

1 MIGUEL A. CUSTODIO, JR., STATE BAR NO. 248744
2 VINEET DUBEY, STATE BAR NO. 243208
3 CUSTODIO & DUBEY LLP
4 448 S. Hill St., Suite 612
5 Los Angeles, CA 90013
6 Telephone: (213) 785-2909
7 Facsimile: (213) 785-2899

8 Attorneys for Plaintiff Ecological Alliance, LLC

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF LOS ANGELES

11 (Unlimited Jurisdiction)

12 ECOLOGICAL ALLIANCE, LLC, a California
13 limited liability company,

14 Plaintiff,

15 v.

16 MIZCO INTERNATIONAL, INC., a New York
17 corporation; and DOES 1 through 10, inclusive,

18 Defendants.

19 Case No.:BC698232

20 **[PROPOSED] STIPULATED**
21 **CONSENT JUDGMENT**

22
23
24
25
26
27
28

1
2 Plaintiff Ecological Alliance, LLC (“Plaintiff”), and Defendant Mizco International, Inc.
3 (“Defendant”) hereby enter into this Stipulated Consent Judgment (“Consent Judgment”) as
4 follows:

5 WHEREAS: On or about November 6, 2017, Plaintiff, through Plaintiff’s counsel, served
6 a 60 Day Notice to IP Holdings Unltd LLC, Family Dollar, Inc., the California Attorney General,
7 the District Attorneys of every County in the State of California, and the City Attorneys for every
8 City in the State of California with a population greater than 750,000 (collectively, “Public
9 Prosecutor(s)”) alleging that Defendant violated California’s Safe Drinking Water and Toxic
10 Enforcement Act of 1986, California Health and Safety Code § 25249.6, et seq., and its
11 implementing regulations (collectively, “Proposition 65”) and that Plaintiff intended to file an
12 enforcement action in the public interest; and

13 WHEREAS: Plaintiff alleges that Defendant manufactured and/or distributed earbuds and
14 earbud cords (collectively the “Covered Products”) that were sold or distributed for sale in
15 California and further alleges that those Covered Products expose consumers in the State of
16 California to chemicals including Di(2-ethylhexyl)phthalate [DEHP], which are listed by the State
17 of California pursuant to California Health and Safety Code § 25249.8; and

18 WHEREAS: Plaintiff further alleges that persons in the State of California were exposed
19 to DEHP in Covered Products without being provided the Proposition 65 warning set out at
20 California Health and Safety Code § 25249.6 and its implementing regulations (“Proposition 65
21 Warning”);

22 WHEREAS: Defendant denies the allegations of the 60 Day Notice, and denies that it has
23 violated Proposition 65 and expressly denies that it has engaged in any wrongdoing whatsoever,

24 WHEREAS: Plaintiff seeks to provide the public with Proposition 65 warnings and believes that
25 this objective is achieved by the actions described in this Consent Judgment; and

26 WHEREAS: Plaintiff and Defendant wish to resolve their differences without the delay
27 and expense of litigation.

28 NOW THEREFORE BE IT RESOLVED AND AGREED UPON AS BETWEEN
PLAINTIFF ACTING IN THE PUBLIC INTEREST AND DEFENDANT AS FOLLOWS:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. INTRODUCTION

1.1. On November 6, 2017, Plaintiff served the 60-Day Notice upon IP Holdings Unltd LLC, Family Dollar, Inc., and on Public Prosecutors. No Public Prosecutors commenced an enforcement action. No Public Prosecutor having commenced an enforcement action, Plaintiff proceeded to file its Complaint against Defendant in the present action.

1.2. Defendant employs ten (10) or more persons.

1.3. For purposes of this Consent Judgment only, Plaintiff and Defendant (the “Parties”) stipulate that: 1) this Court has jurisdiction over the allegations of violation contained in the Complaint, and personal jurisdiction over Defendant as to the acts alleged in the Complaint; 2) venue is proper in the County of Los Angeles; and 3) this Court has jurisdiction to enter this Consent Judgment as a full and final resolution of all claims which were or could have been raised in the Complaint based on the facts alleged therein with respect to the Covered Products, and of all claims which were or could have been raised by any person or entity based in whole or in part, directly or indirectly, on the facts alleged in the 60-Day Notice, in the present action, or arising therefrom or related thereto, with respect to Covered Products, including any Proposition 65 claim arising out of an exposure to Covered Products (collectively, “Proposition 65 Claims”).

