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Plaintiff John Moore and Defendant Bytech NY, Inc., having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and following this Court's issuance of an Order approving this Proposition 65 settlement and Consent Judgment,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered in accordance with the terms of the Consent Judgment attached hereto as Exhibit 1. By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

IT IS SO ORDERED.

Dated: 6-3-13



JUDGE OF THE SUPERIOR COURT

1 Christopher M. Martin, State Bar No. 186021
THE CHANLER GROUP
2 2560 Ninth Street, Suite 214
Berkeley, CA 94710
3 Telephone: (510) 848-8880
Facsimile: (510) 848-8118
4 Attorneys for Plaintiff
5 JOHN MOORE

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF ALAMEDA
9 UNLIMITED CIVIL JURISDICTION
10

11 JOHN MOORE,
12 Plaintiff,
13 v.
14 BYTECH NY, INC.; and DOES 1-150,
inclusive,
15 Defendants.
16

Case No. RG- 12638793

[PROPOSED] CONSENT JUDGMENT

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[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 John Moore and Bytech NY, Inc.**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore” or
4 “Plaintiff”) and defendant Bytech NY, Inc. (“Bytech” or “Defendant”), with Plaintiff and
5 Defendant collectively referred to as the “Parties” and each individually referred to as a “Party.”

6 **1.2 Plaintiff**

7 Moore is an individual residing in California who seeks to promote awareness of
8 exposure to toxic chemicals and improve human health by reducing or eliminating hazardous
9 substances in consumer products.

10 **1.3 Defendant**

11 Bytech employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
13 Safety Code § 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that Bytech manufactured, imported, distributed, sold and/or offered for
16 sale cases with zipper pulls containing di(2-ethylhexyl)phthalate (“DEHP”) in the State of
17 California without the health hazard warnings required by Proposition 65. DEHP is listed
18 pursuant to Proposition 65 as known to the State of California to cause birth defects and other
19 reproductive harm.

20 **1.5 Product Description**

21 The products that are covered by this Consent Judgment are defined as cases with zipper
22 pulls containing DEHP including, but not limited to, *Bytech Mini Sleeve for your Netbook*,
23 *BYTNB10 (#8 05112 08015 1)*, which Bytech manufactured, imported, distributed, sold and/or
24 offered for sale in the State of California, hereinafter referred to as the “Products.”

25 **1.6 Notice of Violation**

26 On September 19, 2011, Moore served Bytech and various public enforcement agencies
27 with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients
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1 with notice of alleged violations of Proposition 65 for failing to warn consumers that the
2 Products exposed users in California to DEHP. To the best of the Parties' knowledge, no public
3 enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

4 **1.7 Complaint**

5 On or about July 12, 2012, Moore, who was and is acting in the interest of the general
6 public in California, filed a complaint ("Complaint" or "Action") in the Superior Court in and
7 for the County of Alameda against Bytech and Does 1 through 150, alleging, *inter alia*,
8 violations of Proposition 65 based on the alleged exposures to DEHP contained in the Products.

9 **1.8 No Admission**

10 Bytech denies the material factual and legal allegations contained in Moore's Notice and
11 Complaint and maintains that all Products sold and distributed in California have been and are
12 in compliance with all laws. Nothing in this Consent Judgment shall be construed as an
13 admission by Bytech of any fact, finding, issue of law, or violation of law; nor shall compliance
14 with this Consent Judgment constitute or be construed as an admission by Bytech of any fact,
15 finding, conclusion, issue of law, or violation of law, such being specifically denied by Bytech.
16 However, this section shall not diminish or otherwise affect Bytech's obligations,
17 responsibilities, and duties under this Consent Judgment.

18 **1.9 Consent to Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
20 jurisdiction over Bytech as to the allegations contained in the Complaint, that venue is proper in
21 the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions
22 of this Consent Judgment.

