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ENDORSED  
FILED  
ALAMEDA COUNTY

AUG 13 2018

CLERK OF THE SUPERIOR COURT  
By CURTIYAH GANTER

Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,  
11 Plaintiff,  
12 vs.  
13 PLANO SYNERGY HOLDINGS, INC.,  
14 Defendant.

Case No.: RG18916392

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

15 Plaintiff Anthony Ferreiro ("Plaintiff"), by and through her attorneys, alleges the  
16 following cause of action in the public interest of the citizens of the State of California.

**BACKGROUND OF THE CASE**

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

24 2. This complaint is a representative action brought by Plaintiff in the public interest  
25 of the citizens of the State of California to enforce the People's right to be informed of the health  
26 hazards caused by exposure diisononyl phthalate (DINP), a toxic chemical found in Plano tackle  
27 cases sold and/or distributed by defendant Plano Synergy Holdings, Inc. ("Plano" or  
28 "Defendant") in California.

BY FAX

1 3. DINP is a harmful chemical known to the State of California to cause cancer. On  
2 December 20, 2013, the State of California listed DINP as a chemical known to the State to  
3 cause cancer and it has come under the purview of Proposition 65 regulations since that time.  
4 Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On

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

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

15 6. Plaintiff alleges that Defendant manufactures, distributes and/or offers for sale in  
16 California, without a requisite exposure warning, Plano tackle cases (the “Products”) that expose  
17 persons to DINP.

18 7. Defendant’s failure to warn consumers and other individuals in California of the  
19 health hazards associated with exposure to DINP in conjunction with the sale and/or distribution  
20 of the Products is a violation of Proposition 65 and subjects Defendant to the enjoinder and  
21 civil penalties described herein.

22 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition  
23 65 in accordance with Health and Safety Code § 25249.7(b).

24 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
25 Defendant to provide purchasers or users of the Products with required warnings related to the  
26 dangers and health hazards associated with exposure to DINP pursuant to Health and Safety  
27 Code § 25249.7(a).

28 **PARTIES**

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

5 11. Defendant Plano, through its business, effectively imports, distributes, sells,  
6 and/or offers the Products for sale or use in the State of California, or it implies by its conduct  
7 that it manufactures, imports, distributes, sells, and/or offers the Products for sale or use in the  
8 State of California.

9 12. Plaintiff alleges that defendant Plano is a “person” in the course of doing business  
10 within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

11 **VENUE AND JURISDICTION**

12 13. Venue is proper in the County of Alameda because one or more of the instances  
13 of wrongful conduct occurred, and continue to occur in this county and/or because Defendant  
14 conducted, and continues to conduct, business in the County of Alameda with respect to the  
15 Products.

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

21 15. This Court has jurisdiction over Defendant because Defendant is either a citizen  
22 of the State of California, has sufficient minimum contacts with the State of California, is  
23 registered with the California Secretary of State as foreign corporations authorized to do business  
24 in the State of California, and/or has otherwise purposefully availed itself of the California  
25 market. Such purposeful availment has rendered the exercise of jurisdiction by California courts  
26 consistent and permissible with traditional notions of fair play and substantial justice.

27 **SATISFACTION OF NOTICE REQUIREMENTS**

1 16. On November 13, 2017, Plaintiff gave notice of alleged violation of Health and  
2 Safety Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California  
3 citizens to DINP contained in the Products without proper warning, subject to a private action to  
4 Defendant and to the California Attorney General's office and the offices of the County District  
5 attorneys and City Attorneys for each city with a population greater than 750,000 persons  
6 wherein the herein violations allegedly occurred.

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

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

16 19. Plaintiff is commencing this action more than sixty (60) days from the date of the  
17 Notice to Defendant, as required by law.

### 18 FIRST CAUSE OF ACTION

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

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

22 21. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,  
23 and/or retailer of the Products.

24 22. The Products contain DINP, a hazardous chemical found on the Proposition 65  
25 list of chemicals known to be hazardous to human health.

26 23. The Products do not comply with the Proposition 65 warning requirements.

27 24. Plaintiff, based on his best information and belief, avers that at all relevant times  
28 herein, and at least since June 28, 2017, continuing until the present, that Defendant has

1 continued to knowingly and intentionally expose California users and consumers of the Products  
2 to DINP without providing required warnings under Proposition 65.

3 25. The exposures that are the subject of the Notice result from the purchase,  
4 acquisition, handling and recommended use of the Products. Consequently, the primary route of  
5 exposure to these chemicals through dermal absorption. Users may potentially be exposed to  
6 DINP by dermal absorption through direct skin contact with the clear plastic during use with  
7 bare hands. Concentrations of DINP can be expected to build within the enclosed interior of the  
8 case. This DINP can potentially be absorbed to the surface of the interior contents that can  
9 include, but are not limited to, needlework supplies, that can be subsequently handled or  
10 mouthed. Finally, while mouthing of the product does not seem likely, some amount of exposure  
11 through ingestion can occur by touching the product with subsequent touching of the user's hand  
12 to mouth, or if DINP contaminated thread/yarn is mouthed.

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

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

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

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

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

26 **PRAYER FOR RELIEF**

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

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- 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: August 10, 2018

BRODSKY & SMITH, LLC

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