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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA

11 GABRIEL ESPINOSA, et al.,
12 Plaintiffs,
13 v.
14 BYTECH NY, INC.,
15 Defendant.

Case No.: RG18899185
CONSENT JUDGMENT
Judge: Dennis Hayashi
Dept.: 518
Hearing Date: August 9, 2018
Hearing Time: 2:30 PM
Reservation #: R-1962198

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1 **1. INTRODUCTION**

2 1.1 **The Parties.** This Consent Judgment is entered into by and between Gabriel
3 Espinosa (“Espinosa”), Anthony Ferreiro (“Ferreiro”) (collectively, “Plaintiffs”), each acting on
4 behalf of the public interest and ByTech NY, Inc. (“ByTech” or “Defendant”) with Plaintiffs and
5 Defendant collectively referred to as the “Parties” and each of them as a “Party.” Espinosa and
6 Ferreiro is each an individual residing in California that seeks to promote awareness of exposures
7 to toxic chemicals and improve human health by reducing or eliminating hazardous substances
8 contained in consumer products. ByTech is alleged to be a person in the course of doing business
9 for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

10 1.2 **Allegations and Representations.** Plaintiffs allege that Defendant has exposed
11 individuals to Di(2-ethylhexyl) phthalate (DEHP) and Diisononyl phthalate (DINP) from
12 Aux/Charging Cables/Cords and/or Case Logic armbands without providing clear and reasonable
13 warnings under Proposition 65. DEHP is listed under Proposition 65 as a chemical known to the
14 State of California to cause cancer and reproductive toxicity. DINP is listed under Proposition 65
15 as a chemical known to the State of California to cause cancer.

16 1.3 **Notices of Violation/Complaint.** On or about April 4, 2017, and on or about
17 February 9, 2018, Espinosa and Ferreiro, respectively, served ByTech, and various public
18 enforcement agencies with documents entitled “60-Day Notice of Violation” pursuant to Health &
19 Safety Code §25249.7(d) (collectively, the “Notices”), alleging that Defendant was in violation of
20 Proposition 65 for failing to warn consumers and customers that Aux/Charging Cables/Cords and
21 Case Logic Active Armbands, respectively, expose users in California to DEHP and DINP. No
22 public enforcer has brought and is diligently prosecuting the claims alleged in the Notices. On
23 April 2, 2018, Espinosa filed a complaint (the “Complaint”) in the matter related to the April 4,
24 2017 notice of violation. On May 1, 2018, the Complaint was amended (the “Amended
25 Complaint”). The Amended Complaint identified both Espinosa and Ferreiro as plaintiffs, and was
26 filed in relation to the Notices.

27 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
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1 jurisdiction over Defendant as to the allegations contained in the Complaint and Amended
2 Complaint filed in this matter, that venue is proper in the County of Alameda, and that this Court
3 has jurisdiction to approve, enter, and oversee the enforcement of this Consent Judgment as a full
4 and final binding resolution of all claims which were or could have been raised in the Complaint
5 and/or Amended Complaint based on the facts alleged therein and/or in the Notices.

6 1.5 Defendant denies the material allegations contained in Plaintiffs' Notices,
7 Complaint, and Amended Complaint, and maintains that it has not violated Proposition 65. Nothing
8 in this Consent Judgment shall be construed as an admission by Defendant of any fact, finding,
9 issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be
10 construed as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation
11 of law, such being specifically denied by Defendant. However, this Section shall not diminish or
12 otherwise affect the obligations, responsibilities, and duties of Defendant under this Consent
13 Judgment.

14 **2. DEFINITIONS**

15 2.1 **Covered Products.** The term "Covered Products" means mobile Aux/Charging
16 Cables/Cords and/or Active Armbands sold under the following brand names: (a) Isaac Mizrahi,
17 (b) Case Logic, (c) Pink Chandelier, (d) Bonnie Marcus, (e) Biconic, (f) Bytech, (g) Minions, (h)
18 Miztech, and (i) Vesca Wireless which are manufactured, distributed and/or offered for sale in
19 California by ByTech.

20 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
21 entered as a Judgment of the Court.

