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Telephone: 619-235-5400

Attorneys for Plaintiff, Evelyn Wimberley

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

EVELYN WIMBERLEY,

Plaintiff,

v.

MIZCO INTERNATIONAL, INC;
FED EX CORPORATION;
TRAVELOCITY.COM, LP; AND DOES 1-25
INCLUSIVE

Case No. 37-2015-00018193-CU-NP-CTL

UNLIMITED JURISDICTION
AMENDED CONSENT JUDGMENT
Complaint Filed: June 1, 2015

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1. INTRODUCTION

1.1 **The Parties.** This Consent Judgment is entered into by and between Evelyn Wimberley acting on behalf of the public interest (hereinafter “Wimberley”) and Mizco International, INC, (hereinafter “Mizco”), with Wimberley and Mizco collectively referred to as the “Parties” and each of them as a “Party.” Wimberley is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Mizco employs ten or more persons and is a person in the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

1.2 **Allegations and Representations.**

1.2.1 Wimberley alleges that Mizco has offered for sale in the State of California and has sold in California, brass travel locks containing lead, and that such sales have not been accompanied by Proposition 65 warnings. Lead is listed under Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm. Wimberley has cited “Travelocity TSA Lock Brass 2 pack” UPC 758302634408, hereafter (“Covered Products ”), as a specific example of the brass travel locks that are the subject of her allegations.

1.2.2 Mizco represents that it: 1) it distributes and/or sells the Covered Products to others and 2) it had no reason to believe that the Covered Products contained and exposed users to lead until receiving Wimberley’s 60-Day Notice on or about March 18, 2015.

1.3 **Notices of Violation/Complaint.** On or about March 18, 2015, Wimberley served Mizco, and various public enforcement agencies with a document entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the "Notice"), alleging that Mizco was in violation of Proposition 65 for failing to warn consumers and customers that the Covered Product exposed users in California to lead. No public enforcer diligently prosecuted the claims threatened in the Notice within sixty days plus service time relative to the provision of the Notice to them by Wimberley.

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

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

14 **2. DEFINITIONS**

15 2.1 **Complaint.** The term "Complaint" shall have the meaning given in Section 1.3.

16 2.2 **Covered Product.** The term "Covered Product" means Travel Locks.

17 2.3 **Effective Date.** The term "Effective Date" shall mean the date this Consent
18 Judgment is entered as a Judgment of the Court.

19 2.4 **Notice.** The term "Notice" shall have the meaning given in Section 1.3.

20 2.5 **Releasees.** The terms "Defendant Releasees" and "Downstream Defendant
21 Releasees" shall have the meanings given in Section 5.1.

22 2.6 **Execution Date.** The term "Execution Date" shall mean the date this Consent
23 Judgment is signed by the parties

24 **3. INJUNCTIVE RELIEF: REFORMULATION**

25 3.1 Commencing on the Effective Date, Mizco shall not sell, offer for sale, or ship for
26 sale in California Covered Products that contain exposed brass or other exposed metal
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1 components with a lead content by weight in excess of 0.03% (300 parts per million, or “300
2 ppm”).

3 3.2 Covered Products that do not meet the warning exemption standard (i.e. products
4 with lead content by weight in excess of 0.03% ppm) shall be accompanied by a warning as
5 described in section 3.4 below. The warning requirements set forth in 3.4 below shall apply only
6 to Covered manufactured, distributed, or offered for sale in California by Mizco on or after 90
7 days after the effective date in California.

8 3.4 Where required under section 3.3 above, Mizco shall provide Proposition 65
9 warnings as follow: **“California Prop. 65 Warning: This product contains lead, a
10 chemical known to the State of California to cause cancer, birth defects or other
11 reproductive harm.”**

12 3.5 Mizco’s compliance with the terms of this Consent Judgment shall constitute
13 compliance with Proposition 65 with respect to exposure to lead from Covered Products.

14 **4. MONETARY TERMS**

15 4.1 **Civil Penalty.** Mizco shall pay a civil penalty of \$500.00 pursuant to Health and
16 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
17 Code § 25192, with 75% of these funds remitted to the State of California’s Office of
18 Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
19 Wimberley, as provided by California Health & Safety Code § 25249.12(d).

20 4.2 **Attorney Fees.** Mizco agrees to pay and will not oppose an application made by
21 Wimberley’s counsel for an award of attorney fees, inclusive of all expenses and costs incurred as
22 a result of investigating, bringing this matter to Mizco’s attention, litigating and negotiating and
23 obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil
24 Procedure section 1021.5, in an amount not to exceed \$24,500.00. Other than the payment
25 required hereunder, each side is to bear its own attorneys’ fees and costs.
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1 4.3 Mizco shall send a check via overnight delivery to Wimberley’s counsel the total
2 sum of \$25,000.00, representing the civil penalty and attorney fees in Sections 4.1 and 4.2 by
3 May 22, 2015.
4

5 **5. RELEASE OF ALL CLAIMS**

6 5.1 Wimberley, on behalf of herself and in the public interest, releases Mizco and its
7 parents, shareholders, employees, contractors, agents, divisions, subdivisions, subsidiaries,
8 partners, sister companies, and affiliates, and their successors and assigns (“Defendant
9 Releasees”), and all entities to whom they directly or indirectly distribute or sell or have
10 distributed or sold Covered Products, including but not limited to manufacturers, suppliers,
11 distributors, wholesalers, customers, licensors, licensees, retailers, franchisees, and cooperative
12 members, including but not limited to Fed Ex Corporation, and Travelocity.com, LP (both of
13 whom are parties to the Notice), and their subsidiaries and affiliates (“Downstream Defendant
14 Releasees”), of all claims for violations of Proposition 65 arising from the Covered Products as
15 set forth in her Notice of Violation, with respect to any Covered Products manufactured,
16 distributed, or sold by Mizco prior to the Effective Date.

