

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Plaintiff and Defendant

This Settlement Agreement is entered into by and between Plaintiff Karen Calacin ("Calacin" or "Plaintiff") and Defendants The Betesh Group, The Betesh Group Holding Corporation, and Motion Systems, LLC (collectively "Betesh" or "Defendants").

Together, Calacin and Betesh are collectively referred to as the "Parties". Calacin is an individual that reside in the State of California, and seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products.

Betesh employs ten or more persons and are considered persons in the course of doing business for purposes of the Safe Drinking water and Toxic Enforcement Act of 1986, Health & Safety Code section 25249.6, et seq. ("Proposition 65").

1.2 General Allegations

Calacin alleges that Betesh has manufactured, imported, distributed and/or sold in the State of California products containing Di(2-ethylhexyl) phthalate ("DEHP"). DEHP is listed under Proposition 65 as a chemical known to cause birth defects and other reproductive harm.

1.3 Product Description

The products addressed by this Settlement Agreement are the following, (a) icon 7" Tablet/iPad Mini Removable & Rotating Case, UPC# 7 37073 07633 4, and (b) 7Rotate4Q14-AST, (collectively referred to hereinafter as the "Products"). Calacin alleges that the Products contain DEHP, and are manufactured, imported, distributed, sold and/or offered for sale by Betesh in the State of California.

1.4 Notice of Violation

On January 27, 2015, Calacin served Betesh and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that

provided Betesh, and such others, including public enforcers, with notice that alleged that Defendant was in violation of California Health & Safety Code 25249.6 (“Proposition 65”) for failing to warn consumers and customers that the Products exposed users in California to DEHP. To the best of the Parties’ knowledge, no public enforcer has diligently prosecuted the allegations set forth in the Notices.

1.5 No Admission

Betesh denies the material factual and legal allegations contained in the Notices, and maintains that to the best of their knowledge all products that are or have been sold and distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Betesh of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Betesh of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Betesh. However, this section shall not diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement. Notwithstanding the allegations in the Notices, Betesh maintains that it has not knowingly manufactured, or caused to be manufactured, the Products for sale in California which is in violation of Proposition 65.

1.6 Consent to Jurisdiction

For purposes of this Settlement Agreement only, the Parties stipulate that the Court in Superior Court of California – County of Alameda has jurisdiction over the allegations of violations contained in the Notice and personal jurisdiction over the Defendants as to the acts alleged in the Notice, and that the venue is proper in this Court.

1.7 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean July 31, 2015.

2. INJUNCTIVE RELIEF

2.1 Reformulation Products

Commencing on the Effective Date, and continuing thereafter, Betesh shall only ship, sell, or offer for sale in California, Reformulated Products pursuant to Section 2.2, or Products that are labeled with a clear and reasonable warning pursuant to Section 2.3. For purposes of this Settlement Agreement, “Reformulated Products” refer to the following, (a) icon 7” Tablet/iPad Mini Removable & Rotating Case, and (b) 7Rotate4Q14-AST, as set forth in Section 1.3.

2.2 Reformulation Standard

“Reformulated Products” are defined as those Products continuing the Listed Chemicals in concentrations less than 0.1 percent (1,000 parts per million) in each Accessible Component when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining phthalate content in a solid substance (“Reformulation Standard”). For the purposes of this Settlement Agreement, the term “Accessible Component” shall mean any component of the Products that could be touched by a person during reasonably foreseeable use.

2.3 Clear and Reasonable Warnings

Commencing on the Effective Date, Betesh, for all Products it sells or distributes and which are intended for sale in California, or which Betesh has reason to believe will be shipped or sold in California, provide clear and reasonable warnings as set forth in subsections 2.3(a) and (b) and (c) below. The Parties, however, hereby acknowledge and agree that Betesh has implemented a labeling program that uses the following language:

PROPOSITION 65 WARNING:

This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.*

* or any other suitable warning under the OEHHA regulations.

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.

Therefore, the Parties agree that Betesh need not re-label any existing Products intended for sale in California containing such warning as of the Effective Date. After the Effective Date, Defendant, shall begin using the specific warning language provided in Sections 2.3(a) and 2.3(b) below for all Products intended for sale in California that do not already contain the above warning.

(a) Retail Store Sales

(i) Product Labeling. Betesh shall affix a warning to the Packaging, labeling or directly on each Product sold in retail outlets in California by Betesh or any person selling the Products that states:

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

(ii) Point of Sale Warnings. Alternatively, Betesh may provide warning signs in the form below to its customers in California with instructions to post the warnings in close proximity to the point of display of the Products. Point of Sale warnings may be provided through one or more signs posted at or near the point of sale or display of the Covered Products that state:

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

Such instruction sent to Betesh's customers shall be sent by certified mail, return receipt requested.

