

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This "Settlement Agreement" is entered into by and between Hector Velarde ("H. Velarde") on behalf of the Estate of Martha Elvira Velarde (the "Velarde Estate") on the one hand and Axent Corporation Limited ("Axent") on the other hand. The Velarde Estate and Axent will hereinafter be referred to collectively as the "Parties."

1.2 Velarde

Martha Velarde was an individual residing in California who sought to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products.

1.3 Axent

Axent is a corporation that employs more than ten persons under California Health and Safety Code §25249.6.

1.4 Notice of Violation and Product Description

On August 11, 2015, Martha Velarde served Axent, LG Sourcing Inc. ("LG Sourcing"), Lowe's Companies, Inc., Lowe's Home Centers, LLC (collectively, "Lowe's") and various public enforcement agencies with a document entitled "Notice of Violation of California Health & Safety Code § 25249.5, *et seq.*" (the "Notice"). The Notice provided Axent and such others, including public enforcers, with notice that alleged that Axent was in violation of California Health & Safety Code § 25249.5 ("Proposition 65"), for failing to warn consumers and customers that the Aquasource Cushioned Vinyl Toilet Seat, UPC # 8 91347 00262 4 (the "Product") exposed users in California to the chemical Di(2-ethylhexyl)phthalate ("DEHP"). No public enforcer has diligently prosecuted the allegations set forth in the Notice.

1.5 No Admissions

The parties enter into this Settlement Agreement in full settlement of disputed claims between the Parties as alleged in the Notice for the purpose of avoiding prolonged litigation. Axent specifically denies the factual and legal allegations in the Notice and

denies it has committed any violation of Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by Axent of any fact, issue of law or violation of law. Nor shall Axent's compliance with the Settlement Agreement constitute or be construed as an admission by Axent of any fact, issue of law, or violation of law. Nothing in this Settlement Agreement shall prejudice, waive, or impair any right, remedy or defense that Axent may have in any other future proceeding. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities and duties of Axent under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean June 1, 2016.

2. INJUNCTIVE RELIEF: WARNINGS

2.1 Required Warnings

a. Commencing on the Effective Date, and continuing thereafter, Axent shall not knowingly sell, ship, or offer to be shipped for sale in California any Product containing DEHP, unless warnings are given in accordance with one or more of the provisions of subsection 2.2 below.

b. Exceptions. The warning requirements set forth in subsections 2.1.a. and 2.2 below shall not apply to any "Reformulated Product" or to any Product that was manufactured prior to the Effective Date.

c. "Reformulated Product" shall mean Product that contains less than or equal to 1,000 parts per million ("ppm") of DEHP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C.

2.2 Clear and Reasonable Warnings

Commencing on the Effective Date, Axent shall, for all Product they sell or distribute which is intended for sale in California or which Axent has reason to believe will be shipped or sold in California and that is not a Reformulated Product, provide clear and reasonable warnings as set forth in subsections 2.2.a. and 2.2.b. below. The warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall

be provided in a manner such that the consumer or user understands to which specific Product the warning applies, so as to minimize the risk of consumer confusion.

a. **Product Labeling.** A warning is affixed to the packaging, labeling or directly to or on each Product by Axent, its agents, importers, distributors, or retail sellers of the Product sold in retail outlets in California that states the following language or language to the similar effect of the following:

“WARNING: This product contains a chemical [or chemicals] known to the State of California to cause cancer, birth defects or other reproductive harm.”

b. **Point of Sale Warnings.** Alternatively, Axent may satisfy its warning obligations, where applicable, by providing warning signs in the form below to their customers in California with instructions to post the warnings in close proximity to the point of display of the Product. Point of Sale warnings may be provided through one or more signs posted at or near the point of sale or display of the Products that state the following language or language to the similar effect of the following:

“WARNING: This product contains a chemical [or chemicals] known to the State of California to cause cancer, birth defects or other reproductive harm.”

A point of sale warning shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which specific Product the warning applies, so as to minimize the risk of consumer confusion.

3. **MONETARY PAYMENTS**

In settlement of all the Claims (as defined in subsection 4.1 below), and without any admission of liability therefor, Axent shall make the following monetary payments (no payments of any kind will be made by any other person or entity, including without limitation, LG Sourcing and Lowes):

3.1 **Civil Penalties Pursuant to Proposition 65**

3.1.1. Axent shall pay a total of \$2,000.00 in civil penalties on behalf of Axent which is to be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with 75% of the funds paid to the State of California Office of

Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% paid to Velarde.