1.4. The Parties enter into this Consent Judgment as a full and final settlement of the Proposition 65 Claims, for the purpose of avoiding prolonged and costly litigation and of resolving the issues raised therein both as to past and future conduct. By execution of this Consent Judgment and agreeing to comply with its terms, the Parties do not admit any fact, conclusion of law, or violation of law, nor shall Defendant’s compliance with the Consent Judgment constitute or be construed as an admission by Defendant of any fact, conclusion of law, or violation of law. Defendant denies the material, factual, and legal allegations in the 60-Day Notice and the Complaint and expressly denies any wrongdoing whatsoever.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. DEFINITIONS

2.1. "Effective Date" shall mean, with respect to this Consent Judgment, the date the Consent Judgment has been approved and entered by the Court.

3. INJUNCTIVE RELIEF

3.1. Commencing ninety (90) days after the Effective Date, Defendant shall not manufacture, import, or purchase for sale in California any Covered Product that has not undergone, either (a) reformulation of the Covered Product to bring it within the Proposition 65 exemption identified in Section 3.2 below, or (b) provide a warning as prescribed in Sections 3.3-3.4 below. Compliance with this Section 3.1 will constitute compliance by Defendant with all requirements of Proposition 65 relating to DEHP exposure in the Covered Products. Defendant and the Released Parties as defined herein may continue to sell any and all Covered Products in their possession as of ninety (90) days after the Effective Date, as long as they do not manufacture and import any Covered Products after such date.

3.2. Proposition 65 Exemption for the Covered Products

Subject to Sections 3.1 and 3.5, any Covered Product that is sold, or offered for sale, to consumers in the State of California after the Effective Date shall be deemed to comply with Proposition 65, and be exempt from any Proposition 65 warning requirements with respect to DEHP, if no "Accessible Component Part" of such Covered Product contains more than 0.1 percent (1,000 parts per million) of DEHP. For purposes of this Consent Judgment, "Accessible Component Part" shall mean components of the Covered Products to which a person would be exposed to DEHP by direct contact during normal use of the Covered Product.

3.3. Warning Option

Subject to sections 3.1 and 3.5, Covered Products that do not meet the warning exemption standard set forth in Section 3.2 above, shall be accompanied by a warning as described in Section 3.4 below. This warning requirement shall only be required as to Covered Products that are manufactured to be distributed, marketed, sold or shipped for sale to

1
2 consumers by Defendant in the State of California, starting ninety (90) days after the
3 Effective Date. No Proposition 65 warning shall be required as to any Covered Products
4 that are already in the stream of commerce up to ninety (90) days after the Effective Date
5 and after such time if they were manufactured before the Effective Date, and all such
6 Covered Products are hereby deemed to be exempt from Proposition 65.

7
8 3.4. Warning Language

9 Where required to meet the criteria set forth in Section 3.3, Defendant shall provide one of
10 the following warning statements on or within the unit packaging of the Covered
11 Products, or affixed to the Covered Products, displayed in a reasonably conspicuous
12 manner:

- 13 (1) **[California Proposition 65] WARNING: This product**
14 **contains chemicals known to the state of California to**
15 **cause cancer, and birth defects or other reproductive**
16 **harm.**
- 17 (2) **[California Proposition 65] WARNING: This product may**
18 **expose you to chemicals including DEHP known to the**
19 **State of California to cause cancer, and birth defects or**
20 **other reproductive harm. For more information go to**
21 **www.P65warnings.ca.gov**
- 22 (3) **WARNING: This product can expose you to DEHP, which is**
23 **known to the State of California to cause cancer, birth defects or**
24 **other reproductive harm. For more info go to**
25 **www.P65Warnings.ca.gov.**
- 26 (4) **WARNING: Cancer and Reproductive Harm –**
27 **www.P65Warnings.ca.gov.**

28 If Defendant elects to use the warning statements identified in either (3) or (4) or
(5) above, it may also include a symbol consisting of a black exclamation point in

1
2 a yellow equilateral triangle with a bold black outline. Where the sign, label or
3 shelf tag for the product is not printed using the color yellow, the symbol may be
4 printed in black and white. The symbol shall be placed to the left of the text of the
5 warning, in a size no smaller than the height of the word "WARNING".

