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11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13  
14 COUNTY OF LOS ANGELES – CENTRAL DISTRICT

15 CONSUMER ADVOCACY GROUP, INC.,  
16 in the public interest,

17 Plaintiff,

18 v.

19 MIZCO INTERNATIONAL, INC., a New  
20 York Corporation, TJX COMPANIES, INC.  
21 dba TJ.MAXX, a Delaware Corporation and  
22 DOES 1-50;

23 Defendants.

24 CASE NO. **BC473112**

25 COMPLAINT FOR PENALTY,  
26 INJUNCTION, AND RESTITUTION

27 Violation of Proposition 65, the Safe  
28 Drinking Water and Toxic Enforcement  
Act of 1986 (*Health & Safety Code*, §  
25249.5, *et seq.*)

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

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

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CONFORMED COPY  
ORIGINAL FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

NOV 07 2011

John A. Clarke, Executive Officer/Clerk  
BY [Signature] Deputy  
Regina Juliano

COPY

**THE PARTIES**

- 1  
2 1. Plaintiff Consumer Advocacy Group, Inc. ("Plaintiff" or "CAG") is an organization  
3 qualified to do business in the State of California. CAG is a person within the meaning  
4 of Health and Safety Code section 25249.11, subdivision (a). CAG, acting as a private  
5 attorney general, brings this action in the public interest as defined under Health and  
6 Safety Code section 25249.7, subdivision (d).
- 7 2. Defendant MIZCO INTERNATIONAL, INC. ("Mizco") is a New York corporation,  
8 qualified to do business and doing business in the State of California at all relevant times  
9 herein.
- 10 3. Defendant TJX COMPANIES, INC. dba T.J. MAXX ("TJX") is a Delaware corporation,  
11 qualified to do business and doing business in the State of California at all relevant times  
12 herein.
- 13 4. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-50,  
14 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
15 complaint to allege their true names and capacities when ascertained. Plaintiff is  
16 informed, believes, and thereon alleges that each fictitiously named defendant is  
17 responsible in some manner for the occurrences herein alleged and the damages caused  
18 thereby.
- 19 5. At all times mentioned herein, the term "Defendants" includes MIZCO  
20 INTERNATIONAL, INC., TJX COMPANIES, INC. and Does 1-50.
- 21 6. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all  
22 times mentioned herein have conducted business within the State of California.
- 23 7. At all times relevant to this action, each of the Defendants, including Does 1-50, was an  
24 agent, servant, or employee of each of the other Defendants. In conducting the activities  
25 alleged in this Complaint, each of the Defendants was acting within the course and scope  
26 of this agency, service, or employment, and was acting with the consent, permission, and  
27 authorization of each of the other Defendants. All actions of each of the Defendants  
28 alleged in this Complaint were ratified and approved by every other Defendant or their

1 officers or managing agents. Alternatively, each of the Defendants aided, conspired with  
2 and/or facilitated the alleged wrongful conduct of each of the other Defendants.

- 3 8. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
4 Defendants was a person doing business within the meaning of Health and Safety Code  
5 section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more  
6 employees at all relevant times.

7 **JURISDICTION**

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

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

- 21 11. Venue is proper in the County of Los Angeles because one or more of the instances of  
22 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
23 because Defendants conducted, and continue to conduct, business in the County of Los  
24 Angeles with respect to the consumer product that is the subject of this action.

25 **BACKGROUND AND PRELIMINARY FACTS**

- 26 12. In 1986, California voters approved an initiative to address growing concerns about  
27 exposure to toxic chemicals and declared their right "[t]o be informed about exposures to  
28 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,

1 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking  
2 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections  
3 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources  
4 from contamination, to allow consumers to make informed choices about the products  
5 they buy, and to enable persons to protect themselves from toxic chemicals as they see  
6 fit.

7 13. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
8 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety Code*  
9 § 25249.8. The list, which the Governor updates at least once a year, contains over 700  
10 chemicals and chemical families. Proposition 65 imposes warning requirements and  
11 other controls that apply to Proposition 65-listed chemicals.

