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7 Attorneys for Plaintiff
8 CONSUMER ADVOCACY GROUP, INC.

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF LOS ANGELES

11 CONSUMER ADVOCACY GROUP,
12 Plaintiff,
13 v.
14 MIZCO INTERNATIONAL, INC.,
15 Defendant.

Case No. BC451036

Assigned For All Purposes To The
Honorable Mary H. Strobel

CONSENT JUDGMENT [PROPOSED]

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18 **1. INTRODUCTION**

19 1.1 This Consent Judgment is entered into by and between plaintiff Consumer
20 Advocacy Group, Inc. (referred to as "CAG) acting on behalf of itself and in the interest of the
21 public and defendant Mizco International, Inc. (referred to as "Mizco"), with each a Party and
22 collectively referred to as "Parties."

23 1.2 Mizco employs ten or more persons, is a person in the course of doing business for
24 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
25 Safety Code §§ 25249.6 et seq. ("Proposition 65"), and manufactures, distributes, and sells car
26 lighter chargers ("Car Lighter Chargers"). Lead is known to the State of California to cause
27 cancer and/or birth defects or other reproductive harm.
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1 **1.3 Notices of Violation.**

2 1.3.1 On July 20, 2010, CAG served Mizco, T. J. and various public enforcement
3 agencies with a document entitled “60-Day Notice of Violation” (“August 5, 2010
4 Notice”) that provided the recipients with notice of alleged violations of Health & Safety
5 Code § 25249.6 for failing to warn individuals in California of exposures to lead
6 contained in Cellular Innovations Wireless Accessories Car Lighter Charger Universal
7 Charger Series PCB-BB sold by Mizco. No public enforcer has commenced or diligently
8 prosecuted the allegations set forth in the July 20, 2010 Notice.

9 1.3.2 On March 4, 2011, CAG served Mizco and various public enforcement
10 agencies with a document entitled “60-Day Notice of Violation” (“March 4, 2011
11 Notice”) that provided the recipients with notice of alleged violations of Health & Safety
12 Code § 25249.6 for failing to warn individuals in California of exposures to lead
13 contained in cellular phone chargers sold by Mizco. No public enforcer has commenced
14 or diligently prosecuted the allegations set forth in the March 4, 2011 Notice.

15 1.3.3 On July 15, 2011, CAG served Mizco and various public enforcement
16 agencies with a document entitled “60-Day Notice of Violation” (“July 15, 2011 Notice”)
17 that provided the recipients with notice of alleged violations of Health & Safety Code §
18 25249.6 for failing to warn individuals in California of exposures to lead contained in car
19 charging products, home charging products, travel charging products, ear buds, splitters,
20 and cases, including but not limited to the Iessentials 7 Piece Accessory Kit sold by
21 Mizco. No public enforcer has commenced or diligently prosecuted the allegations set
22 forth in the July 15, 2011 Notice.

23 **1.4 Complaints.**

24 1.4.1 On December 9, 2010, CAG filed a Complaint for civil penalties and
25 injunctive relief (“Complaint”) in Los Angeles, Superior Court, Case No. BC451036,
26 against Mizco. The Complaint alleges, among other things, that Mizco violated
27 Proposition 65 by failing to give clear and reasonable warnings of exposure to lead from
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1 Cellular Innovations Wireless Accessories Car Lighter Charger Universal Charger Series
2 PCB-BB.

3 1.4.2 On November 7, 2011, CAG filed a complaint for civil penalties and
4 injunctive relief in Los Angeles, Superior Court, Case No. BC473112, against Mizco.
5 The complaint alleges, among other things, that Mizco violated Proposition 65 by failing
6 to give clear and reasonable warnings of exposure to lead from Essentials 7 Piece
7 Accessory Kit sold by Mizco.

8 1.4.3 Upon entry of this Consent Judgment, the complaint in Case No.
9 BC451036 shall be deemed amended to include the violations alleged in the March 4,
10 2011 Notice, and the July 15, 2011 Notice, and CAG shall file a dismissal with prejudice
11 of the complaint in Case No. BC473112.

12 **1.5 Consent to Jurisdiction**

13 For purposes of this Consent Judgment, the parties stipulate that this Court has jurisdiction
14 over the allegations of violations contained in the Complaint and personal jurisdiction over Mizco
15 as to the acts alleged in the Complaint, that venue is proper in the County of Los Angeles and that
16 this Court has jurisdiction to enter this Consent Judgment as a full settlement and resolution of the
17 allegations contained in the Complaint and of all claims which were or could have been raised by
18 any person or entity based in whole or in part, directly or indirectly, on the facts alleged therein or
19 arising therefrom or related to.