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date
25 this Consent Judgment is approved by the Court.
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1 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

2 **2.1 Reformulation Standards and Commitment**

3 As of the Effective Date, Bytech shall only manufacture, import, distribute, sell and/or
4 offer for sale in California Products that are “DEHP Free” or that contain the proper health
5 hazard warning pursuant to Section 2.2 below. For purposes of this Consent Judgment, “DEHP
6 Free” Products shall mean Products containing less than 1,000 parts per million (0.1%) of
7 DEHP when analyzed pursuant to Environmental Protection Agency testing methodologies
8 3580A and 8270C, or any method utilized by state or federal agencies for the purposes of
9 determining DEHP content in a solid substance.

10 **2.2 Product Warnings**

11 Commencing on the Effective Date, Bytech shall, for all Products other than DEHP Free
12 Products, provide clear and reasonable warnings as set forth in subsections 2.2(a) and (b). Each
13 warning shall be prominently placed with such conspicuousness as compared with other words,
14 statements, designs, or devices as to render it likely to be read and understood by an ordinary
15 individual under customary conditions before purchase or use. Each warning shall be provided
16 in a manner such that the consumer or user understands to which *specific* Product the warning
17 applies, so as to minimize the risk of consumer confusion.

18 **(a) Retail Store Sales.**

19 **(i) Product Labeling.** Bytech shall affix a warning to the packaging,
20 labeling, or directly on each Product sold in retail outlets in California by Bytech or any person
21 selling the Products, that states:

22 **WARNING:** This product contains DEHP, a chemical known
23 to the State of California to cause birth defects
and other reproductive harm.

24 **(ii) Point-of-Sale Warnings.** Alternatively, Bytech may provide
25 warning signs in the form below to its customers in California with instructions to post the
26 warnings in close proximity to the point of display of the Products. Such instruction sent to
27 Bytech’s customers shall be sent by certified mail, return receipt requested.

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WARNING: This product contains DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm.

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (e.g., DEHP Free Products as defined in Section 2.1), the following statement shall be used:¹

WARNING: The following products contain DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm:
[list products for which warning is required]

(b) Mail Order Catalog and Internet Sales.

In the event that Bytech sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not DEHP Free Products, Bytech shall provide warnings for such Products sold via mail order catalog or the internet to California residents. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to which the warning applies as further specified in Sections 2.2(b)(i) and (ii).

(i) Mail Order Catalog Warning. Any warning provided in a mail order catalog shall be in the same type size or larger than the Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Product:

WARNING: This product contains DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, Bytech may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the

¹ For purposes of the Consent Judgment, “sold in proximity” shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 **3. MONETARY PAYMENTS**

2 **3.1 Initial Civil Penalty**

3 Bytech shall pay an initial civil penalty of \$2,500, to be apportioned in accordance with
4 California Health & Safety Code §§ 25249.12(c) & (d), with 75% of these funds remitted to the
5 State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the
6 remaining 25% of the penalty remitted to Moore.

7 **3.2 Final Civil Penalty**

8 Bytech shall pay a final civil penalty in the amount of \$7,500 on March 29, 2013. As
9 incentive for Bytech to reformulate the Products, however, this final civil penalty shall be
10 waived in its entirety if an officer of Bytech certifies in writing that it, as of March 15, 2013,
11 and continuing on into the future, will sell, ship and offer for sale in California only DEHP Free
12 Products. Such certification must be received by The Chanler Group on or before March 15,
13 2013. The final civil penalty payment shall be apportioned in accordance with California
14 Health & Safety Code §§ 25249.12(c) & (d), with 75% of these funds remitted to OEHHA and
15 the remaining 25% of the penalty remitted to John Moore.

16 **3.3 Reimbursement of Plaintiff's Fees and Costs**

17 The Parties acknowledge that Moore and his counsel offered to resolve this dispute
18 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
19 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
20 Bytech then expressed a desire to resolve the fee and cost issue shortly after the other settlement
21 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
22 compensation due to Moore and his counsel under general contract principles and the private
23 attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all
24 work performed in this matter, except fees that may be incurred on appeal. Under these legal
25 principles, Bytech shall pay the amount of \$23,000 for fees and costs incurred investigating,
26 litigating and enforcing this matter, including the fees and costs incurred (and yet to be
27 incurred) negotiating, drafting, and obtaining the Court's approval of this Consent Judgment in
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1 the public interest.

