

1 Evan J. Smith, Esquire (SBN 242352)  
2 Ryan P. Cardona, Esquire (SBN 302113)  
3 BRODSKY & SMITH, LLC  
4 9595 Wilshire Blvd., Ste. 900  
5 Beverly Hills, CA 90212  
6 Telephone: (877) 534-2590  
7 Facsimile: (310) 247-0160

8 *Attorneys for Plaintiff*

ENDORSED  
FILED  
ALAMEDA COUNTY

OCT 15 2015

CLERK OF THE SUPERIOR COURT  
By D. Oliver, Deputy

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

11 ANTHONY FERREIRO,  
12 Plaintiff,

13 vs.

14 THE PARALLAX GROUP  
15 INTERNATIONAL, LLC,  
16 Defendant.

CASE NO.: *RG* 15789615

JUDGE

DEPT.:

COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF

(Violation of Health & Safety Code §25249.5  
*et seq.*)

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19 Plaintiff Anthony Ferreiro ("Plaintiff" or "Ferreiro"), by and through his attorneys,  
20 alleges the following cause of action in the public interest of the citizens of the State of  
21 California.

BY FAX

22 BACKGROUND OF THE CASE

23 1. Plaintiff brings this representative action on behalf of all California citizens to  
24 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified  
25 at the Health and Safety Code § 25249.5 *et seq* ("Proposition 65"), which reads, in relevant part,  
26 "[n]o person in the course of doing business shall knowingly and intentionally expose any  
27 individual to a chemical known to the state to cause cancer or reproductive toxicity without first  
28 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

1           2.       This complaint is a representative action brought by Plaintiff in the public interest  
2 of the citizens of the State of California to enforce the People’s right to be informed of the health  
3 hazards caused by exposure to Di(2-ethylhexyl) phthalate (“DEHP”), a toxic chemical found in  
4 flooring sold and distributed by defendant The Parallax Group International, LLC (“Parallax” or  
5 “Defendant”) in California.

6           3.       DEHP is a harmful chemical known to the State of California to cause both cancer  
7 and reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical  
8 known to the State to cause cancer and it has come under the purview of Proposition 65  
9 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§  
10 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical  
11 known to cause developmental male reproductive toxicity. *Id.*

12           4.       Proposition 65 requires all businesses with ten (10) or more employees that  
13 operate within California or sell products therein to comply with Proposition 65 regulations.  
14 Included in such regulations is the requirement that businesses must label any product containing  
15 a Proposition 65-listed chemical with a “clear and reasonable” warning before “knowingly and  
16 intentionally” exposing any person to it.

17           5.       Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
18 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety  
19 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin  
20 the actions of a defendant which “violate or threaten to violate” the statute. Health & Safety  
21 Code § 25249.7.

22           6.       Plaintiff alleges that Defendant produced, manufactured, distributed, imported,  
23 sold, and offered for sale, without the required warning, flooring in California containing. These  
24 products include, but are not limited to, *Multi-Purpose/Garage Flooring, Dove Gray – Raised*  
25 *Coin, UPC# 8 22384 18560 5, 20130705, NSMPC6DVGRY* (the “Product”).

26           7.       Defendant’s failure to warn consumers, workers, and other individuals in  
27 California of the health hazards associated with exposure to DEHP in conjunction with the sale,  
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1 manufacture, and distribution of the Product is a violation of Proposition 65 and subjects  
2 Defendant to the enjoinder and civil penalties described herein.

3 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition  
4 65 in accordance with Health and Safety Code § 25249.7(b).

5 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
6 Defendant to provide purchasers or users of the Product with the required warnings related to the  
7 dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety  
8 Code § 25249.7(a).

9 **PARTIES**

10 10. Plaintiff is a citizen of the State of California acting in the interest of the general  
11 public to promote awareness of exposures to toxic chemicals in products sold in California and  
12 to improve human health by reducing hazardous substances contained in such items. He brings  
13 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

14 11. Defendant Parallax designs and manufactures industrial rubber goods, rubberized  
15 fabrics, and miscellaneous rubber specialties. Through its business, Parallax effectively  
16 manufactures, imports, distributes, sells, and offers the Product for sale or use in the State of  
17 California, or it implies by its conduct that it manufactures, imports, distributes, sells, and offers  
18 the Product for sale or use in the State of California. Parallax can be served c/o Bruce A. Thrush  
19 at 27542 Calle De La Rosa, San Juan Capistrano, CA 92675.

20 **VENUE AND JURISDICTION**

21 12. Venue is proper in the County of Alameda because one or more of the instances  
22 of wrongful conduct occurred, and continue to occur in this county and because Defendant  
23 conducted, and continues to conduct, business in the County of Alameda with respect to the  
24 Product.

25 13. This Court has jurisdiction over this action pursuant to California Constitution  
26 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those  
27 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the  
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1 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,  
2 this Court has jurisdiction over this lawsuit.

3 14. This Court has jurisdiction over Defendant because it is either a citizen of the  
4 State of California, has sufficient minimum contacts with the State of California, is registered  
5 with the California Secretary of State as foreign corporations authorized to do business in the  
6 State of California, and has otherwise purposefully availed itself of the California market. Such  
7 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and  
8 permissible with traditional notions of fair play and substantial justice.