6 3.5. 90-Day Grace Period

7 Although Defendant shall be deemed in compliance on the Effective Date, Defendant
8 shall have a ninety (90)-day grace period from the Effective Date to complete the
9 reformulation or warning steps provided in Sections 3.1 – 3.4.

10 **4. MONETARY RELIEF**

11 4.1. Within ten (10) days of the Effective Date, Defendant shall pay the total sum of
12 \$25,000 which includes \$4,000 in civil penalties and \$21,000 in payment of Plaintiff's
13 costs and reasonable attorney's fees. The \$4,000 civil penalty shall be apportioned
14 pursuant to Health and Safety Code section 25249.12 (d), with 75%, or \$3,000, paid to
15 the State of California's Office of Environmental Health Hazard Assessment and 25%, or
16 \$1,000, payable to Plaintiff.

17 4.2. The payments specified in Section 4.1. shall be made by wire transfer to Plaintiff's
18 counsel Custodio & Dubey LLP as set forth below. Plaintiffs' counsel will remit the
19 portions due to the State of California Office of Environmental Health Hazard
20 Assessment and to Plaintiff:

21 Bank: Bank of America, N.A.

22 Routing Transit No.: 026009593

23 Account No.: 325054144600

24 Beneficiary: Custodio & Dubey LLP

25 **5. CLAIMS COVERED AND RELEASE**

26 5.1. This Consent Judgment is a full, final, and binding resolution between Plaintiff, on
27 behalf of itself, and acting in the public interest, and Defendant, and all of Defendant's,
28 IP Holdings Unltd LLC, and Family Dollar, Inc's, parent companies, as well as all of
Defendant's, IP Holdings Unltd LLC, and Family Dollar, Inc's, officers, directors,

1
2 members, shareholders, employees, attorneys, agents, parent companies, subsidiaries,
3 divisions, affiliates, suppliers, franchisees, licensees, licensors, and retailers, their parent
4 and all subsidiaries, and affiliates, thereof, their respective employees, agents and assigns,
5 as well as all other upstream and downstream entities in the distribution chain for any of
6 the Covered Products (including Family Dollar, Inc.), and the predecessors, successors,
7 and assigns of any of them (collectively, the "Released Parties"), for any alleged
8 violation of Proposition 65, and its implementing regulations, for failure to provide
9 Proposition 65 warnings for the Covered Products with respect to DEHP, and fully
10 resolves all claims that have been brought, or which could have been brought in this
11 action up to and including the Effective Date. Plaintiff on behalf of itself, and in the
12 public interest, hereby discharges the Released Parties from any and all claims, actions,
13 causes of action, suits, demands, liabilities, damages, penalties, fees, costs and expenses
14 asserted, or that could have been asserted, with respect to any alleged violation of
15 Proposition 65 arising from the failure to provide Proposition 65 warnings for any or all
16 of the Covered Products, through and including the Effective Date.

17 5.2. It is possible that other claims not known to the Parties arising out of the facts
18 contained in the 60-Day Notice, or alleged in the Complaint, relating to the Covered
19 Products, will hereafter be discovered or developed. Plaintiff, on behalf of itself only, on
20 the one hand, and Defendant, on the other hand, acknowledge that this Consent Judgment
21 is expressly intended to cover and include all such claims through and including the
22 Effective Date, including all rights of action therefore. Plaintiff and Defendant
23 acknowledge that the claims released in Sections 5.1 and 5.2 may include unknown
24 claims, and nevertheless intend to release such claims, and in doing so waive California
25 Civil Code § 1542 which reads as follows:

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
27 CREDITOR DOES NOT KNOW OR SUSPECT EXIST IN HIS OR HER
28 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS

1
2 SETTLEMENT WITH THE DEBTOR.

3 5.3. Plaintiff understands and acknowledges that the significance and consequence of
4 this waiver of California Civil Code § 1542 is that even if Plaintiff suffers future damages
5 arising out of or resulting from, or related directly or indirectly to, in whole or in part, the
6 Covered Products, including but not limited to any exposure to, or failure to warn with
7 respect to exposure to, the Covered Products, Plaintiff will not be able to make any claim
8 for those damages against any of the Released Parties.

