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Los Angeles Superior Court**

**DEC 10 2010**

John A. Clarke, Executive Officer/Clerk  
By *Dawn Alexander* Deputy  
**DAWN ALEXANDER**

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9 Attorneys for Plaintiffs,  
10 Consumer Advocacy Group, Inc.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF LOS ANGELES

13 CONSUMER ADVOCACY GROUP, INC.,  
14 in the public interest,

15 Plaintiff,

16 v.

17 MIZCO INTERNATIONAL, INC. a New  
18 York Corporation and Does 1-50.

19 Defendants.

20 CASE NO. **BC 451036**

21 COMPLAINT FOR PENALTY,  
22 INJUNCTION, AND RESTITUTION

23 Violation of Proposition 65, the Safe  
24 Drinking Water and Toxic Enforcement  
25 Act of 1986 (*Cal. Health & Safety Code, §*  
26 *25249.5, et seq.*)

27 ACTION IS AN UNLIMITED CIVIL  
28 CASE (exceeds \$25,000)

Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against defendants as follows:

**THE PARTIES**

1. Plaintiff Consumer Advocacy Group, Inc. ("Plaintiff" OR "CAG") is a non-profit corporation qualified to do business in the State of California. CAG is a person within the meaning of Health and Safety Code section 25249.11, subdivision (a). CAG, acting

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1 as a private attorney general, brings this action in the public interest as defined under  
2 Health and Safety Code section 25249.7, subdivision (d).

3 2. Plaintiff, Mizco International, Inc. is a corporation duly organized and existing under the  
4 laws of the state of New York.

5 3. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-50,  
6 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
7 Complaint to allege their true names and capacities when ascertained. Plaintiff is  
8 informed, believes, and thereon alleges that each fictitiously named defendant is  
9 responsible in some manner for the occurrences herein alleged and the damages caused  
10 thereby.

11 4. As to the first cause of action only, the term "Defendants" includes Mizco International,  
12 Inc., and Does 1-50.

13 5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
14 times mentioned herein has conducted business within the State of California.

15 6. At all times relevant to this action, each of the Defendants, including Does 1-50, was an  
16 agent, servant, or employee of each of the other Defendants. In conducting the activities  
17 alleged in this Complaint, each of the Defendants was acting within the course and scope  
18 of this agency, service, or employment, and was acting with the consent, permission, and  
19 authorization of each of the other Defendants. All actions of each of the Defendants  
20 alleged in this Complaint were ratified and approved by every other Defendant or their  
21 officers or managing agents. Alternatively, each of the Defendants aided, conspired with  
22 and/or facilitated the alleged wrongful conduct of each of the other Defendants.  
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1 7. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
2 Defendants was a person doing business within the meaning of Health and Safety Code  
3 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
4 employees at all relevant times.

5 **JURISDICTION**

6 8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
7 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
8 those given by statute to other trial courts. This Court has jurisdiction over this action  
9 pursuant to Health and Safety Code section 25249.7, which allows enforcement of  
10 violations of Proposition 65 in any Court of competent jurisdiction.

11 9. This Court has jurisdiction over Defendants named herein because Defendants either  
12 reside or are located in this State or are foreign corporations authorized to do business in  
13 California, are registered with the California Secretary of State, or who do sufficient  
14 business in California, have sufficient minimum contacts with California, or otherwise  
15 intentionally avail themselves of the markets within California through their manufacture,  
16 distribution, promotion, marketing, or sale of their products within California to render  
17 the exercise of jurisdiction by the California courts permissible under traditional notions  
18 of fair play and substantial justice.

