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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA

12 GABRIEL ESPINOSA,
13 Plaintiff,

14 v.

15 MIZCO INTERNATIONAL, INC.,
16 Defendant.

Case No.: RG17865155

CONSENT JUDGMENT

Judge: Ioana Petrou

Dept.: 15

Hearing Date: September 28, 2017

Hearing Time: 9:00 AM

Reservation #: R-1874237

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between Gabriel
3 Espinosa acting on behalf of the public interest (hereinafter “Espinosa”) and Mizco International,
4 Inc. (“Mizco” or “Defendant”) with Espinosa and Defendant collectively referred to as the “Parties”
5 and each of them as a “Party.” Espinosa is an individual residing in California who seeks to
6 promote awareness of exposures to toxic chemicals and improve human health by reducing or
7 eliminating hazardous substances contained in consumer products. Mizco is a person in the course
8 of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 et seq.

9 **1.2 Allegations and Representations.** Espinosa alleges that Defendant has exposed
10 individuals to Diisononyl phthalate (DINP) from Iessentials USB Cables without providing clear
11 and reasonable warnings under Proposition 65. DINP is listed under Proposition 65 as a chemical
12 known to the State of California to cause reproductive toxicity.

13 **1.3 Notices of Violation/Complaint.** On or about April 19, 2017, Espinosa served
14 Mizco and various public enforcement agencies with a document entitled “60-Day Notice of
15 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant
16 was in violation of Proposition 65 for failing to warn consumers and customers that Iessentials USB
17 Cables exposed users in California to DINP. No public enforcer has brought and is diligently
18 prosecuting the claims alleged in the Notice. On June 23, 2017, Espinosa filed a complaint in the
19 matter (the “Complaint”).

20 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has
21 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
22 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
23 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
24 claims which were or could have been raised in the Complaint based on the facts alleged therein
25 and/or in the Notice.

26 **1.5** Defendant denies the material allegations contained in Espinosa’s Notice and
27 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
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1 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
2 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
3 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
4 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
5 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

6 **2. DEFINITIONS**

7 **2.1 Covered Products.** The term "Covered Products" means Essentials USB cables in
8 all sizes, including but not limited to UPC No. 7 5830265011 8, that are manufactured, distributed
9 and/or offered for sale in California by Mizco, and that contain DINP.

10 **2.2 Effective Date.** The term "Effective Date" means the date this Consent Judgment is
11 entered as a Judgment of the Court.

12 **3. INJUNCTIVE RELIEF: WARNINGS**

13 **3.1** Commencing ninety (90) days after the Effective Date, Mizco shall not manufacture,
14 import, or purchase for sale in California any Covered Product that contains more than 1,000 parts
15 per million DINP, unless the Covered Product is accompanied by the following warning:
16 "WARNING: This product contains a chemical known to the State of California to cause cancer,
17 birth defects and other reproductive harm."

18 **3.2** The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
19 Covered Product's packaging or labeling. The warning shall be prominently affixed to or printed
20 on the packaging or labeling and displayed with such conspicuousness, as compared with other
21 words, statements, or designs as to render it likely to be read and understood by an ordinary
22 individual under customary conditions of purchase or use. A warning may be contained in the same
23 section of the packaging, labeling, or instruction booklet that states other safety warnings, if any,
24 concerning the use of the product and shall be at least the same size as those other safety warnings.

25 **4. MONETARY TERMS**

26 **4.1 Initial Civil Penalty.** Mizco shall pay an Initial Civil Penalty of \$2,500.00 pursuant
27 to Health and Safety Code section 25249.7(b), to be apportioned in accordance with California
28

1 Health & Safety Code § 25192, with 75% of these funds remitted to the State of California's Office
2 of Environmental Health Hazard Assessment and the remaining 25% of the penalty remitted to
3 Espinosa, as provided by California Health & Safety Code § 25249.12(d).

4 4.1.1 Within ten (10) business days of the Effective Date, Mizco shall issue two
5 separate checks for the civil penalty payment to (a) "OEHHA" in the amount of \$1,875.00; and
6 (b) "Brodsky & Smith, LLC in Trust for Espinosa" in the amount of \$625.00. Payment owed to
7 Espinosa pursuant to this Section shall be delivered to the following payment address:

8 Evan J. Smith, Esquire
9 Brodsky & Smith, LLC
10 Two Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

11 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
12 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

13 For United States Postal Service Delivery:

14 Mike Gyurics
15 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
16 P.O. Box 4010
Sacramento, CA 95812-4010

17 For Non-United States Postal Service Delivery:

18 Mike Gyurics
19 Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
20 1001 I Street
Sacramento, CA 95814

21 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith, LLC at the
22 address set forth above as proof of payment to OEHHA.

23 4.2 **Final Civil Penalty.** One Hundred Twenty (120) days after the Effective Date,
24 Mizco shall make a Final Civil Penalty payment of \$2,500.00 on the same terms as set forth in
25 Section 4.1.1 pertaining to the Initial Civil Penalty. Pursuant to Title 11 California Code of
26 Regulations, Section 3203(c), Espinosa agrees that the Final Civil Penalty payment shall be waived
27 in its entirety if, on or before the Final Civil Penalty payment is due, an officer of Mizco provides
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1 Plaintiff with a signed declaration certifying that all Covered Products it ships for sale or distributes
2 for sale in California as of the date of its certification are Reformulated Products or are marked
3 with the warnings required by this Consent Decree (hereinafter "Labeled Product") and that Mizco
4 will, to the best of its knowledge, continue to offer only Reformulated Products or Labeled Products
5 in California in the future. The option to provide a declaration certifying its complete early
6 reformulation or labeling of the Covered Products in lieu of making the Final Civil Penalty payment
7 otherwise required by this Section is a material term, and time is of the essence.

