fees. Quest shall pay \$26,000.00 to Brodsky & Smith, LLC ("Brodsky
Smith") as complete reimbursement for Velarde's attorneys' fees and costs incurred as a result of
investigating, bringing this matter to Quest's attention, litigating and negotiating and obtaining

1 judicial approval of a settlement in the public interest, pursuant to California Civil Procedure Code
2 § 1021.5. Payment shall be made within fourteen (14) business days of the Effective Date and sent
3 to the address for Brodsky & Smith set forth in section 4.1.1, above.

4 **5. RELEASE OF ALL CLAIMS**

5 5.1 Plaintiff, acting on his own behalf and in the public interest, and on behalf of his
6 past and current agents, representatives, attorneys, successors, and assigns hereby completely
7 releases and forever discharges Quest and each of its past, present and future officers, directors,
8 stockholders, attorneys, agents, insurers, servants, representatives, employees, parents,
9 subsidiaries, affiliates, partners, predecessors, successors in interest and assigns ("Defendant
10 Releasees"), and each entity from whom and to whom Quest directly or indirectly distributes or
11 sells the Covered Products including, but not limited to, distributors, wholesalers, customers,
12 retailers (including Ross Stores, Inc.), franchisees, cooperative members, licensors, and licensees
13 ("Additional Releasees"), based on the alleged or actual failure to warn about exposures to DINP
14 in the Covered Products imported, manufactured, sold, or distributed for sale before the Effective
15 Date, or within ninety (90) days after the Effective Date. Quest's Compliance with the terms of this
16 Consent Judgment constitutes compliance with Proposition 65 with regard to DINP exposures from
17 the Covered Products.

18 5.2 In addition to the foregoing, Velarde, on behalf of himself, his past and current
19 agents, representatives, attorneys, successors and/or assignees, and *not* in his representative
20 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
21 legal action and releases Quest, Defendant Releasees, and Additional Releasees from any and all
22 manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
23 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys' fees, of
24 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
25 future, with respect to any alleged violations of Proposition 65 related to or arising from the
26 Covered Products manufactured, distributed, or sold by Quest, Defendant Releasees or Additional
27 Releasees. With respect to the foregoing waivers and releases in this Section, Velarde hereby
28 specifically waives any and all rights and benefits which he now has, or in the future may have,

1 conferred by virtue of the provisions of Section 1542 of the California Civil Code, which provides
2 as follows:

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

8 5.3 Quest waives any and all claims against Velarde, his attorneys and other
9 representatives, for any and all actions taken or statements made (or those that could have been
10 taken or made) by Velarde and his attorneys and other representatives in the course of investigating
11 the claims in the Notice and Complaint or otherwise seeking enforcement of Proposition 65 against
12 Quest in this matter with respect to the Covered Products.

13 5.4 Velarde represents and warrants that as of the date of his execution of this Consent
14 Judgment he is not aware of any other Proposition 65 violations by Defendant.

15 **6. INTEGRATION**

16 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
17 any and all prior negotiations and understandings related hereto shall be deemed to have been
18 merged within it. No representations or terms of agreement other than those contained herein exist
19 or have been made by any Party with respect to the other Party or the subject matter hereof.

20 **7. GOVERNING LAW**

21 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
22 California and apply within the State of California. In the event that Proposition 65 is repealed or
23 is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then
24 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
25 to the extent that, the Covered Products are so affected.

26 **8. NOTICES**

27 8.1 Unless specified herein, all correspondence and notices required to be provided
28 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
by the other party at the following addresses:

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For Defendant:

Peg Carew Toledo
PEG CAREW TOLEDO, LAW CORPORATION
3001 Douglas Blvd.
Suite 340
Roseville, CA 95661

For Velarde:

Evan Smith
BRODSKY & SMITH, LLC
9595 Wilshire Blvd.
Ste. 900
Beverly Hills, CA 90212

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

9. COUNTERPARTS; FACSIMILE SIGNATURES

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

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

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

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 thirty (30) days, the case shall proceed on its normal course.

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1 **11. MODIFICATION**

2 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
3 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

4 **12. ATTORNEY'S FEES**

5 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent
6 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless
7 the unsuccessful party acted with substantial justification. For purposes of this Consent Judgment,
8 the term substantial justification shall carry the same meaning as used in the Civil Discovery Act
9 of 1986, Civil Procedure Code Section 2016.010, *et seq.*

10 **13. RETENTION OF JURISDICTION**

11 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
12 Consent Judgment.

13 **14. AUTHORIZATION**

14 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
15 respective Parties and have read, understood and agree to all of the terms and conditions of this
16 document and certifies that he or she is fully authorized by the Party he or she represents to execute
17 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
18 explicitly provided herein each Party is to bear its own fees and costs.

19 **AGREED TO:**

AGREED TO:

20
21 Date: _____

Date: 3-29-18

22
23 By: _____
HECTOR VELARDE

By:  _____
QUEST USA CORP.

24
25 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

26
27 Dated: _____

Judge of Superior Court

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16 document and certifies that he or she is fully authorized by the Party he or she represents to execute
17 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
18 explicitly provided herein each Party is to bear its own fees and costs.

19 **AGREED TO:**

AGREED TO:

20
21 Date: 7-10-18

Date: _____

22 By: Hector Velarde
23 **HECTOR VELARDE**

By: _____
QUEST USA CORP.

24
25 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

26
27 Dated: 8/28/18

Julia A. Spain
Judge of Superior Court
JULIA A. SPAIN