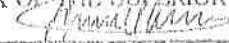


1 Evan J. Smith, Esquire (SBN 242352)
2 Ryan P. Cardona, Esquire (SBN 302113)
3 BRODSKY & SMITH, LLC
4 9595 Wilshire Blvd., Ste. 900
5 Beverly Hills, CA 90212
6 Telephone: (877) 534-2590
7 Facsimile: (310) 247-0160

8 *Attorneys for Plaintiff*

ENDORSED
FILED
ALAMEDA COUNTY

JUN 23 2017

CLERK OF THE SUPERIOR COURT
By 
JANE THOMAS, Deputy

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

GABRIEL ESPINOSA,

Plaintiff,

v.

MIZCO INTERNATIONAL, INC.,

Defendant.

Case No.:

RG17865155

COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF

(Violation of Health & Safety Code §25249.5
et seq.)

BY FAX

Plaintiff Gabriel Espinosa ("Plaintiff"), by and through his attorneys, alleges the following cause of action in the public interest of the citizens of the State of California.

BACKGROUND OF THE CASE

1. Plaintiff brings this representative action on behalf of all California citizens to enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at the Health and Safety Code § 25249.5 *et seq* ("Proposition 65"), which reads, in relevant part, "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

2. This complaint is a representative action brought by Plaintiff in the public interest of the citizens of the State of California to enforce the People's right to be informed of the health

1 hazards caused by exposure to Diisononyl phthalate (DINP), a toxic chemical found in
2 lessentials USB Cables manufactured, sold and/or distributed in California by defendant Mizco
3 International, Inc. ("Mizco" or "Defendant") in California.

4 3. DINP is a harmful chemical known to the State of California to cause cancer. On
5 December 20, 2013, the State of California listed DINP as a chemical known to the State to
6 cause cancer and it has come under the purview of Proposition 65 regulations since that time.
7 Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

8 4. Proposition 65 requires all businesses with ten (10) or more employees that
9 operate within California or sell products therein to comply with Proposition 65 regulations.
10 Included in such regulations is the requirement that businesses must label any product containing
11 a Proposition 65-listed chemical with a "clear and reasonable" warning before "knowingly and
12 intentionally" exposing any person to it.

13 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
14 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety
15 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin
16 the actions of a defendant which "violate[s] or threaten[s] to violate" the statute. Health &
17 Safety Code § 25249.7.

18 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
19 and/or offers for sale in California, without the required warning, USB cables, including but not
20 limited to SKU No. 7 5830265011 8 ("Product" or "Products"), that contain DINP.

21 7. Defendant's failure to warn consumers and other individuals in California of the
22 health hazards associated with exposure to DINP in conjunction with the sale, manufacture,
23 and/or distribution of the Product is a violation of Proposition 65 and subjects Defendant to the
24 enjoinder and civil penalties described herein.

25 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition
26 65 in accordance with Health and Safety Code § 25249.7(b).

27 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
28 Defendant to provide purchasers or users of the Product with the required warnings related to the

1 dangers and health hazards associated with exposure to DINP pursuant to Health and Safety
2 Code § 25249.7(a).

3 **PARTIES**

4 10. Plaintiff is a citizen of the State of California acting in the interest of the general
5 public to promote awareness of exposures to toxic chemicals in products sold in California and
6 to improve human health by reducing hazardous substances contained in such items. He brings
7 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

8 11. Defendant Mizco designs and manufactures, and sells and distributes mobile
9 phone headsets and accessories. Through its business, Mizco effectively manufactures, imports,
10 distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies
11 by its conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale
12 or use in the State of California.

13 12. Defendant Mizco is a “person” in the course of doing business within the meaning
14 of Health & Safety Code sections 25249.6 and 25249.11.

15 **VENUE AND JURISDICTION**

16 13. Venue is proper in the County of Alameda because one or more of the instances
17 of wrongful conduct occurred, and continue to occur in this county and/or because Defendant
18 conducted, and continues to conduct, business in the County of Alameda with respect to the
19 Product.

20 14. This Court has jurisdiction over this action pursuant to California Constitution
21 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
22 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the
23 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,
24 this Court has jurisdiction over this lawsuit.

25 15. This Court has jurisdiction over Defendant because it is either a citizen of the
26 State of California, has sufficient minimum contacts with the State of California, is registered
27 with the California Secretary of State as foreign corporations authorized to do business in the
28 State of California, and/or has otherwise purposefully availed itself of the California market.