8 4.3 **Attorney Fees.** Mizco shall pay \$30,000.00 to Brodsky & Smith, LLC ("Brodsky
9 Smith") as complete reimbursement for Plaintiff Espinosa's attorneys' fees and costs incurred as a
10 result of investigating, bringing this matter to Mizco's attention, litigating and negotiating and
11 obtaining judicial approval of a settlement in the public interest, pursuant to Code of Civil
12 Procedure section 1021.5. Payment shall be made within fourteen (14) business days of the
13 Effective Date and sent to the address for Brodsky & Smith set forth in section 4.1.1, above.

14 **5. RELEASE OF ALL CLAIMS**

15 5.1 This consent judgment is a full, final, and binding resolution between Espinosa
16 acting in the public interest, and Mizco, and its parents, shareholders, divisions, subdivisions,
17 subsidiaries, partners, sister companies, and affiliates, and their successors and assigns ("Defendant
18 Releasees"), and all entities from whom they obtain and to whom they directly or indirectly
19 distribute or sell Covered Products, including but not limited to Rite Aid Corporation ("Rite Aid"),
20 manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees retailers,
21 franchisees, and cooperative members ("Downstream Defendant Releasees"), of all claims for
22 violations of Proposition 65 based on exposure to DINP from Covered Products as set forth in the
23 Notice, with respect to any Covered Products manufactured, distributed, or sold by Mizco prior to
24 one hundred twenty (120) days after the Effective Date. Compliance with the terms of this Consent
25 Judgment constitutes compliance with Proposition 65 with regard to the Covered Products.

26 5.2 In addition to the foregoing, Espinosa, on behalf of himself, his past and current
27 agents, representatives, attorneys, and successors and/or assignees, and not in his representative
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1 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
2 legal action and releases any Mizco, Defendant Releasees, and Downstream Defendant Releasees
3 from any and all manner of actions, causes of action, claims, demands, rights, suits, obligations,
4 debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs, expenses, and
5 attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed or contingent,
6 now or in the future, with respect to any alleged violations of Proposition 65 related to or arising
7 from Covered Products manufactured distributed or sold by Mizco or Defendant Releasees. With
8 respect to the foregoing waivers and releases in this paragraph, Espinosa hereby specifically waives
9 any and all rights and benefits which she now has, or in the future may have, conferred by virtue
10 of the provisions of Section 1542 of the California Civil Code, which provides as follows:
11

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

15 5.3 Mizco waives any and all claims against Espinosa, his attorneys and other
16 representatives, for any and all actions taken or statements made (or those that could have been
17 taken or made) by Espinosa and his attorneys and other representatives, whether in the course of
18 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
19 and/or with respect to Covered Products.

20 **6. INTEGRATION**

21 6.1 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 exist
24 or have been made by any Party with respect to the other Party or the subject matter hereof.

25 **7. GOVERNING LAW**

26 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
27 California and apply within the State of California. In the event that Proposition 65 is repealed or
28

1 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
2 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
3 to the extent that, Covered Products are so affected.

4 **8. NOTICES**

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

9 For Defendant:

10 Evan Mizrahi, Esq.
11 Miller, Leiby & Associates, P.C.
12 32 Broadway
13 13th Floor
New York, NY 10004

14 And

15 For Espinosa:

16 Evan Smith
17 Brodsky & Smith, LLC
2 Bala Plaza, Suite 510
Bala Cynwyd, PA 19004

18 Any party, from time to time, may specify in writing to the other party a change of address to
19 which all notices and other communications shall be sent.

20 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

21 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
22 which shall be deemed an original, and all of which, when taken together, shall constitute one and
23 the same document.

24 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
25 **APPROVAL**

26 10.1 Espinosa agrees to comply with the requirements set forth in California Health &
27 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment
28 and Defendant agrees it shall support approval of such Motion.

1 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
2 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
3 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
4 30 days, the case shall proceed on its normal course.

5 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
6 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
7 Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
8 its normal course on the trial court's calendar.

9 **11. MODIFICATION**

10 11.1 This Consent Judgment may be modified only by further stipulation of the Parties
11 and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

12 **12. ATTORNEY'S FEES**

13 12.1 A party who unsuccessfully brings or contests an action arising out of this Consent
14 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless
15 the unsuccessful party has acted with substantial justification. For purposes of this Consent
16 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
17 Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

18 12.2 Nothing in this Section shall preclude a Party from seeking an award of sanctions
19 pursuant to law.

20 **13. RETENTION OF JURISDICTION**

21 13.1 This Court shall retain jurisdiction of this matter to implement or modify the
22 Consent Judgment.

23 **14. AUTHORIZATION**

24 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
25 respective Parties and have read, understood and agree to all of the terms and conditions of this
26 document and certifies that he or she is fully authorized by the Party he or she represents to execute
27
28

1 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
2 explicitly provided herein each Party is to bear its own fees and costs.

3
4 **AGREED TO:**

AGREED TO:

5 Date: 6/25/2017

Date: _____

6
7 By: Gabriel Espinosa
8 GABRIEL ESPINOSA

By: _____
MIZCO INTERNATIONAL, INC.

9
10 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

11
12 Dated: _____

Judge of Superior Court

1 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
2 explicitly provided herein each Party is to bear its own fees and costs.
3

4 **AGREED TO:**

AGREED TO:

5 Date: _____
6

Date: 7/14/17

7 By: _____

By: 

8 GABRIEL ESPINOSA

MIZCO INTERNATIONAL, INC.

9
10 **IT IS SO ORDERED, ADJUDGED AND DECREED:**
11

12 Dated: _____

Judge of Superior Court