22 **3. INJUNCTIVE RELIEF: WARNINGS**

23 As of the date this Consent Judgment is signed by all Parties, ByTech shall not manufacture
24 or order from any supplier any Covered Products intended for retail sale in California that contains
25 DEHP and/or DINP on any component to which consumers are exposed in excess of 0.1% (1,000
26 ppm) (hereinafter "Reformulated Products") unless the Covered Product is accompanied by a
27 warning that complies with Article 6 of Title 27 of the California Code of Regulations. Covered
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1 Products sold by ByTech before the date this Consent Judgment is signed by both Parties may sell
2 through without a warning even if not Reformulated Products. Until August 30, 2018, the warning
3 shall consist of either: (a) The statement: “WARNING: This product contains a chemical known
4 to the State of California to cause cancer and birth defects or other reproductive harm.”¹; or (b) (1)
5 A symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black
6 outline to the left of the word “warning” in bold all capital letters, followed by the statement “This
7 product can expose you to chemicals including Di(2-ethylhexyl)phthalate (DEHP), which is known
8 to the State of California to cause cancer and birth defects or other reproductive harm. For more
9 information, go to www.P65Warnings.ca.gov.”; or (2) a warning consisting of a symbol that is a
10 black exclamation point in a yellow equilateral triangle with a bold black outline to the left of the
11 word “warning” in bold all capital letters, followed by the statement “Cancer and Reproductive
12 Harm - www.P65Warnings.ca.gov.”²

13 For Covered Products manufactured on and after August 30, 2018, the warning set forth in Section
14 3.1(b) shall be used.

15 3.1 The warning provided pursuant to Section 0 shall be affixed to or printed on the
16 Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or
17 automatic process, providing that the warning is displayed with such conspicuousness, as compared
18 with other words, statements, or designs as to render it likely to be read and understood by an
19 ordinary individual under customary conditions of purchase or use. A warning may be contained
20 in the same section of the packaging, labeling, or instruction booklet that states other safety
21 warnings, if any, concerning the use of the product and shall be at least the same size as those other
22 safety warnings.

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24 ¹ If ByTech knows the Covered Product contains only DINP, the statement:
25 “WARNING: This product contains a chemical known to the State of California to cause cancer”
26 or, the statement: “This product can expose you to chemicals including Diisononyl phthalate
(DINP), which is known to the State of California to cause. For more information, go to
www.P65Warnings.ca.gov” shall be used as the warning.

27 ² The triangular symbol need only be in yellow where the sign, label, shelf tag or other
28 transmission format is being printed in color for purposes of other language, symbols or designs.

1 **4. MONETARY TERMS**

2 4.1 **Civil Penalty.** ByTech shall pay a \$3,000.00 Civil Penalty pursuant to Health and
3 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
4 Code § 25192, 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 Civil Penalty remitted to
6 Plaintiffs, as provided by California Health & Safety Code § 25249.12(d).

7 4.1.1 Within fourteen (14) days of the Effective Date, ByTech shall issue three
8 separate checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$2,250.00; (b)
9 “Brodsky & Smith, LLC in Trust for Espinosa” in the amount of \$375.00; and (c) “Brodsky &
10 Smith, LLC in Trust for Ferreiro” in the amount of \$375.00. Payment owed to Plaintiffs pursuant
11 to this Section shall be delivered to the following payment address:

12 Evan J. Smith, Esquire
13 Brodsky & Smith, LLC
14 Two Bala Plaza, Suite 510
 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
 P.O. Box 4010
 Sacramento, CA 95812-4010

21 For Non-United States Postal Service Delivery:

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

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

1 4.2 **Attorneys' Fees.** Within fourteen (14) days of the Effective Date, ByTech shall pay
2 \$34,500.00 to Brodsky & Smith, LLC ("Brodsky Smith") as complete reimbursement for Plaintiffs'
3 attorneys' fees and costs incurred as a result of investigating, bringing this matter to ByTech's
4 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
5 interest, pursuant to Code of Civil Procedure section 1021.5.

6 **5. RELEASE OF ALL CLAIMS**

7 5.1 This Consent Judgment is a full, final, and binding resolution between Espinosa and
8 Ferreira, each acting on his own behalf, and on behalf of the public interest, and ByTech, and its
9 parents, shareholders, members, directors, officers, managers, employees, representatives, agents,
10 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
11 predecessors, successors and assigns ("Defendant Releasees"), and all entities from whom they
12 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
13 not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees
14 retailers, franchisees, and cooperative members, including but not limited to Thule Organization
15 Solutions Holding, Inc., Marshalls of MA, Inc., The TJX Companies, Inc., Dollar Tree Stores, Inc.,
16 Fry's Electronics, Inc. and each of their parents, shareholders, members, directors, officers,
17 managers, employees, representatives, agents, attorneys, divisions, subdivisions, subsidiaries,
18 partners, sister companies, and affiliates, and their predecessors, successors and assigns
19 ("Downstream Releasees"), of all claims for violations of Proposition 65 based on exposure to
20 DEHP and/or DINP from Covered Products as set forth in the Notices, with respect to any Covered
21 Products manufactured, distributed, or sold by ByTech prior to the Effective Date. This Consent
22 Judgment shall have preclusive effect such that no other person or entity, whether purporting to act
23 in his, her, or its interests or the public interest shall be permitted to pursue and/or take any action
24 with respect to any violation of Proposition 65 that was alleged in the Complaint and/or Amended
25 Complaint, or that could have been brought pursuant to the Notices against ByTech or its
26 Downstream Releasees of the Product including but not limited to ("Proposition 65 Claims").
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1 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
2 with regard to the Covered Products.