9 5.4. Compliance by Defendant with the terms of this Consent Judgment shall constitute
10 compliance with Proposition 65 with respect to exposure to DEHP in the Covered
11 Products as set forth in the 60 Day Notice and/or the Complaint.

12 **6. COMPLIANCE WITH HEALTH AND SAFETY CODE SECTION 25249.7(F)**

13 6.1. Plaintiff and its attorneys agree to comply with the reporting form requirements
14 referenced in California Health and Safety Code § 25249.7(f).

15 **7. PROVISION OF NOTICE**

16 7.1. When any Party is entitled to receive any notice or writing under this Consent
17 Judgment, the notice or writing shall be sent by first class certified mail with return
18 receipt requested, or by electronic mail, as follows:

19 To Defendant:
20 Evan Mizrahi, Esq.
21 Miller, Leiby & Associates, P.C.
22 32 Broadway, 13th Floor
23 New York, NY 10004
24 emizrahi@millerleiby.com

25 with a copy to

26 Albert Mizrahi
27 Mizco International, Inc.
28 80 Essex Avenue, Easy
Avenel, NJ 07001
AlbertM@Mizco.com

To Plaintiff:
Vineet Dubey, Esq.

1
2 Custodio & Dubey LLP
3 448 S. Hill St., Ste 612
4 Los Angeles, CA 90013
5 dubey@cd-lawyers.com

6 7.2. Any party may modify the person and address to whom the notice is to be sent by
7 sending the other Party notice that is transmitted in the manner set forth in section 7.1.

8 **8. COURT APPROVAL**

9 8.1. Upon execution of this Consent Judgment by all parties, Plaintiff shall prepare and
10 file, at its sole cost and expense, a Motion for Approval of this Consent Judgment. This
11 Consent Judgment shall not become effective until approved and entered by the Court. If
12 this Consent Judgment is not entered by the Court, it shall be of no force or effect, and
13 shall not be introduced into evidence or otherwise used in any proceeding for any
14 purpose. Plaintiff will take all action necessary to approve this Consent Judgment.
15 Defendant will not be required to interpose an answer and Plaintiff will not take a default
16 against the Defendant in the event that it must file a Complaint in the process of getting
17 this Consent Judgment approved.

18 **9. GOVERNING LAW AND CONSTRUCTION**

19 9.1. The terms of this Consent Judgment shall be governed by the laws of the State of
20 California.

21 **10. ENTIRE AGREEMENT**

22 10.1. This Consent Judgment contains the sole and entire agreement and understanding
23 of the Parties with respect to the entire subject matter hereof, and any and all prior
24 discussions, negotiations, commitments, or understandings related thereto, if any, are
25 hereby merged herein and therein.

26 10.2. There are no warranties, representations, or other agreements between the Parties
27 except as expressly set forth herein. No representations, oral or otherwise, express or
28 implied, other than those specifically referred to in this Consent Judgment have been
made by any Party hereto.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

10.3. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto only to the extent that they are expressly incorporated herein.

10.4. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby.

10.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

11. RETENTION OF JURISDICTION

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

12. EXECUTION IN COUNTERPARTS

12.1. This Consent Judgment may be executed in counterparts, each of which shall be deemed to be an original, and all of which, taken together, shall constitute the same document. Execution of the Consent Judgment by e-mail, facsimile, or other electronic means, shall constitute legal and binding execution and delivery. Any photocopy of the executed Consent Judgment shall have the same force and effect as the original.

13. AUTHORIZATION

13.1. The undersigned are authorized to stipulate to, enter into, and 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 Consent Judgment.

14. SEVERABILITY

14.1. If subsequent to Court approval of this Consent Judgment, any part or provision is declared by a Court to be invalid, void, or unenforceable, the remaining portions or provisions shall continue in full force and effect.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AGREED TO:

Ecological Alliance LLC

Date: 6/27/18

By: [Signature]

Harmony Welsh, Managing Member

AGREED TO:

Mizco International, Inc.

Date: 3/26/18

By: [Signature]

Albert Mizrahi, President

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered.

Dated: _____

JUDGE OF THE SUPERIOR COURT