9 **SATISFACTION OF NOTICE REQUIREMENTS**

10 15. On May 26, 2015, Plaintiff gave notice of alleged violation of Health and Safety  
11 Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California citizens to  
12 DEHP contained in the Product without proper warning, subject to a private action to Defendant  
13 and to the California Attorney General's office and the offices of the County District attorneys  
14 and City Attorneys for each city with a population greater than 750,000 persons wherein the  
15 herein violations allegedly occurred.

16 16. The Notice complied with all procedural requirements of Proposition 65 including  
17 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at  
18 least one person with relevant and appropriate expertise who reviewed relevant data regarding  
19 DEHP exposure, and that counsel believed there was meritorious and reasonable cause for a  
20 private action.

21 17. After receiving the Notice, and to Plaintiff's best information and belief, none of  
22 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted  
23 a cause of action against Defendant under Proposition 65 to enforce the alleged violations which  
24 are the subject of Plaintiff's notice of violation.

25 18. Plaintiff is commencing this action more than sixty (60) days from the date of his  
26 notice to Defendant, as required by law.

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1 **FIRST CAUSE OF ACTION**

2 **(By Plaintiff against Defendant for the Violation of Proposition 65)**

3 19. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 18 of  
4 this complaint as though fully set forth herein.

5 20. Defendant has, at all times mentioned herein, acted as a manufacturer, distributor,  
6 and retailer of the Product.

7 21. The Product contains DEHP, a hazardous chemical found on the Proposition 65  
8 list of a chemical known to be hazardous to human health.

9 22. The Product does not comply with the Proposition 65 warning requirements.

10 23. Plaintiff, based on his best information and belief, avers that at all relevant times  
11 herein, and at least since April 8, 2015, continuing until the present, that Defendant has  
12 continued to knowingly and intentionally expose California users and consumers of the Product  
13 to DEHP without providing required warnings under Proposition 65.

14 24. The exposures that are the subject of this notice result from the purchase,  
15 acquisition, handling and recommended use of the product. Consequently, the primary route of  
16 exposure to these chemicals is through dermal absorption from contact, inhalation of gas phase  
17 phthalates in indoor air, dermal absorption of gas phase phthalates. Indirect exposure is possible  
18 from dermal absorption of items contaminated with phthalates due to gas phase absorption of  
19 phthalates on these items, and oral ingestion of phthalate contaminated dust. Direct dermal  
20 exposure through the hands or other exposed skin is possible during installation and during  
21 normal use over the lifetime of the product. Dermal exposure may be enhanced should the  
22 product become wet and DEHP leach out into the water, for instance when used in basements or  
23 garages, as aqueous DEHP skin permeation rates are faster than neat DEHP permeation. As the  
24 surface area of vinyl tile flooring can be substantial, the dermal transfer from contaminated  
25 surfaces (walking in bare feet, children crawling) is likely when used for exercise rooms/home  
26 gyms and children's playrooms. The Norsk patented Air-Dry design of these tiles permits  
27 airflow under the tiles. This design effectively increases the surface area for gas phase DEHP to  
28 leach out of the tiles into the air and it can be expected that the gas-phase DEHP to leach out of

1 the tiles into the air and it can be expected that the gas-phase DEHP would be approximately  
2 double that of equivalent PVC tiles that are fixed to the floor with adhesive. DEHP emitted from  
3 the vinyl flooring in an indoor setting would be expected to accumulate in household items such  
4 as bedding, rugs, cookware, cutlery and clothes, and when these clothes are worn, dermal  
5 absorption could increase substantially. Phthalate containing dust can be suspended in the air  
6 and ingested directly or ingested by touching the dust with subsequent hand to mouth contact and  
7 is of particular concern in crawling infants and toddlers. The ingestion of phthalate containing  
8 dust is presumed to be the primary means of exposure to DEHP from vinyl flooring. Finally,  
9 while mouthing of the product does not seem likely, some amount of exposure through ingestion  
10 can occur by touching the product with subsequent touching of the users hand to mouth as is  
11 possible for crawling infants and toddlers.

12 25. Plaintiff, based on his best information and belief, avers that such exposures will  
13 continue every day until clear and reasonable warnings are provided to Product purchasers and  
14 users or until this known toxic chemical is removed from the Product.

15 26. Defendant has knowledge that the normal and reasonably foreseeable use of the  
16 Product exposes individuals to DEHP, and Defendant intends that exposures to DEHP will occur  
17 by its deliberate, non-accidental participation in the manufacture, importation, distribution, sale  
18 and offering of the Product to consumers in California

19 27. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
20 Complaint.

21 28. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above  
22 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

23 29. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically  
24 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment against Defendant and requests the following relief:

- A. That the court assess civil penalties against Defendant in the amount of \$2,500 per day for each violation in accordance with Health and Safety Code § 25249.7(b);
- B. That the court preliminarily and permanently enjoin Defendant mandating Proposition 65 compliant warnings on the Product;
- C. That the court grant Plaintiff reasonable attorney’s fees and costs of suit.
- D. That the court grant any further relief as may be just and proper.

Dated: October 14, 2015

BRODSKY & SMITH, LLC

By:  \_\_\_\_\_

Evan J. Smith (SBN242352)  
Ryan P. Cardona (SBN302113)  
9595 Wilshire Boulevard, Suite 900  
Beverly Hills, CA 90212  
Telephone: (877) 534-2590  
Facsimile: (310) 247-0160

*Attorneys for Plaintiff*