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (e.g. Reformulated Products as defined in Section 2.2), the following statement shall be used:

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

[list products for which warning is required]

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 of use or purchase and shall be placed or written in a manner such that the consumer understands to which specific Covered Products the warnings apply so as to minimize, if not eliminate, the chances that an over warning situation will arise. Any changes to the language or format of the warning required for covered products by this subsection shall only be made following approval of Calacin.

(b) Mail Order Catalog and Internet Sales. In the event that Betesh directly sells Products via mail order catalog and/or its own internet site, directly to consumers located in California after the Effective Date, that are not Reformulated Products, Betesh shall provide warnings for such Products sold via mail order catalog or the internet to such 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 2.3(b)(i) and (ii).

(i) **Mail Order Catalog Warning.** Any warning provided in Betesh's 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 and other phthalates, chemicals 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, Betesh may utilize a designated symbol to cross reference the applicable warning and shall define the term "designated symbol" with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

WARNING: Certain products identified with this symbol ▼ and offered for sale in this catalog contain DEHP and other phthalates, chemicals known to the State of California to cause birth defects and other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Product. On each page where the designated symbol appears, Betesh must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

(ii) **Internet Website Warning.** After the Effective Date, a warning shall be given in conjunction with the direct sale of the Products by Defendant to consumers in California via the consumers' purchase of Products on Betesh's own internet site[s], which warning shall appear either: (a) on the same web page on which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the same page as the price for any Product; (d) on one or more web pages displayed to a

purchaser during the checkout process; or in any manner such that is likely to be read and understood by an ordinary individual under customary conditions of purchase of a product, including the same language as that appearing in Section 2.3 above. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger than the Product description text:

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

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page, as follows:

WARNING: Products identified on this page with the following Symbol ▼ contain DEHP and other phthalates, chemicals known to The State of California to cause birth defects and other reproductive harm.

c. Package Insert or Label.

Alternatively, a warning may be provided with the product when it is shipped directly to a consumer in California, by (a) product labeling pursuant to subsection 2.3 above, (b) inserting a card or slip of paper measuring at least 4" X 6" in the shipping carton, or (c) including the warning on the packaging slip or customer invoice identifying the covered Product in lettering of the same size as the description of the Covered Product. The warning shall include the language appearing in subsection 2.3 and shall inform the consumer that he or she may return the product for a full refund within 30 days of receipt.

2.4 Exceptions To Warning Requirements

The warning requirements set forth in Section 2.3 above shall not apply to:

- (i) Any Product manufactured by Betesh prior to the Effective Date; or
- (ii) Reformulated Products (as defined above).

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Betesh shall pay a total of \$2,000.00 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Calacin. Each penalty payment shall be delivered to the addresses listed in Section 3.3 below. Betesh shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing that are not received within two business days of the date they are due.

3.1 Initial Civil Penalty

On or before the Effective Date, Betesh shall issue two separate checks for the initial civil penalty payment to (a) "OEHHA" in the amount of \$1,500.00; and (b) "Brodsky & Smith, LLC in Trust for Calacin" in the amount of \$500.00. All penalty payments shall be delivered to the addresses listed in Section 3.2 below.

3.2 Payment Procedures

3.2.1 Issuance of Payments. Payments shall be delivered as follows:

- (a) All payments owed to Calacin, pursuant to Section 3.1 shall be delivered to the following payment address:

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

(b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to Section 3.1 shall be delivered directly to OEHHA (Memo Line "Prop 65 Penalties") at 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

3.2.2 Copy of Payments to OEHHA. Defendant agree to provide Calacin's counsel with a copy of the checks payable to OEHHA, simultaneous with its penalty payments to Calacin, to be delivered to the address provided in Section 3.2.1(a), as proof of payment to OEHHA.

3.2.3 Tax Documentation. Betesh agrees to provide a completed IRS 1099 for its payments to each of the following payees under this Settlement Agreement:

(a) "Karen Calacin" whose address and tax identification number shall be provided after this Settlement Agreement is fully executed by the Parties;

(b) "Brodsky & Smith, LLC" (EIN: 23-2971061) at the address provided in Section 3.2.1(a); and

(c) "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that Calacin and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Calacin then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties reached an accord on the compensation due to Calacin and her counsel under general contract principles and the private attorney general doctrine and principles codified at California Code of Civil Procedure section 1021.5, for all work performed through the mutual execution of this agreement. Under these legal principles, Betesh shall reimburse Calacin's counsel for fees and costs incurred as a result of investigating and bringing this matter to Betesh's attention, and negotiating a settlement in the public interest. On or before the Effective Date, Betesh shall issue a check payable to "Brodsky & Smith, LLC" in the amount of \$18,000.00 for delivery to the following address:

Evan Smith, Esq.
Brodsky & Smith, LLC
Two Bala Plaza, Ste. 510
Bala Cynwyd, PA 19004