20 **1.6 No Admission**

21 This Consent Judgment resolves claims that are denied and disputed. The parties enter
22 into this Consent Judgment pursuant to a full and final settlement of any and all claims between
23 the parties for the purpose of avoiding prolonged litigation. This Consent Judgment shall not
24 constitute an admission with respect to any material allegation of the Complaint, each and every
25 allegation of which Mizco denies, nor may this Consent Judgment or compliance with it be used
26 as evidence of any wrongdoing, misconduct, culpability or liability on the part of Mizco.
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1 **2. DEFINITIONS**

2 2.1 “Accessible Component” means any component of a Covered Product that could
3 be touched by a person during reasonably foreseeable use.

4 2.2 “Covered Products” means car charging products, home charging products, travel
5 charging products, ear buds, splitters, and cases.

6 2.3 “Effective Date” means the date that this Consent Judgment is entered by the
7 Court.

8 2.4 “Lead” means lead and lead compounds.

9 2.5 “Notices” means the July 20, 2010, March 4, 2011, and July 15, 2011.

10 **3. INJUNCTIVE RELIEF/REFORMULATION/CLEAR AND REASONABLE**
11 **WARNINGS.**

12 3.1 On or after February 6, 2012, Mizco shall not manufacture or import Covered
13 Products that contain Accessible Components with more than 200 parts per million (“ppm”) Lead
14 by weight.

15 3.2 On or after August 5, 2012, Mizco shall not manufacture or import Covered
16 Products that contain Accessible Components with more than 100 ppm Lead by weight.

17 **4. SETTLEMENT PAYMENT**

18 4.1 Within 14 business days of the Effective Date or receipt of Forms W-9 from CAG,
19 whichever is later, Mizco shall pay a total of \$40,000 to CAG in full and complete settlement of
20 all monetary claims by CAG related to the Notices, as follows.

21 4.2 **Payment In Lieu of Civil Penalties:** Mizco shall pay \$2,000 in lieu of civil
22 penalties to “Consumer Advocacy Group, Inc.” CAG will use the payment for such projects and
23 purposes related to environmental protection, worker health and safety, or reduction of human
24 exposure to hazardous substances (including administrative and litigation costs arising from such
25 projects), as CAG may choose.

26 4.3 **Reimbursement of Attorneys Fees and Costs:** Mizco shall pay \$38,000
27 “Yeroushalmi & Associates” as reimbursement for the investigation fees and costs, testing costs,
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1 expert fees, attorney fees, and other litigation costs and expenses for all work performed through
2 the approval of this Consent Judgment.

3 4.4 Payments shall be delivered to: Reuben Yeroushalmi, Yeroushalmi & Associates,
4 9100 Wilshire Blvd., Suite 610E, Beverly Hills, CA 90212.

5 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT**

6 5.1 This Consent Judgment is a full, final, and binding resolution between CAG on
7 behalf of itself and in the public interest and Mizco and its officers, directors, insurers,
8 employees, parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliates, sister
9 companies and their successors and assigns (“Defendant Releasees”) and each of their suppliers,
10 customers, distributors, wholesalers, retailers (including but not limited to The TJX Companies,
11 Inc.), or any other person in the course of doing business, and the successors and assigns of any of
12 them, who may use, maintain, distribute or sell Covered Products (“Downstream Defendant
13 Releasees”), for all claims for violations of Proposition 65 up through the Effective Date based on
14 exposure to Lead from Covered Products as set forth in the Notices. Mizco’s and Defendant
15 Releasees’ compliance with this Consent Judgment shall constitute compliance with Proposition
16 65 with respect to Lead from the Covered Products as set forth in the Notices.

17 5.2 CAG on behalf of itself, its past and current agents, representatives, attorneys,
18 successors, and/or assignees, hereby waives all rights to institute or participate in, directly or
19 indirectly, any form of legal action and releases all claims, including, without limitation, all
20 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
21 costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert
22 fees, and attorneys’ fees) of any nature whatsoever, whether known or unknown, fixed or
23 contingent (collectively “Claims”), against Mizco, Defendant Releasees, and Downstream
24 Defendant Releasees arising from any violation of Proposition 65 or any other statutory or
25 common law regarding the failure to warn about exposure to Lead in Covered Products. In
26 furtherance of the foregoing, as to alleged exposures to Covered Products, CAG hereby waives
27 any and all rights and benefits which it now has, or in the future may have, conferred upon it with
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1 respect to the Claims by virtue of the provisions of section 1542 of the California Civil Code,
2 which provides as follows:

3
4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
5 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT
6 THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM,
7 MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE
8 DEBTOR.