3.1.2. In accordance with Section 3.1.1 above, within ten (10) days of the Effective Date, Axent shall issue two separate checks for the civil penalty payment to: (a) "OEHHA" (taxpayer identification number 68-0284486) in the amount of \$1,500.00; and (b) "Brodsky & Smith, LLC in Trust for Estate of Martha Elvira Velarde" in the amount of \$500.00. All payments owed to the Velarde Estate pursuant to this Section shall be delivered to the following payment address:

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

All payments owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at either of the following addresses:

For United States Postal Service Delivery:

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

For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

3.1.3. Copy of Payments to OEHHA. Axent agrees to provide counsel for the Velarde Estate with a copy of the check payable to OEHHA, simultaneous with its penalty payments to Velarde, to be delivered to the address provided in Section 3.1.2 as proof of payment to OEHHA.

3.2. **Reimbursement of Attorneys' Fees and Costs**

3.2.1. In addition to the payments referenced in subsections 3.1.1 and 3.1.2 above, within ten (10) days of the Effective Date, Axent shall pay an agreed sum in the amount of \$18,000.00 to Brodsky & Smith, LLC as reimbursement of the Velarde Estate's reasonable attorneys' fees, expert fees and costs incurred as a result of investigating, enforcing Proposition 65, and negotiating a settlement in the public interest, including without limitation, the preparation of the 60-Day Notice letter, and all discussions with the office of the Attorney General concerning this matter both before and after the court's approval of this Settlement Agreement.

3.2.2. Axent shall issue 1099s for its payments to each of the following payees:

a. "Brodsky & Smith, LLC" (EIN: 23-2971061) at the address provided in subsection 3.1.2 above; and

b. "Office of Environmental Health Hazard Assessment" (EIN: 68-0284486) at 1001 I Street, Sacramento, CA 95814.

c. "Estate of Martha Elvira Velarde" whose address and tax identification number shall be provided after this Settlement Agreement is fully executed by the Parties.

3.2.3. Except as specifically provided in this Settlement Agreement, Axent shall have no further obligation with regard to reimbursement of any attorneys' fees and costs of Velarde or The Velarde Estate with regard to the Product covered in this Settlement Agreement or in any other manner with respect to the Claims.

4. RELEASE OF ALL CLAIMS

4.1 The Velarde Estate's Release of Axent, LG Sourcing, Lowes and Downstream Customers

In further consideration of the promises and agreements contained herein, and for the payments to be made pursuant to Section 3 above, H. Velarde, on behalf of Martha Velarde, the Velarde Estate, their past and current agents, representatives, predecessors, successors, assigns and agents, and in the interest of the general public and on behalf of the public interest ("Velarde Releasing Parties"), hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action or proceeding, and does hereby irrevocably and unconditionally release, acquit and forever discharge Axent, LG Sourcing, and Lowe's, as well as their parents, subsidiaries, divisions, partners, affiliates, current and former owners, officers, directors, shareholders, employees, attorneys, representatives, heirs, executors, administrators, predecessors, successors and assigns, and each of their downstream distributors, wholesalers, licensors, licensees, auctioneers, retailers,

franchisees, dealers, customers, owners, purchasers, users, and each of them (the "Axent Released Parties") from any and all claims, charges, complaints, liabilities, obligations, promises, agreements, controversies, damages, actions, causes of actions, suits, rights, demands, costs, losses, debts and expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees), of any nature whatsoever, known or unknown, suspected or unsuspected, in law or in equity, which Velarde now has or claims to have, or which she at any time heretofore had, or claimed to have, or which at any time hereafter she may have, own or hold, or claim to have, own or hold against the Axent Released Parties, by reason of any fact, matter or thing arising from any act, cause or claim that was or could have been raised against Axent, LG Sourcing and/or Lowe's (the "Velarde's Released Claims or Claims").

4.2 Axent's Release of the Velarde Estate

Axent waives any and all claims against the Velarde Estate, its attorneys and other representatives, for any and all actions taken or statements made by the Velarde Estate and/or its attorneys and other representatives, whether in the course of pursuing Velarde's Released Claims or Claims or otherwise seeking enforcement of Proposition 65 against Axent in this matter, and/or with respect to the Product.

5. WAIVER OF UNKNOWN CLAIMS

The release pertains to all claims identified above, whether known, unknown, unforeseen, patent or latent, except for actions to enforce this Settlement Agreement. The Parties understand and agree that all rights under Section 1542 of the California Civil Code, if applicable, are hereby expressly waived. Section 1542 reads as follows:

"Section 1542 – Claims Extinguished. A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known to him or her must have materially affected his or her settlement with the debtor."