5. ASSURANCE OF PAYMENTS BY THE DEFENDANT

To assure that the Defendants are in a position to honor the monetary payment obligations set forth above on a timely basis, prior to the Execution Date of this Agreement, an authorized representative of Defendants shall disclose to Calacin's counsel in a separate writing the name and contribution amount of any Defendant responsible for paying any amount of the funds for civil penalties and attorneys' fees and costs. Each Defendant shall, within ten (10) calendar days after the Execution Date, tender the funds that it has separately agreed to contribute to settlement embodied Agreement, to a fund administered by a representative of the Defendant, as selected by consensus among Defendant and whose identity has been disclosed to Calacin's counsel

prior to the Execution Date (“Defendants’ Representative”). In the event that Defendants’ Representative has not received all funds within the time provided by the preceding sentence, it shall, within three (3) business days thereafter provide each Defendant from whom it has not received full payment and Calacin’s counsel with written notice pursuant to the Notice section , specifying the respective amounts of its delinquency (“Delinquency Notice”). If a Defendant receives and does not address the Delinquency Notice within three additional business days, Defendants’ Representative shall notify Calacin’s counsel. The total sums due shall therefore be reduced by the amount(s) of any non-payments by a Defendant and Calacin may elect to do either: 1) enforce the non-paying Defendant’s obligations under this Agreement with whatever sanctions the Court finds appropriate; or 2) severing the non-paying Defendant from the Settlement Agreement and voiding the Agreement as to such Defendant so that litigation can be commenced or pursued as if the Agreement has not been entered into with that non-paying Defendant. A Delinquency Notice shall be admissible as evidence in any proceeding brought by Calacin pursuant to the preceding sentence.

6. RELEASE OF ALL CLAIMS

6.1 Full, Final and Binding Resolution of Proposition 65 Allegations Release of Betesh, Big Lots Stores, Inc. and Downstream Customers and Entities

This Settlement Agreement is a full, final and binding resolution between Calacin, on behalf of herself and the public, and Betesh, of any violation of Proposition 65 that was or could have been asserted by Calacin against Betesh, its parent companies, including, but not limited to subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, and each entity to whom Betesh directly or indirectly distributes or sells products, including but not limited to downstream distributors, wholesalers, customers, retailers including, but not limited to, Big Lots Stores, Inc., franchisees, cooperative members, licensors, and licensees

("Releasees"), based on their failure to warn about alleged exposures to DEHP contained in the Products that were sold by Betesh.

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to this Agreement, Calacin, on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Betesh or the Releasees of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of the alleged or actual exposure to the DEHP in the Products.

6.2 Calacin's Public Release of Proposition 65 Claims

In further consideration of the promises and agreements herein contained, Calacin on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses – including, but not limited to, investigation fees, expert fees, attorneys' fees, but exclusive of fees and costs on appeal – limited to and arising under Proposition 65 with respect to DEHP in the Products sold by Betesh, including any Products currently in the stream of commerce (collectively "claims"), against Betesh and Releasees.

6.3 Calacin's Individual Release of Claims

Calacin also, in her individual capacity only and not in her representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Calacin of any nature, character or kind, whether known or unknown, suspected or unsuspected, against Betesh

and Releasees, limited to and arising out of alleged or actual exposures to the Listed Chemicals in the Products manufactured, distributed or sold by Betesh.

6.4 Betesh's Release of Calacin

Betesh, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Calacin, her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Calacin and her attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Product.

6.5 Limitations on Releases

The release provided by Calacin in this section shall not extend upstream to other product manufacturers not part of this agreement or to any Product distributor or supplier from whom a Defendant purchased any product that are identified herein, except insofar as such manufacturer, distributor or supplier is a Defendant.

7. SEVERABILITY

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

8. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the law of the State of California and apply within the State of California. In the event that Proposition is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Betesh shall provide written notice to Calacin of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Betesh from any obligation to comply with any pertinent state or federal toxics control law.

9. **NOTICES**

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

For Defendant The Betesh Group:

Locker Greenberg & Brainin LLP
Frederick Locker
Attorney At Law
420 Fifth Avenue
New York NY 10018

For Calacin:

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

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.

11. **COUNTERPARTS: SIGNATURES**

This Settlement Agreement may be executed in counterparts and by facsimile or pdf signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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

Calacin agrees to comply with the reporting requirements referenced in Health & Safety Code section 25249.7(f).

13. **MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties.

14. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

AGREED TO:

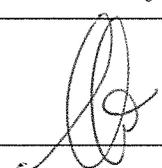
Date: _____

By: _____

Karen Calacin

AGREED TO:

Date: 8/31/11 _____

By:  _____

Michael Betesh for The Betesh Group

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 8/13/2015

Date: 8/13/15

By: 
Karen Calacin

By: _____

_____ for The Betesh Group