2 **3.4 Payment Procedures**

3 **3.4.1 Funds Held In Trust.** All payments required by Sections 3.1 and 3.3
4 shall delivered on or before the dates provided below to The Chanler Group and shall be held in
5 trust pending the Court's approval of this Consent Judgment.

6 Payments delivered shall be made payable, as follows:

- 7 (a) One check made payable to "The Chanler Group in Trust for
8 OEHHA" in the amount of \$1,875, and delivered on or before
9 January 31, 2013;
- 10 (b) One check made payable to "The Chanler Group in Trust for John
11 Moore" in the amount of \$625, and delivered on or before January
12 31, 2013;
- 13 (c) One check made payable to "The Chanler Group in Trust" in the
14 amount of \$6,000, and delivered on or before January 31, 2013;
- 15 (d) One check made payable to "The Chanler Group in Trust" in the
16 amount of \$8,500, and delivered on or before March 29, 2013; and
- 17 (e) One check made payable to "The Chanler Group in Trust" in the
18 amount of \$8,500, and delivered on or before May 31, 2013.

19 If the final civil penalty payments required by Section 3.2 above are not waived,
20 payments shall be delivered to The Chanler Group on or before March 29, 2013 made payable,
21 as follows:

- 22 (a) One check made payable to "The Chanler Group in Trust for
23 OEHHA" in the amount of \$5,625;
- 24 (b) One check made payable to "The Chanler Group in Trust for John
25 Moore" in the amount of \$1,875.

26 **3.4.2 Issuance of 1099 Forms.** After the Consent Judgment has been approved
27 and all the settlement funds have been transmitted to Moore's counsel, Bytech shall issue
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1 separate 1099 forms, as follows:

- 2 (a) The first 1099 shall be issued to the Office of Environmental
3 Health Hazard Assessment, P.O. Box 4010, Sacramento, CA
4 95814 (EIN: 68-0284486) in the amount of \$1,875;
- 5 (b) The second 1099 shall be issued to John Moore in the amount
6 of \$625, whose address and tax identification number shall be
7 furnished upon request;
- 8 (c) The third 1099 shall be issued to The Chanler Group (EIN: 94-
9 3171522) in the amount of \$23,000;
- 10 (d) If the final civil penalty in Section 3.2 above is paid, the fourth
11 1099 shall be issued to the Office of Environmental Health Hazard
12 Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-
13 0284486) in the amount of \$5,625; and
- 14 (e) If the final civil penalty in Section 3.2 above is paid, the fifth 1099
15 shall be issued to Moore in the amount of \$1,875, whose address
16 and tax identification number shall be furnished upon request.

17 **3.4.3 Payment Address.** All payments to the Chanler Group shall be delivered
18 to the following payment address:

19 The Chanler Group
20 Attn: Proposition 65 Controller
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710

24 **4. CLAIMS COVERED AND RELEASED**

25 **4.1 Moore's Public Release of Proposition 65 Claims**

26 Moore acting on his own behalf and in the public interest releases Bytech, its parents,
27 subsidiaries, affiliated entities that are under common ownership, directors, officers, employees,
28 attorneys, and each entity to whom Bytech directly or indirectly distributes or sells Products,
including but not limited to downstream distributors, wholesalers, customers, retailers,

1 franchisees, cooperative members, licensors, and licensees (“Releasees”) from all claims for
2 violations of Proposition 65 up through the Effective Date based on exposure to DEHP from the
3 Products as set forth in the Notice. Compliance with the terms of this Consent Judgment
4 constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products
5 as set forth in the Notice.

6 **4.2 Moore’s Individual Release of Claims**

7 Moore also, in his individual capacity only and *not* in his representative capacity, provides
8 a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
9 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
10 liabilities and demands of Moore of any nature, character or kind, whether known or unknown,
11 suspected or unsuspected, limited to and arising out of any violation of Proposition 65 regarding
12 the failure to warn about exposure to DEHP in the Products manufactured, imported, distributed,
13 sold and/or offered for sale by Releasees.