17 5.2 In addition to the foregoing, Wimberley, on behalf of herself, her past and current
18 agents, representatives, attorneys, and successors and/or assignees, and *not* in her representative
19 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
20 legal action and releases Mizco, Defendant Releasees, and Downstream Defendant Releasees
21 from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations,
22 debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
23 attorneys’ fees, of any nature whatsoever, known or unknown, in law or equity, fixed or
24 contingent, now or in the future, with respect to any alleged violations of Proposition 65 related to
25 or arising from Covered Products manufactured distributed or sold by Mizco or Defendant
26 Releasees. With respect to the foregoing waivers and releases in this paragraph, Wimberley
27 hereby specifically waives any and all rights and benefits which she now has, or in the future may
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1 have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which
2 provides as follows:

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

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10 5.3 Mizco waive(s) any and all claims against Wimberley, her attorneys and other
11 representatives, for any and all actions taken or statements made (or those that could have been
12 taken or made) by Wimberley and her attorneys and other representatives, whether in the course
13 of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this
14 matter, and/or with respect to Covered Products. Further, Mizco agrees to reasonably cooperate
15 to facilitate the entry of this Consent Judgment.

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17 **6. SEVERABILITY AND MERGER**

18 6.1 If, subsequent to the execution of this Consent Judgment, any of the provisions of
19 this document are held by a court to be unenforceable, the validity of the enforceable provisions
20 remaining shall not be adversely affected.

21 6.2 This Consent Judgment contains the sole and entire agreement of the Parties and
22 any and all prior negotiations and understandings related hereto shall be deemed to have been
23 merged within it. No representations or terms of agreement other than those contained herein
24 exist or have been made by any Party with respect to the other Party or the subject matter hereof.

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26 **7. GOVERNING LAW**

27 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
28 California and apply within the State of California. In the event that Proposition 65 is repealed or
is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
Mizco shall provide written notice to Wimberley of any asserted change in the law, and shall have
no further obligations pursuant to this Consent Judgment with respect to, and to the extent that,
Covered Products are so affected.

1 **8. NOTICES**

2 8.1 Unless specified herein, all correspondence and notices required to be provided
3 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
4 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any
5 party by the other party at the following addresses:

6 For Mizco:

7
8 Mizco International, Inc.
9 80 Essex Avenue East
10 Avenel, NJ 07001
11 ATTN: Albert Mizrahi

12 With a copy to:

13 Miller, Leiby & Associates, P.C
14 32 Broadway, 13th Floor
15 New York, NY 10004
16 Attn: Evan Mizrahi, Esq.

17 and

18 For Wimberley:

19 Stephen Ure
20 Law Offices of Stephen Ure, PC.
21 11622 El Camino Real, Suite 100
22 San Diego, California 92130

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 Wimberley agrees 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
5 Judgment and Mizco 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
7 the Court and shall be null and void if, for any reason, it is not approved and entered by the Court
8 within twelve months after it has been fully executed by the Parties. In such case, the Parties
9 agree to meet and confer on how to proceed and if such agreement is not reached within 30-days
10 the case shall proceed on its normal course and all monies paid as part of this settlement
11 agreement shall be refunded.

12 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
13 appellate court, the Parties shall meet and confer as to whether to modify the terms of this
14 Consent Judgment. If the Parties do not jointly agree on a course of action to take, any monies
15 paid as part of this settlement agreement shall be refunded within 15 days after remittitur to the
16 trial court, and the case shall proceed on its normal course on the trial court's calendar.

17 **11. MODIFICATION**

18 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
19 and the approval of the Court or upon the granting of a motion brought to the Court by either
20 Party.

21 **12. ATTORNEY'S FEES**

22 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent
23 Judgment shall be required to pay the prevailing party's reasonable attorney's fees.

24 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
25 pursuant to law.

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13. RETENTION OF JURISDICTION

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

14. AUTHORIZATION

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

1 IT IS HEREBY SO STIPULATED:

2 AGREED TO:

AGREED TO:

3
4 Date: 7-31-16

Date: _____

5 By: 
6 EVELYN WIMBERLEY

By: _____
MIZCO INTERNATIONAL, INC

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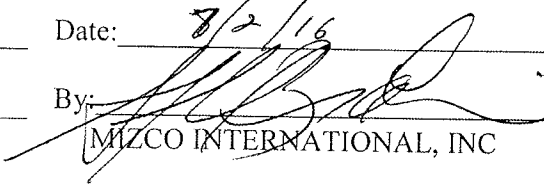
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Date: _____

Date: 8/2/16

By: _____
EVELYN WIMBERLEY

By: 
MIZCO INTERNATIONAL, INC