3 5.2 In addition to the foregoing, Espinosa and Ferreiro, each on behalf of himself, his
4 past and current agents, representatives, attorneys, and successors and/or assignees, and *not* in his
5 representative capacity, hereby waives all rights to institute or participate in, directly or indirectly,
6 any form of legal action and releases ByTech, Defendant Releasees, and Downstream Releasees
7 from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations,
8 debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
9 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
10 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
11 from Covered Products manufactured, distributed, or sold by ByTech, Defendant Releasees or
12 Downstream Releasees. With respect to the foregoing waivers and releases in this paragraph,
13 Plaintiffs hereby specifically waives any and all rights and benefits which they now have, or in the
14 future may have, conferred by virtue of the provisions of Section 1542 of the California Civil Code,
15 which provides as follows:

16 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
17 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
18 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
19 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
20 SETTLEMENT WITH THE DEBTOR.

21 5.3 ByTech waives any and all claims against Plaintiffs, their attorneys and other
22 representatives, for any and all actions taken or statements made (or those that could have been
23 taken or made) by Plaintiffs and their attorneys and other representatives, whether in the course of
24 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
25 and/or with respect to Covered Products.

26 **6. INTEGRATION**

27 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
28 any and all prior negotiations and understandings related hereto shall be deemed to have been

1 merged within it. No representations or terms of agreement other than those contained herein exist
2 or have been made by any Party with respect to the other Party or the subject matter hereof.

3 **7. GOVERNING LAW**

4 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
5 California and apply within the State of California. In the event that Proposition 65 is repealed or
6 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
7 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
8 to the extent that, Covered Products are so affected.

9 **8. NOTICES**

10 8.1 Unless specified herein, all correspondence and notices required to be provided
11 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
12 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party
13 by the other Party at the following addresses:

14 For Defendant:

15 Jeffrey Dweck
16 The Law Firm Of Jeffrey S. Dweck, P.C.
17 43 West 33rd Street, Suite 304
New York, New York 10001

18 And

19 For Plaintiffs:

20 Evan Smith
21 Brodsky & Smith, LLC
22 9595 Wilshire Blvd., Ste. 900
Beverly Hills, CA 90212

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

25 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

26 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
27 which shall be deemed an original, and all of which, when taken together, shall constitute one and
28 the same document.

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

3 10.1 Plaintiffs agree to comply with the requirements set forth in California Health &
4 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
5 Defendant agrees it shall support approval of such Motion.

6 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
7 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
8 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
9 30 days, the case shall proceed on its normal course.

10 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
11 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
12 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
13 its normal course on the trial court's calendar.

14 **11. MODIFICATION**

15 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
16 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

17 **12. ATTORNEY'S FEES**

18 12.1 A Party who unsuccessfully brings or contests an action arising out of this Consent
19 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs.

20 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
21 pursuant to law.

22 **13. RETENTION OF JURISDICTION**

23 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
24 Consent Judgment.

25 **14. AUTHORIZATION**

26 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
27 respective Parties and have read, understood and agree to all of the terms and conditions of this
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1 document and certify that he or she is fully authorized by the Party he or she represents to execute
2 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
3 explicitly provided herein each Party is to bear its own fees and costs.
4

5 **AGREED TO:**

AGREED TO:

6
7 Date: _____

Date: 6/20/18

8 By: _____

By: Anthony Ferreiro

9 GABRIEL ESPINOSA

ANTHONY FERREIRO.

10
11 **AGREED TO:**

12
13 Date: 5/4/2018

14 By: [Signature]

15 BYTECH NY, INC.

16
17 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

18
19 Dated: _____

20 _____
21 Judge of Superior Court

1 document and certify that he or she is fully authorized by the Party he or she represents to execute
2 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
3 explicitly provided herein each Party is to bear its own fees and costs.
4

5 **AGREED TO:**

AGREED TO:

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7 Date:

Date:

8 By:

By

9 
GABRIEL ESPINOSA

ANTHONY FERREIRO.

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11 **AGREED TO:**

12
13 Date:

14 By:

15 BYTECH NY, INC.
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17 **IT IS SO ORDERED, ADJUDGED AND DECREED:**
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20 Judge of Superior Court
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