14 **4.3 Bytech’s Release of Moore**

15 Bytech on behalf of itself, its past and current agents, representatives, attorneys,
16 successors, and/or assignees, hereby waives any and all claims against Moore, his attorneys and
17 other representatives, for any and all actions taken or statements made (or those that could have
18 been taken or made) by Moore and his attorneys and other representatives, whether in the
19 course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this
20 matter with respect to the Products.

21 **5. COURT APPROVAL**

22 This Consent Judgment is not effective until it is approved and entered by the court and
23 shall be null and void if, for any reason, it is not approved and entered by the court within one
24 year after it has been fully executed by all Parties, in which event any monies that have been
25 provided to Moore or his counsel pursuant to Section 3 above, shall be refunded within fifteen
26 (15) days after receiving written notice from Bytech that the one-year period has expired.

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1 **6. SEVERABILITY**

2 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
3 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
4 provisions remaining shall not be adversely affected.

5 **7. GOVERNING LAW**

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

12 **8. NOTICES**

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

17 To Bytech:

18 Brian Tretter, Esq.
19 Oved & Oved LLP
20 401 Greenwich Street
 New York, NY 10013

To Moore:

 Proposition 65 Coordinator
 The Chanler Group
 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710-2565

21 With a copy to:

22 Victor Mizrahi, President
23 Bytech NY, Inc.
24 2585 West 13th Street
 Brooklyn, NY 11223

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

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1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

2 This Consent Judgment may be executed in counterparts and by facsimile or portable
3 document format (“pdf”), each of which shall be deemed an original, and all of which, when
4 taken together, shall constitute one and the same document. A facsimile or pdf signature shall
5 be as valid as the original.

6 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

7 Moore agrees to comply with the reporting form requirements referenced in California
8 Health & Safety Code § 25249.7(f).

9 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

10 The Parties agree to mutually employ their, and their counsel’s, reasonable best efforts to
11 support the entry of this agreement as a Consent Judgment and obtain approval of the Consent
12 Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to
13 California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial
14 approval of this Consent Judgment, which Moore shall file, and which Bytech shall not oppose.
15 If any third party objection to the noticed motion is filed, Moore and Bytech shall work together
16 to file a joint reply and appear at any hearing before the Court. If the Court does not approve
17 the motion to approve this Consent Judgment, and the Parties choose not to pursue a modified
18 Consent Judgment within 30 days of said denial, or in the event that the Court approve this
19 Consent Judgment and any person successfully appeals that approval, all payments made
20 pursuant to this Consent Judgment will be returned to Bytech.

21 **12. MODIFICATION**

22 This Consent Judgment may be modified only: (1) by written agreement of the Parties
23 and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful
24 motion of any Party and entry of a modified Consent Judgment by the court.

25 **13. ENTIRE AGREEMENT**

26 This Consent Judgment contains the sole and entire agreement and understanding of the
27 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
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1 negotiations, commitments, and understandings related hereto. No representations, oral or
2 otherwise, express or implied, other than those contained herein have been made by any party
3 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
4 deemed to exist or to bind any of the Parties.

5 **14. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment on behalf of their
7 respective parties and have read, understood, and agree to all of the terms and conditions of this
8 Consent Judgment.

9 **AGREED TO:**

AGREED TO:

10 Date: JANUARY 25, 2013

Date: _____

11
12 By: 
13 John Moore

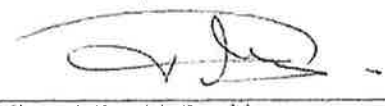
By: _____
Victor Mizrahi, President
Bytech NY, Inc.

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1 negotiations, commitments, and understandings related hereto. No representations, oral or
2 otherwise, express or implied, other than those contained herein have been made by any party
3 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
4 deemed to exist or to bind any of the Parties.

5 **14. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment on behalf of their
7 respective parties and have read, understood, and agree to all of the terms and conditions of this
8 Consent Judgment.

9	AGREED TO:	AGREED TO:
10	Date: _____	Date: <u>1/30/13</u>
11		
12	By: _____	By: 
13	John Moore	Victor Mizrahi, President Bytech NY, Inc.
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