The Parties, being aware of Section 1542, hereby expressly waive and relinquish any right or benefit they have or may have under Section 1542 pertaining to the matters released herein, to the full extent they may lawfully waive such rights or benefits pertaining to the subject matter of this Agreement. Notwithstanding the above, however, the Parties' releases herein do not include obligations or duties which they have undertaken in this Agreement.

6. MODIFICATION OF SETTLEMENT AGREEMENT

6.1 The terms of this Settlement Agreement may be amended, modified or eliminated and the observance or performance of any term, covenant, condition, or provision herein may be omitted or waived (either generally or in a particular instance, and either prospectively or retroactively) only by the mutual written consent of the Parties. The waiver by any party hereto of any breach of any term or provision of this Settlement Agreement shall not be construed as a waiver of any subsequent breach.

6.2 Should any court enter a final judgment in a case brought by the Velarde Estate or any of the Velarde Releasing Parties involving the Product that sets forth standards defining when Proposition 65 warnings will or will not be required (“Alternative Standards”), or if the California Attorney General’s office otherwise provides written endorsement (i.e. a writing that is circulated by the Attorney General that is not intended for the purpose of soliciting further input or comments) of Alternative Standards applicable to the products that are of the same general type and function as the Product and constructed from the same materials, Axent shall be entitled (but not required) to seek a modification of this Settlement Agreement on forty-five (45) days’ notice to The Velarde Estate so as to be able to utilize and rely on such Alternative Standards in lieu of those set forth in Section 1 of this Settlement Agreement. The Velarde Estate shall not unreasonably contest any proposed application to effectuate such a modification provided that the Product for which such a modification is sought is of the same general type and function as those to which the Alternative Standards apply.

7. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)

Brodsky & Smith, LLC agrees to comply with the reporting requirements referenced in Health & Safety Code Section 25249.7(f).

8. ATTORNEYS’ FEES AND COSTS

In the event that any suit or proceeding is brought to enforce, construe, interpret, rescind or cancel this Settlement Agreement or any of its provisions, the prevailing party shall recover against the non-prevailing party or parties to that suit or proceeding his, her or its actual attorneys’ fees and costs incurred in connection with such suit or proceeding, including attorneys’ fees and costs incurred in connection with any appeals.

9. **NOTICES**

Any and all notices between the parties provided for or permitted under this Settlement Agreement, or by law, 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 to the following addresses:

For Axent:

H. Daniel Fuller
CADDEN & FULLER LLP
114 Pacifica, Suite 450
Irvine, CA 92618
T: 949.788.0827
F: 949.450.0650

For The Velarde Estate:

Evan J. Smith
BRODSKY & SMITH, LLC
9595 Wilshire Blvd., Suite 900
Beverly Hills, CA 90212
T: 877.354.2590
F: 610.667.9029

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.

10. **AUTHORITY TO EXECUTE AGREEMENT**

Each of the Parties to this Settlement Agreement warrants, covenants, and agrees that the persons executing this Settlement Agreement are authorized and empowered to enter into and execute this Settlement Agreement for and on behalf of the person and/or entity they represent, and by their execution hereof, each respective entity or person they represent, and all persons, partnerships, corporations, joint ventures and any person or thing affiliated therewith, shall be bound by the terms hereof.

11. COUNTERPARTS

This Settlement Agreement may be executed in one or more counterparts, each of which shall be deemed an original for all purposes, but all of which shall constitute one and the same Settlement Agreement. Executed signatures may be transmitted and exchanged by facsimile or by email through a “.pdf” file, with such signature pages having the same force and effect as original signatures.

12. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all discussions, negotiations, commitment and understandings related thereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the parties.

13. GOVERNING LAW AND CONSTRUCTION

13.1 This Settlement Agreement shall be deemed to have been entered into in the State of California, and all questions concerning the validity, interpretation or performance of any of its terms or provisions or of any rights or obligations of the Parties thereto, shall be governed by and resolved in accordance with the laws of the State of California (not including conflict of laws rules), and any claims relating hereto shall be brought in the Superior Court for the County of Orange in California.

13.2 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Product, then Axent shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Product is so affected.

14. BINDING EFFECT


This Settlement Agreement, and each and every provision hereof, shall bind and shall inure to the benefit of each party hereto and to the Axent Released Parties.

15. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any of the provisions thereof are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.


IN WITNESS WHEREOF, this Settlement Agreement is executed by the parties hereto as of the date indicated by the signatures below.

Dated: May 19, 2016

By: 

Hector Velarde on behalf of the Estate of
Martha Elvira Velarde

Dated: May 25, 2016

By: 
Axent Corporation Ltd.