1 Such purposeful availment has rendered the exercise of jurisdiction by California courts
2 consistent and permissible with traditional notions of fair play and substantial justice.

3 **SATISFACTION OF NOTICE REQUIREMENTS**

4 16. On April 19, 2017, Plaintiff gave notice of alleged violation of Health and Safety
5 Code § 25249.6 (the "Notice") to Mizco concerning the exposure of California citizens to DINP
6 contained in the Product without proper warning, subject to a private action to Mizco and to the
7 California Attorney General's office and the offices of the County District attorneys and City
8 Attorneys for each city with a population greater than 750,000 persons wherein the herein
9 violations allegedly occurred.

10 17. The Notice complied with all procedural requirements of Proposition 65 including
11 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at
12 least one person with relevant and appropriate expertise who reviewed relevant data regarding
13 DINP exposure, and that counsel believed there was meritorious and reasonable cause for a
14 private action.

15 18. After receiving the Notice, and to Plaintiff's best information and belief, none of
16 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted
17 a cause of action against Mizco under Proposition 65 to enforce the alleged violations which are
18 the subject of Plaintiff's notice of violation.

19 19. Plaintiff is commencing this action more than sixty (60) days from the date of the
20 Notice to Mizco, as required by law.

21 **FIRST CAUSE OF ACTION**

22 **(By Plaintiff against Defendant for the Violation of Proposition 65)**

23 20. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of
24 this complaint as though fully set forth herein.

25 21. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,
26 and/or retailer of the Product.

27 22. The Product contains DINP, a hazardous chemical found on the Proposition 65
28 list of chemicals known to be hazardous to human health.

1 23. The Product does not comply with the Proposition 65 warning requirements.

2 24. Plaintiff, based on his best information and belief, avers that at all relevant times
3 herein, and at least since March 21, 2017, continuing until the present, that Mizco has continued
4 to knowingly and intentionally expose California users and consumers of the Product to DINP
5 without providing required warnings under Proposition 65.

6 25. The exposures that are the subject of the Notice result from the purchase,
7 acquisition, handling and recommended use of the product. Consequently, the primary route of
8 exposure to these chemicals is through dermal absorption. Users may potentially be exposed to
9 DINP by dermal absorption through direct skin contact with the cord during routine use when the
10 cord is manipulated with bare hands. The product can be expected to emit gas phase DINP into
11 the air over the lifetime of the product. If the cable is stored or transported in a carrier DINP that
12 leaches from the cable may contaminate other articles contained within these closed spaces that
13 are subsequently handled, worn, mouthed, or ingested by the user. Finally, while mouthing of
14 the product does not seem likely, some amount of exposure through ingestion can occur by
15 touching the product, with subsequent touching of the user's hand to mouth.

16 26. Plaintiff, based on his best information and belief, avers that such exposures will
17 continue every day until clear and reasonable warnings are provided to Product purchasers and
18 users or until this known toxic chemical is removed from the Product.

19 27. Defendant has knowledge that the normal and reasonably foreseeable use of the
20 Product exposes individuals to DINP, and Defendant intends that exposures to DINP will occur
21 by their deliberate, non-accidental participation in the manufacture, importation, distribution,
22 sale and offering of the Product to consumers in California

23 28. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
24 Complaint.

25 29. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above
26 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

27 30. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
28 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

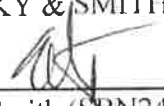
1 PRAYER FOR RELIEF

2 WHEREFORE, Plaintiff demands judgment against Defendant and requests the
3 following relief:
4

- 5 A. That the court assess civil penalties against Defendant in the amount of
6 \$2,500 per day for each violation in accordance with Health and Safety
7 Code § 25249.7(b);
8 B. That the court preliminarily and permanently enjoin Defendant mandating
9 Proposition 65 compliant warnings on the Product;
10 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
11 D. That the court grant any further relief as may be just and proper.

12 Dated: June 23, 2017

BRODSKY & SMITH, LLC

13 By: 
14 Evan J. Smith (SBN242352)
15 Ryan P. Cardona (SBN302113)
16 9595 Wilshire Boulevard, Suite 900
17 Beverly Hills, CA 90212
18 Telephone: (877) 534-2590
19 Facsimile: (310) 247-0160

20 *Attorneys for Plaintiff*
21
22
23
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25
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