

## CORRECTED: Intervenor In Cable Packaging Suit Sanctioned Over Lies

By **Hannah Meisel**

Law360 (March 9, 2018, 9:40 PM EST) -- After granting preliminary approval earlier this week to a class action settlement over allegedly misleading cable packaging, a Cook County judge on Friday granted the parties' joint motion for sanctions against a man who tried intervening to stop the deal, finding he'd lied about having purchased a cable in the first place.

Cook County Circuit Court Judge Franklin Valderrama said sanctions against California man Benjamin Perez were warranted after Perez's attempt to intervene in the class settlement delayed the settlement for over a year, and that his basis for intervening in the first place was built on lies.

**The class whose settlement** with high definition multimedia interface cable manufacturer Monster Inc. and retailer Best Buy was approved Tuesday comprises an estimated 1.6 million people who purchased Monster's HDMI cable that boasted a speed of 22.5 gigabytes per second. The class maintains its members would not have bought the cable for its high price had they known the speed would largely not be useful to them, and alleges the packaging for the cable misled them into believing it was a far superior product than other HDMI cables on the market.

Perez had **filed suit over a similar issue in California**, but when the attorneys for the class in the instant case reached out to Perez and his attorneys, Perez refused to join the case. Later, as litigation in the Illinois case approached settlement talks, Perez filed a motion to intervene, claiming he had standing to interrupt settlement talks for a more favorable outcome.

But in investigating Perez's standing, attorneys for the class, Monster and Best Buy began to suspect Perez's story was not accurate. Though Perez had claimed he had bought a 22.5 GB per second Monster HDMI cable from Best Buy in 2014, which he claimed he had installed behind drywall at his California home, a home inspection conducted as part of an evidentiary hearing revealed that not only was there no HDMI cable behind Perez's drywall, the HDMI cable Perez owned was actually manufactured in 2007.

Judge Valderrama agreed with the class' and the defendants' counsel that Perez's story was fishy, and on Friday hammered Perez's inconsistent statements about the HDMI cable he actually was found to have owned.

"During cross examination by defendants' counsel, Perez maintained that the red cable was installed behind drywall at his rental unit when he filed the California action," Judge Valderrama said. "At the same time, however, Perez testified that prior to the filing of the California action, he inspected the entire length of the red cable 'tip to tip.' The two statements are inconsistent. If the cable was installed behind the drywall such that it would require breaking the drywall to remove it, it was impossible for Perez to have examined the red Cable 'tip to tip' prior to filing the California action."

A subpoena of online retailer Amazon.com found that Perez had actually purchased his cable from Amazon in 2008, well before the cable at issue in the instant case had even been manufactured. While Perez had claimed he had bought the 22.5 GB per second-capable cable for his 4K television, it was also found that Perez did not even own a 4K television.

"HDMI cables with 22.5 Gbps technology did not exist in 2007," Judge Valderrama wrote in his order

Friday. "4K televisions did not exist in 2007. Monster did not manufacturer or sell a 22.5 Gbps HDMI cable in 2007 — the year that Perez's red cable was manufactured."

Perez could not prove that he had actually purchased a 22.5 GB per second Monster cable from Best Buy in 2014, nor did many other elements of his testimony add up, leading the court to believe Perez had lied on the stand, Judge Valderrama wrote.

"Leaving aside the fact that the court has found Perez not to be a credible witness, Perez's entire basis to assert that his red cable was the cable at issue in the action is that he 'remembered' purchasing the cable at the Best Buy in Orange, California in 2014," Judge Valderrama said. "As noted, under rule 137, it is not sufficient that a party 'honestly believed' that his statement was well grounded in fact or law."

Class counsel Tom Zimmerman told Law360 on Friday that he will investigate Perez's attorneys Josh Arisohn of Bursor & Fisher PA and Katrina Carroll of Lite DePalma Greenberg LLC for possible sanctions.

"We are going to seek to invade the attorney-client privilege now through what's called the crime fraud exception," Zimmerman said. "It provides that if an attorney is acting and assisting client in furtherance of committing fraud on the court, there is no privilege for that."

Attorneys for Perez could not be reached for comment Friday. An attorney for Best Buy and Monster declined to comment.

The class is represented by Thomas Zimmerman, Sharon Harris and Maebettey Kirby of Zimmerman Law Offices, and Robert Clifford and Shannon McNulty of Clifford Law Offices.

Monster and Best Buy are represented by Joseph Collins of Fox Rothschild LLP.

The intervenors are represented by Josh Arisohn of Bursor & Fisher PA and Katrina Carroll of Lite DePalma Greenberg LLC.

The case is Amy Joseph et al. v. Monster Inc. et al., case number 15 CH 13991, in the Circuit Court of Cook County.

--Additional reporting by Lauraann Wood and Emily Field. Editing by Pamela Wilkinson.

*Correction: A previous version of this story incorrectly identified an attorney class counsel will seek to bring sanctions against. The error has been corrected.*