12 14. All businesses with ten (10) or more employees that operate or sell products in California  
13 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited  
14 from knowingly discharging Proposition 65-listed chemicals into sources of drinking  
15 water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and  
16 reasonable" warnings before exposing a person, knowingly and intentionally, to a  
17 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

18 15. Proposition 65 provides that any person "violating or threatening to violate" the statute  
19 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* § 25249.7.  
20 "Threaten to violate" means "to create a condition in which there is a substantial  
21 probability that a violation will occur." *Health & Safety Code* § 25249.11(e).

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

24 16. Plaintiff identified certain practices of manufacturers and distributors of lead-bearing  
25 products of exposing, knowingly and intentionally, persons in California to the  
26 Proposition 65-listed chemicals of such products without first providing clear and  
27 reasonable warnings of such to the exposed persons prior to the time of exposure.

28 Plaintiff later discerned that Defendants engaged in such practice.

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

7 18. On February 27, 1987, the Governor of California added Lead to the list of chemicals  
8 known to the State to cause reproductive toxicity (*Cal. Code Regs. tit. 27, § 27001(c)*).  
9 Lead is known to the State to cause developmental, female, and male reproductive  
10 toxicity. Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20)  
11 months after addition of Lead to the list of chemicals known to the State to cause  
12 reproductive toxicity, Lead became fully subject to Proposition 65 warning requirements  
13 and discharge prohibitions.

14 **SATISFACTION OF PRIOR NOTICE**

15 19. On or about July 19, 2011, Plaintiff gave notice of alleged violations of Health and Safety  
16 Code section 25249.6, concerning consumer products exposures and occupational  
17 exposures, subject to a private action to Mizco International, Inc., TJX Companies, Inc.,  
18 and to the California Attorney General, County District Attorneys, and City Attorneys for  
19 each city containing a population of at least 750,000 people in whose jurisdictions the  
20 violations allegedly occurred, concerning the consumer product Iessentials® 7 Piece  
21 Accessory Kit, including USB Car Charger, USB Travel Charger, Headphone Splitter,  
22 Retractable USB Data Cable, Retractable Stereo Headphone, iPhone 3G/3GS Auxiliary  
23 Cable, and iPhone 3G/3GS Skin Case.

24 20. Before sending the notices of alleged violation, Plaintiff investigated the consumer  
25 products involved, the likelihood that such products would cause users to suffer  
26 significant exposures to lead, and the corporate structure of each of the Defendants.

27 21. Plaintiff's notice of alleged violation included a Certificate of Merit executed by the  
28 attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney for

1 Plaintiff who executed the certificate had consulted with at least one person with relevant  
2 and appropriate expertise who reviewed data regarding the exposures to lead,  
3 respectively, which are the subject Proposition 65-listed chemicals of this action. Based  
4 on that information, the attorney for Plaintiff who executed the Certificate of Merit  
5 believed there was a reasonable and meritorious case for this private action. The attorney  
6 for Plaintiff attached to the Certificate of Merit served on the Attorney General the  
7 confidential factual information sufficient to establish the basis of the Certificate of  
8 Merit.

9 22. Plaintiff's notices of alleged violations also included a Certificate of Service and a  
10 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
11 (Proposition 65) A Summary." *Health & Safety Code* § 25249.7(d).

12 23. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff  
13 gave notices of the alleged violations to Mizco International, Inc., TJX Companies, Inc.,  
14 and the public prosecutors referenced in Paragraph 18.

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

18  
19 **FIRST CAUSE OF ACTION**

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

23 **Iessentials® 7 Piece Accessory Kit, including USB Car Charger, USB Travel Charger,  
24 Headphone Splitter, Retractable USB Data Cable, Retractable Stereo Headphone, iPhone  
25 3G/3GS Auxiliary Cable, and iPhone 3G/3GS Skin Case.**

- 26 1. Plaintiff Consumer Advocacy Group, Inc. repeats and incorporates by reference  
27 paragraphs 1 through 23 of this complaint as though fully set forth herein.  
28 2. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,  
distributor, promoter, or retailer of Iessentials® 7 Piece Accessory Kit, including USB

1 Car Charger, USB Travel Charger, Headphone Splitter, Retractable USB Data Cable,  
2 Retractable Stereo Headphone, iPhone 3G/3GS Auxiliary Cable, and iPhone 3G/3GS Skin  
3 Case (hereinafter "Accessory Kit"), a consumer product designed for use for adding  
4 accessories to utilize the iPhone 3G/3GS.