9 CAG understands and acknowledges that the significance and consequence of this waiver of
10 California Civil Code section 1542 is that even if CAG suffers future damages arising out of or
11 resulting from, or related directly or indirectly to, in whole or in part, the Covered Products,
12 including but not limited to any exposure to, or failure to warn with respect to exposure to, lead or
13 lead compounds from Covered Products, CAG will not be able to make any claim for those
14 damages against Mizco or the Released Entities. Furthermore, CAG acknowledges that it intends
15 these consequences for any such Claims as may exist as of the date of this release but which CAG
16 does not know exist, and which, if known, would materially affect their decision to enter into this
17 Consent Judgment, regardless of whether their lack of knowledge is the result of ignorance,
18 oversight, error, negligence, or any other cause.

19 **6. ENFORCEMENT OF JUDGMENT**

20 6.1 The terms of this Consent Judgment shall be enforced exclusively by the parties
21 hereto. Subject to Section 6.2, the parties may, by noticed motion or order to show cause before
22 the Superior Court of California, Los Angeles County, giving the notice required by law, enforce
23 the terms and conditions contained herein. A Party may enforce any of the terms and conditions
24 of this Consent Judgment only after that Party first provides 30 days notice to the Party allegedly
25 failing to comply with the terms and conditions of this Consent Judgment and attempts to resolve
26 such Party's failure to comply in an open and good faith manner.

27 6.2 **Notice of Violation.** Prior to bringing any motion, order to show cause, or other
28 proceeding to enforce Section 3.1 of this Consent Judgment, CAG shall provide a Notice of
Violation ("NOV") to Mizco. The NOV shall include for each Covered Product: the date(s) the
alleged violation(s) was observed and the location at which the Covered Product was offered for

1 sale, and shall be accompanied by all test data obtained by CAG regarding the Covered Product,
2 including an identification of the component(s) of the Covered Product that were tested.

3 6.2.1 **Non-Contested NOV.** CAG shall take no further action regarding the
4 alleged violation if, within 30 days of receiving such NOV, Mizco serves a Notice of
5 Election (“NOE”) that meets one of the following conditions:

6 (a) The Covered Product was shipped by Mizco for sale in California
7 before the Effective Date, or

8 (b) Since receiving the NOV Mizco has taken corrective action by
9 either (i) requesting that its customers in California remove the Covered Product identified
10 in the NOV from sale in California and destroy or return the Covered Product to Mizco, or
11 (ii) providing a clear and reasonable warning for the Covered Product identified in the
12 NOV pursuant to 27 Cal. Code Regs. § 25603.

13 6.2.2 **Contested NOV.** Mizco may serve an NOE informing CAG of its election
14 to contest the NOV within 30 days of receiving the NOV.

15 (a) In its election, Mizco may request that the sample(s) Covered
16 Product tested by CAG be subject to confirmatory testing at an EPA-accredited
17 laboratory.

18 (b) If the confirmatory testing establishes that the Covered Product
19 does not contain lead in excess of the level allowed in Section 3.1 CAG shall take no
20 further action regarding the alleged violation. If the testing does not establish compliance
21 with Section 3.1, Mizco may withdraw its NOE to contest the violation and may serve a
22 new NOE pursuant to Section 6.2.1.

23 (c) If Mizco does not withdraw an NOE to contest the NOV, the Parties
24 shall meet and confer for a period of no less than 30 days before CAG may seek an order
25 enforcing the terms of this Consent Judgment.

26 6.3 In any proceeding brought by either Party to enforce this Consent Judgment, such
27 party may seek whatever fines, costs, penalties or remedies as may be provided by law for any
28 violation of Proposition 65 or this Consent Judgment.

1 **7. ENTRY OF CONSENT JUDGMENT**

2 7.1 CAG shall file a motion seeking approval of this Consent Judgment pursuant to
3 California Health & Safety Code § 25249.7(f). Upon entry of the Consent Judgment, CAG and
4 Mizco waive their respective rights to a hearing or trial on the allegations of the Complaint.

