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ENDORSED
FILED
ALAMEDA COUNTY

APR 02 2018

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

10 GABRIEL ESPINOSA,
11 Plaintiff,
12 vs.
13 BYTECH NY, INC.,
14 Defendant.

Case No.: **RG18899185**
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
**(Violation of Health & Safety Code §25249.5
et seq.)**

18 Plaintiff Gabriel Espinosa ("Plaintiff"), by and through his attorneys, alleges the
19 following cause of action in the public interest of the citizens of the State of California.

20 **BACKGROUND OF THE CASE**

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

27 2. This complaint is a representative action brought by Plaintiff in the public interest
28 of the citizens of the State of California to enforce the People's right to be informed of the health

1 hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP) and Diisononyl phthalate
2 (DINP), toxic chemicals found in Aux/Charging Cables/Cords and/or distributed by defendant
3 ByTech NY, Inc. (“ByTech” or “Defendant”) in California.

4 3. DEHP and DINP (collectively, “Phthalates”) are harmful chemicals known to the
5 State of California to cause cancer and, in the case of DEHP, reproductive toxicity as well. On
6 January 1, 1988, and on December 20, 2013, the State of California listed DEHP and DINP,
7 respectively, as chemicals known to the State to cause cancer and each chemical has come under
8 the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c);
9 Health & Safety Code §§ 25249.8 & 25249.10(b). On October 24, 2003, the State of California
10 listed DEHP as a chemical known to cause reproductive toxicity.

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

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

21 6. Plaintiff alleges that Defendant manufactures, distributes, imports, sells and/or
22 offers for sale in California, without the requisite exposure warning, Aux/Charging Cables/Cords
23 (the “Products”) that expose persons to Phthalates.

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

28

1 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition
2 65 in accordance with Health and Safety Code § 25249.7(b).

3 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
4 Defendant to provide purchasers or users of the Product with the required warnings related to the
5 dangers and health hazards associated with exposure to Phthalates pursuant to Health and Safety
6 Code § 25249.7(a).

7 **PARTIES**

8 10. Plaintiff is a citizen of the State of California acting in the interest of the general
9 public to promote awareness of exposures to toxic chemicals in products sold in California and
10 to improve human health by reducing hazardous substances contained in such items. She brings
11 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

12 11. Defendant, through its business, effectively manufactures, imports, distributes,
13 sells, and/or offers the Product for sale or use in the State of California, or it implies by its
14 conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale or use
15 in the State of California.

16 12. Plaintiff alleges that Defendant is a “person” in the course of doing business
17 within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

18 **VENUE AND JURISDICTION**

19 13. Venue is proper in the County of Alameda because one or more of the instances
20 of wrongful conduct occurred, and continues to occur in this county and/or because Defendant
21 conducted, and continues to conduct, business in the County of Alameda with respect to the
22 Product.

23 14. This Court has jurisdiction over this action pursuant to California Constitution
24 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
25 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the
26 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,
27 this Court has jurisdiction over this lawsuit.
28

1 15. This Court has jurisdiction over Defendant because it is either a citizen of the
 2 State of California, has sufficient minimum contacts with the State of California, is registered
 3 with the California Secretary of State as foreign corporations authorized to do business in the
 4 State of California, and/or has otherwise purposefully availed itself of the California market.
 5 Such purposeful availment has rendered the exercise of jurisdiction by California courts
 6 consistent and permissible with traditional notions of fair play and substantial justice.

7 **SATISFACTION OF NOTICE REQUIREMNTS**

8 16. On April 4, 2017, Plaintiff gave notice of alleged violation of Health and Safety
 9 Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California citizens to
 10 Phthalates contained in the Products without proper warning, subject to a private action to
 11 Defendant and to the California Attorney General’s office and the offices of the County District
 12 attorneys and City Attorneys for each city with a population greater than 750,000 persons
 13 wherein the herein violations allegedly occurred.

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

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

23 19. Plaintiff is commencing this action more than sixty (60) days from the date of the
 24 Notice to Defendant, as required by law.

25 **FIRST CAUSE OF ACTION**

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

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

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

3 22. The Products contain Phthalates, hazardous chemicals found on the Proposition
4 65 list of chemicals known to be hazardous to human health.

5 23. The Products do not comply with the Proposition 65 warning requirements.

6 24. Plaintiff, based on his best information and belief, avers that at all relevant times
7 herein, and at least since February 8, 2017, continuing until the present, that Defendant has
8 continued to knowingly and intentionally expose California users and consumers of the Product
9 to Phthalates without providing required warnings under Proposition 65.

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

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

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

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