19 10. Venue is proper in the County of Los Angeles because one or more of the instances of  
20 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
21 because Defendants conducted, and continue to conduct, business in the County of Los  
22 Angeles with respect to the consumer product that is the subject of this action.  
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## BACKGROUND AND PRELIMINARY FACTS

- 1  
2 11. In 1986, California voters approved an initiative to address growing concerns about  
3 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to  
4 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,  
5 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
6 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
7 25249.5, *et seq.* (“Proposition 65”), helps to protect California’s drinking water sources  
8 from contamination, to allow consumers to make informed choices about the products  
9 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
10 fit.  
11
- 12 12. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
13 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
14 § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
15 chemicals and chemical families. Proposition 65 imposes warning requirements and  
16 other controls that apply to Proposition 65-listed chemicals.  
17
- 18 13. All businesses with ten (10) or more employees that operate or sell products in California  
19 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
20 from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
21 water (*Health & Safety Code* § 25249.5), and (2) required to provide “clear and  
22 reasonable” warnings before exposing a person, knowingly and intentionally, to a  
23 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).  
24
- 25 14. Proposition 65 provides that any person “violating or threatening to violate” the statute  
26 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
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1 "Threaten to violate" means "to create a condition in which there is a substantial  
2 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

3 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,  
4 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

5  
6 15. Through research and investigation, Plaintiff identified certain practices of Defendants of  
7 exposing, knowingly and intentionally, persons in California to the Proposition 65-listed  
8 chemicals of the consumer products discussed below without first providing clear and  
9 reasonable warnings of such to the exposed persons prior to the time of exposure.

10 **SATISFACTION OF PRIOR NOTICE**

11 16. On or about July 20, 2010, Plaintiff gave notice of alleged violations of Health and Safety  
12 Code section 25249.6, concerning consumer products exposures, subject to a private  
13 action to Mizco International, Inc., and to the California Attorney General, County  
14 District Attorneys, and City Attorneys for each city containing a population of at least  
15 750,000 people in whose jurisdictions the violations allegedly occurred concerning the  
16 consumer product Cellular Innovations Wireless Accessories Car Lighter Charger  
17 Universal Charger Series PCP-BB  
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19  
20 17. Before sending the notice of alleged violations, Plaintiff investigated the consumer  
21 product involved, and the likelihood that such product would cause users to suffer  
22 significant exposures to the relevant Proposition 65-listed chemical at issue.

23 18. Plaintiff's notice of alleged violations included a Certificate of Merit executed by the  
24 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for  
25 Plaintiff who executed the certificate had consulted with at least one person with relevant  
26 and appropriate expertise who reviewed data regarding the exposures to lead, which is the  
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1 subject Proposition 65-listed chemical of this action. Based on that information, the  
2 attorney for Plaintiff who executed the Certificate of Merit believed there was a  
3 reasonable and meritorious case for this private action. The attorney for Plaintiff attached  
4 to the Certificate of Merit served on the Attorney General the confidential factual  
5 information sufficient to establish the bases of the Certificate of Merit.

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7 19. Plaintiff's notice of alleged violation also included a Certificate of Service and a  
8 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
9 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

10 20. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
11 gave notice of the alleged violations to Mizco International, Inc., and the public  
12 prosecutors referenced in Paragraph 16.

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14 21. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
15 any applicable district attorney or city attorney has commenced and is diligently  
16 prosecuting an action against the Defendants.

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18 **FIRST CAUSE OF ACTION**

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20 **(By Consumer Advocacy Group, Inc. and against Mizco International, Inc., and Does 1-50**  
21 **for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of**  
22 **1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

23 **Cellular Innovations Wireless Accessories Car Lighter Charger Universal Charger**  
24 **Series PCP-BB**

25 22. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
26 distributor, promoter, or retailer of Cellular Innovations Wireless Accessories Car Lighter  
27 Charger Universal Charger Series PCP-BB, (hereinafter "Charger"), a consumer product  
28 designed for use to charge wireless phones in an automobile.

1 23. Plaintiff is informed, believes, and thereon alleges that Charger contains lead.

2 24. On February 27, 1987, the Governor of California added lead to the list of chemicals  
3 known to the State to cause reproductive toxicity (*Cal. Code Regs. tit. 27, § 27001(c)*).

4 25. On October 1, 1992 the Governor added lead and lead components to the list of  
5 chemicals known to the State to cause cancer (*Cal. Code Regs. tit. 27, § 27001(b)*).  
6 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months  
7 after addition of lead to the list of chemicals known to the State to cause cancer, lead  
8 became fully subject to Proposition 65 warning requirements and discharge prohibitions.  
9

10 26. Defendants knew or should have known that lead has been identified by the State of  
11 California as a chemical known to cause cancer and therefore were subject to Proposition  
12 65 warning requirements. Defendants were also informed of the presence of lead in the  
13 Charger within Plaintiff's notice of alleged violation further discussed above at  
14 Paragraphs 16.  
15

16 27. Plaintiff's allegations regarding Charger concern "[c]onsumer products exposure[s],"  
17 which "is an exposure that results from a person's acquisition, purchase, storage,  
18 consumption, or other reasonably foreseeable use of a consumer good, or any exposure  
19 that results from receiving a consumer service." *Cal. Code Regs. tit. 27, § 25602(b)*.  
20 Charger is a consumer product, and, as mentioned in herein, exposures to lead took place  
21 as a result of such normal and foreseeable consumption and use.  
22

23 28. Plaintiff is informed, believes, and thereon alleges that between April 27, 2007 and the  
24 present, each of the Defendants knowingly and intentionally exposed California  
25 consumers and users of Charger, which Defendants manufactured, distributed, or sold as  
26 mentioned above, to lead, without first providing any type of clear and reasonable  
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1 warning of such to the exposed persons before the time of exposure. Defendants have  
2 distributed and sold Charger in California. Defendants know and intend that California  
3 consumers will use and consume Charger thereby exposing them to lead. Defendants  
4 thereby violated Proposition 65.

5 29. The principal routes of exposure are through dermal contact, ingestion, and inhalation.

6 Persons sustain exposures by handling the Charger without wearing gloves or by  
7 touching bare skin or mucous membranes with gloves after handling Charger, as well as  
8 hand to mouth contact, hand to mucous membrane, or breathing in particulate matter  
9 emanating from the Charger during application and installation, as well as through  
10 environmental mediums that carry the lead and lead compounds once contained within  
11 the Charger.  
12

13 30. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
14 Proposition 65 as to Charger have been ongoing and continuous to the date of the signing  
15 of this Complaint, as Defendants engaged and continue to engage in conduct which  
16 violates Health and Safety Code section 25249.6, including the manufacture, distribution,  
17 promotion, and sale of Charger, so that a separate and distinct violation of Proposition 65  
18 occurred each and every time a person was exposed to lead by Charger as mentioned  
19 herein.  
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21 31. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
22 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
23 violations alleged herein will continue to occur into the future.  
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1 32. Based on the allegations herein, Defendants are liable for civil penalties of up to  
2 \$2,500.00 per day per individual exposure to lead from Charger, pursuant to Health and  
3 Safety Code section 25249.7(b).

4 33. In the absence of equitable relief, California consumers, the general public, and others  
5 will continue to be involuntarily exposed to lead that is contained in Charger, creating a  
6 substantial risk of irreparable harm. Thus, by committing the acts alleged herein,  
7 Defendants have caused irreparable harm for which there is no plain, speedy, or adequate  
8 remedy at law.  
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10 34. Plaintiff has engaged in good faith efforts to resolve the claim alleged herein prior to  
11 filing this Complaint.  
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17 **PRAYER FOR RELIEF**

18 Plaintiff demands against each of the Defendants, including Mizco International, Inc. and  
19 Does 1-50, as follows:

- 20 1. A permanent injunction mandating Proposition 65-compliant warnings as to the  
21 respective consumer product of each defendant;
- 22 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
- 23 3. Costs of suit;
- 24 4. Reasonable attorney fees and costs; and
- 25 5. Any further relief that the court may deem just and equitable.  
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Dated: 12/5/0

YEROUSHALMI & ASSOCIATES

BY: \_\_\_\_\_  
Reuben Yeroushalmi  
Attorneys for Plaintiff,  
Consumer Advocacy Group, Inc.