5 7.2 If this Consent Judgment is not approved by the Court, (a) this Consent Judgment
6 and any and all prior agreements between the parties merged herein shall terminate and become
7 null and void, and the actions shall revert to the status that existed prior to the execution date of
8 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
9 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall
10 have any effect, nor shall any such matter be admissible in evidence for any purpose in this
11 Action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine
12 whether to modify the terms of the Consent Judgment and to resubmit it for approval.

13 **8. MODIFICATION OF JUDGMENT**

14 8.1 This Consent Judgment may be modified only upon written agreement of the
15 parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of
16 any party as provided by law and upon entry of a modified Consent Judgment by the Court.

17 8.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
18 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

19 **9. RETENTION OF JURISDICTION**

20 9.1 This Court shall retain jurisdiction of this matter to implement and enforce the
21 terms of this Consent Judgment.

22 **10. DUTIES LIMITED TO CALIFORNIA**

23 10.1 This Consent Judgment shall have no effect on Covered Products sold by Mizco
24 outside the State of California.

25 **11. SERVICE ON THE ATTORNEY GENERAL**

26 11.1 CAG shall serve a copy of this Consent Judgment, signed by both parties, on the
27 California Attorney General so that the Attorney General may review this Consent Judgment
28 prior to its submittal to the Court for approval. No sooner than forty five (45) days after the

1 Attorney General has received the aforementioned copy of this Consent Judgment, and in the
2 absence of any written objection by the Attorney General to the terms of this Consent Judgment,
3 the parties may then submit it to the Court for approval.

4 **12. ATTORNEY FEES**

5 12.1 Except as specifically provided in Section 4, each Party shall bear its own costs
6 and attorney fees in connection with this action.

7 **13. ENTIRE AGREEMENT**

8 13.1 This Consent Judgment contains the sole and entire agreement and understanding
9 of the parties with respect to the entire subject matter hereof and any and all prior discussions,
10 negotiations, commitments and understandings related hereto. No representations, oral or
11 otherwise, express or implied, other than those contained herein have been made by any party
12 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
13 deemed to exist or to bind any of the parties.

14 **14. GOVERNING LAW**

15 14.1 The validity, construction and performance of this Consent Judgment shall be
16 governed by the laws of the State of California, without reference to any conflicts of law
17 provisions of California law.

18 14.2 The Parties, including their counsel, have participated in the preparation of this
19 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
20 Consent Judgment was subject to revision and modification by the Parties and has been accepted
21 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
22 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
23 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
24 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
25 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
26 this regard, the Parties hereby waive California Civil Code § 1654.

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1 **15. EXECUTION AND COUNTERPARTS**

2 15.1 This Consent Judgment may be executed in counterparts and by means of
3 facsimile or portable document format (pdf), which taken together shall be deemed to constitute
4 one document.

5 **16. NOTICES**

6 16.1 Any notices under this Consent Judgment shall be by personal delivery of First
7 Class Mail.

8 If to CAG:

9
10 Reuben Yeroushalmi, Esq.
11 9100 Wilshire Boulevard, Suite 610E
12 Beverly Hills, CA 90212
13 (310) 623-1926

14 If to Mizco:

15 Mizco International Inc.
16 80 Essex Avenue
17 East Avenel, NJ 07001

18 With a copy to:

19 Jeffrey B. Margulies, Esq.
20 Fulbright & Jaworski LLP
21 555 South Flower Street, 41st Floor
22 Los Angeles, CA 90071
23 (213) 892-9286

24 and

25 John D. D'Ercole, Esq.
26 ROBINSON BROG LEINWAND GREENE GENOVESE & GLUCK P.C.
27 875 Third Avenue, 9th Floor
28 New York, NY 10022-0123
(212) 603-6300

1 **17. AUTHORITY TO STIPULATE**

2 17.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized
3 by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of
4 the party represented and legally to bind that party.

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AGREED TO:

Date: February __, 2012

By: _____
Plaintiff, CONSUMER ADVOCACY
GROUP, INC.

AGREED TO:

Date: February 9, 2012

By:  _____
Defendant, MIZCO INTERNATIONAL, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

AUTHORITY TO STIPULATE

1.36 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of the party represented and legally to bind that party.

AGREED TO:

Date: February 10, 2012

AGREED TO:

Date: February __, 2012

By: *Ann H. Marous Pres.*
Plaintiff, CONSUMER ADVOCACY
GROUP, INC.

By: _____
Defendant, MIZCO INTERNATIONAL, INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT