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

12 GABRIEL ESPINOZA and EMA BELL,
13 Plaintiffs,
14 vs.
15 PLANO SYNERGY HOLDING, INC.,
16 Defendant.

Case No.:

HG 19047716

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

17 Plaintiffs Gabriel Espinoza ("Espinoza") and Ema Bell ("Bell") (collectively,
18 "Plaintiffs"), by and through their attorneys, allege the following cause of action in the public
19 interest of the citizens of the State of California:

20 **BACKGROUND OF THE CASE**

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

27 2. This complaint is a representative action brought by Plaintiffs in the public
28 interest of the citizens of the State of California to enforce the People's right to be informed of
the health hazards caused by exposure to di(2-ethylhexyl) phthalate (DEHP), a toxic chemical

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1 found in Frabill fishing nets and Plano Molding blade bags/holders sold and/or distributed by
2 defendant Plano Synergy Holding, Inc. (“Plano Synergy” or “Defendant”) in California.

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

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

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

19 6. Plaintiffs allege that Defendant manufactures, distributes and/or offers for sale in
20 California, without a requisite exposure warning, Frabill fishing nets and Plano Molding blade
21 bags/holders (the “Products”) that expose persons to DEHP.

22 7. Defendant’s failure to warn consumers and other individuals in California of the
23 health hazards associated with exposure to DEHP in conjunction with the sale and/or distribution
24 of the Products is a violation of Proposition 65 and subjects Defendant to the enjoinder and
25 civil penalties described herein.

26 8. Plaintiffs seek civil penalties against Defendant for its violations of Proposition
27 65 in accordance with Health and Safety Code § 25249.7(b).

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1 9. Plaintiffs also seek injunctive relief, preliminarily and permanently, requiring
2 Defendant to provide purchasers or users of the Products with required warnings related to the
3 dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety
4 Code § 25249.7(a).

5 **PARTIES**

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

11 11. Plaintiff Espinoza is a citizen of the State of California acting in the interest of the
12 general public to promote awareness of exposures to toxic chemicals in products sold in
13 California and to improve human health by reducing hazardous substances contained in such
14 items. He brings this action in the public interest pursuant to Health and Safety Code §
15 25249.7(d).

16 12. Defendant Plano Synergy, through its business, effectively manufactures, imports,
17 distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies
18 by its conduct that it manufactures, imports, distributes, sells, and/or offers the Products for sale
19 or use in the State of California.

20 13. Plaintiffs allege that defendant Plano Synergy is a “person” in the course of doing
21 business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

22 **VENUE AND JURISDICTION**

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

27 15. This Court has jurisdiction over this action pursuant to California Constitution
28 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those

1 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the
2 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,
3 this Court has jurisdiction over this lawsuit.

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

10 **SATISFACTION OF NOTICE REQUIREMENTS**

11 17. On April 3, 2019 and July 29, 2019, Bell and Espinoza, respectively, gave notice
12 of alleged violations of Health and Safety Code § 25249.6 (the “Notice”) to Defendant
13 concerning the exposure of California citizens to DEHP contained in the Products without proper
14 warning, subject to a private action to Defendant and to the California Attorney General’s office
15 and the offices of the County District attorneys and City Attorneys for each city with a
16 population greater than 750,000 persons wherein the herein violations allegedly occurred.

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

22 19. After receiving the Notices, and to Plaintiffs’ best information and belief, none of
23 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted
24 a cause of action against Defendant under Proposition 65 to enforce the alleged violations which
25 are the subject of the Notice.

26 20. Plaintiffs are commencing this action more than sixty (60) days from the date of
27 the Notices to Defendant, as required by law.

28 **FIRST CAUSE OF ACTION**

1 **(By Plaintiffs against Defendant for its Violation of Proposition 65)**

2 21. Plaintiffs hereby repeat and incorporate by reference paragraphs 1 through 20 of
3 this complaint as though fully set forth herein.

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

6 23. The Products contain DEHP, a hazardous chemical found on the Proposition 65
7 list of chemicals known to be hazardous to human health.

8 24. The Products do not comply with the Proposition 65 warning requirements.

9 25. Plaintiffs, based on their best information and belief, aver that at all relevant times
10 herein, and at least since April 3, 2019 (Plano Molding blade bags/holders) and July 29, 2019
11 (Frabill fishing nets), continuing until the present, that Defendant has continued to knowingly
12 and intentionally expose California users and consumers of the Product to DEHP without
13 providing required warnings under Proposition 65.

14 26. The exposures that are the subject of the Notices result from the purchase,
15 acquisition, handling and recommended use of the Products. Consequently, the primary route of
16 exposure to DEHP in the Plano Molding blade bag is through dermal absorption. Dermal
17 absorption of DEHP can occur by handling the blade bag with subsequent touching of the user's
18 hand to mouth. Users can be exposed to DEHP by dermal absorption through direct skin contact
19 with the blade bag when touched with bare hands. If the blade bag comes into contact with wet
20 hands or the interior of the bag is wet, DEHP skin permeation rates from aqueous solutions are
21 faster than neat DEHP permeation. Items placed inside the blade bag can absorb DEHP that can
22 be subsequently handled, held in direct contact with skin, mouthed, or ingested by the user. If the
23 blade bag is stored or transported in a carrier, DEHP that leaches from the blade bag may
24 contaminate other articles contained within these closed spaces are subsequently handled, worn,
25 mouthed, or consumed. Finally, while direct mouthing of the blade bag does not seem likely,
26 some amount of exposure through ingestion can occur by touching the Products with subsequent
27 touching of the user's hand to mouth.

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1 27. The primary route of exposure to DEHP in the fishing net is through dermal
2 absorption. Users can be exposed to DEHP by dermal absorption through direct skin contact with
3 the fishing net during routine use when the fishing net is handled with bare hands. If the fishing
4 net is handled with wet hands or come into contact with wet skin as can be expected during
5 intended use, DEHP skin permeation rates from aqueous solutions are faster than neat DEHP
6 permeation. If the fishing net is stored or transported in a carrier, DEHP that leaches from the
7 netting may contaminate other articles contained within these closed spaces are subsequently
8 handled, worn, mouthed, or consumed. Finally, while direct mouthing of the fishing net does not
9 seem likely, some amount of exposure through ingestion can occur by touching the fishing net
10 with subsequent touching of the user’s hand to mouth.

11 28. Plaintiffs, based on their best information and belief, aver that such exposures will
12 continue every day until clear and reasonable warnings are provided to Product purchasers and
13 users or until this known toxic chemical is removed from the Products.

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

18 30. Plaintiffs have engaged in good faith efforts to resolve the herein claims prior to
19 this Complaint.

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

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

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs demand judgment against Defendant and requests the
26 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 Products;
- C. That the court grant Plaintiffs reasonable attorney's fees and costs of suit.
- D. That the court grant any further relief as may be just and proper.

Dated: December 19, 2019

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