

Attys Sanctioned Over Possible Fraud In HDMI Cable Suit

By **Lauraann Wood**

Law360 (June 1, 2018, 8:22 PM EDT) -- A California man and his lawyers who have asserted his standing to intervene in a class action over allegedly misleading HDMI cable packaging have one week to show an Illinois state court judge the photo he's claimed for more than a year proves his eligibility to oppose its settlement.

Cook County Associate Judge Franklin Valderrama's order came in the same 24 pages finding Benjamin Perez's counsel at Bursor & Fisher PA and Lite DePalma Greenberg LLC, as well as the firms themselves, liable for sanctions for failing to reasonably inspect Perez's claim that he purchased a cable as defined in the settlement between consumers, Monster Inc. and Best Buy that the court **initially approved** in March.

The ruling comes about two months after he **also found Perez liable** for sanctions for violating state supreme court rules in submitting pleadings to the court that contained false statements regarding his cable.

To address a "possible commission of fraud upon the court," Judge Valderrama told the parties he wants to see all of the original emails Perez exchanged with his lawyers before filing a lawsuit in California raising similar claims that certain Monster HDMI cables' packaging misrepresented the speed consumers needed to properly power their high-definition televisions.

But of the judge's specific interest is an email containing a purported photo Perez says shows he purchased an HDMI cable matching the case's class definition during the relevant class period. Failure to produce it will result in an adverse finding that the photo doesn't exist, he ruled.

The ruling comes at a stage in litigation that Judge Valderrama scathingly called an "unfortunate example" of attorneys losing their self-awareness to "proceed with what boils down to the pursuit of a personal vendetta without any consideration to the undue and excessive consumption of precious judicial resources on an issue which in the end is immaterial to the outcome of litigation."

"Litigation is by its nature adversarial," he wrote. "What litigation is not, however, is a metaphorical street brawl of hand-to-hand combat where the attorney-combatants engage in a full blown battle royale engaging in an indiscriminate scorched-earth strategy."

Perez **filed his California suit** before **the Illinois action** was launched, but the judge overseeing his case stayed it so the instant suit could proceed.

Both parties in the Illinois case have asserted since Perez moved to intervene that he has failed to prove his cable matches the kind Monster made and Best Buy sold during the class period. Perez's cable bears red markings that they say would otherwise be gold if he truly had standing to enter the case.

Bursor & Fisher attorney Joshua Arisohn has claimed he's relied on the photo of Perez's red cable to assert Perez's settlement objection in Illinois.

But "even assuming, arguendo, that ... merely relying on a photograph" satisfies state supreme

court requirements, "there are numerous other issues with Perez's allegations for which Perez's counsel also failed to conduct an objectively reasonable inquiry" into Perez's claims, Judge Valderrama said.

For example, the judge found, Perez has claimed that he purchased his cable while living temporarily in an apartment but couldn't produce it upon filing his suit because it was installed behind drywall. But that claim, he said, "wholly discredits any assertion by his counsel [in the Illinois case] that he conducted an 'objectively reasonable' inquiry before filing this action."

"If indeed the red cable was installed behind drywall prior to October of 2015 as Perez asserted, how was Perez able to provide Arisohn a photograph of the red cable before moving out of his rental apartment (before the California action was filed) on August 25, 2015?" the judge wrote. "The foregoing is not something which Perez's counsel even attempt to explain."

Thomas Zimmerman of Zimmerman Law Offices, who represents the settling class, told Law360 on Friday that he understands the court's frustration over the lengthy sanctions litigation. But when he and defense counsel Joseph Collins of Fox Rothschild LLP had to challenge consistently evolving theories Perez presented to assert his standing, he said, "What was the alternative?"

"We had no alternative," Zimmerman said. "We knew that Perez and his counsel were making misrepresentations to the court, and so we had an obligation to bring that to the court's attention. I've really never seen anything like this before in all my 22 years [of practice]."

Lite DePalma Greenberg attorney Katrina Carroll, who serves as Perez's local counsel, told Law360 on Friday that she and her co-counsel "will be filing an appropriate motion shortly, because, in our view, the court overlooked critical facts, which, if considered would have resulted in a different outcome."

Judge Valderrama's order also instructed counsel for both sides to file fee petitions regarding expenses they incurred while litigating Perez's standing. Zimmerman said while neither side has finalized their total costs to present the court, both have spent more than \$500,000 challenging Perez's claims.

Arisohn did not immediately respond Friday to a request for comment. Counsel for Monster and Best Buy declined to comment Friday.

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.

Perez is 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 Emily Field. Editing by Breda Lund.