5 3. Plaintiff is informed, believes, and thereon alleges that Accessory Kit contains Lead.

6 4. Defendants knew or should have known that Lead has been identified by the State of  
7 California as a chemical known to cause cancer and reproductive toxicity and therefore  
8 was subject to Proposition 65 warning requirements. Defendants were also informed of  
9 the presence of Lead in Accessory Kit within Plaintiff's notice of alleged violations  
10 further discussed above at Paragraph 18.

11 5. Plaintiff's allegations regarding Accessory Kit concern "[c]onsumer products  
12 exposure[s]," which "is an exposure that results from a person's acquisition, purchase,  
13 storage, consumption, or other reasonably foreseeable use of a consumer good, or any  
14 exposure that results from receiving a consumer service." *Cal. Code Regs. tit. 27, §*  
15 *25602(b)*. Accessory Kit is a consumer product, and, as mentioned herein, exposures to  
16 Lead took place as a result of such normal and foreseeable consumption and use.

17 6. Plaintiff is informed, believes, and thereon alleges that between July 19, 2008 and the  
18 present, each of the Defendants knowingly and intentionally exposed California  
19 consumers and users of Accessory Kit, which Defendants manufactured, distributed, or  
20 sold as mentioned above, to Lead, without first providing any type of clear and  
21 reasonable warning of such to the exposed persons before the time of exposure.  
22 Defendants have distributed and sold Accessory Kit in California. Defendants know and  
23 intend that California consumers will use and consume Accessory Kit thereby exposing  
24 them to Lead. Defendants thereby violated Proposition 65.

25 7. The principal routes of exposure are through dermal contact, ingestion and inhalation.  
26 Persons sustain exposures by handling Accessory Kit without wearing gloves or any  
27 other personal protective equipment, or by touching bare skin or mucous membranes with  
28 gloves after handling Accessory Kit, as well as through hand to mouth contact, hand to

1 mucous membrane, or breathing in particulate matter dispersed from Accessory Kit.

2 And as to Defendants' employees, employees may be exposed to lead in the course of  
3 their employment by handling, distributing, and selling Accessory Kit.

4 8. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
5 Proposition 65 as to Accessory Kit have been ongoing and continuous to the date of the  
6 signing of this complaint, as Defendants engaged and continue to engage in conduct  
7 which violates Health and Safety Code section 25249.6, including the manufacture,  
8 distribution, promotion, and sale of Accessory Kit, so that a separate and distinct  
9 violation of Proposition 65 occurred each and every time a person was exposed to Lead  
10 by Accessory Kit as mentioned herein.

11 9. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
12 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
13 violations alleged herein will continue to occur into the future.

14 10. Based on the allegations herein, Defendants are liable for civil penalties of up to  
15 \$2,500.00 per day per individual exposure to Lead from Accessory Kit, pursuant to  
16 Health and Safety Code section 25249.7(b).

17 11. In the absence of equitable relief, the general public will continue to be involuntarily  
18 exposed to Lead that is contained in Accessory Kit, creating a substantial risk of  
19 irreparable harm. Thus, by committing the acts alleged herein, Defendants have caused  
20 irreparable harm for which there is no plain, speedy, or adequate remedy at law.

21 12. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to  
22 filing this Complaint.



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**PRAYER FOR RELIEF**

Plaintiff demands against each of the Defendants as follows:

1. A permanent injunction mandating Proposition 65-compliant warnings;
2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
3. Costs of suit;
4. Reasonable attorney fees and costs; and
5. Any further relief that the court may deem just and equitable.

Dated: November 9, 2011

YEROUSHALMI & ASSOCIATES

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