

1 Jeremy Fietz, State Bar No. 200396
LAW OFFICES OF JEREMY FIETZ
2 1510 Fourth Street
Santa Rosa, CA 95404
3 Telephone: (707) 999-9999

4 David R. Bush, State Bar No. 154511
LAW OFFICE OF DAVID R. BUSH
5 321 South Main Street #502
Sebastopol CA 95472
6 Telephone: (707) 321-5028

7 Attorneys for Plaintiff
MICHAEL DIPIRRO

FILED
Superior Court of California
County of Alameda
09/26/2022
Clad Flake, Executive Officer / Clerk of the Court
By: X. Bowie Deputy
X. Bowie

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION

14 MICHAEL DIPIRRO,
15 Plaintiff,

16 v.

17 AVIATION SUPPLIES & ACADEMICS,
18 INC.; and DOES 1-150,
19 Defendants.

Case No. **22CV018423**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code, § 25249.6 *et seq.*)

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff MICHAEL
3 DIPIRRO in the public interest of the citizens of the State of California to enforce the People’s
4 right to be informed of the presence of Diisononyl phthalate (“DINP”), a toxic chemical, for
5 exposures created by the use of binders sold in California, including but not limited to the 7
6 *Ring Approach Plate Binder, Item # ASA-AP-BD-7RNG*.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
8 warn California citizens about the risk of exposure to DINP from the use of the binders that are
9 manufactured, distributed, and/or offered for sale or use to consumers throughout the State of
10 California without the requisite health hazard warnings.

11 3. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
12 warn California citizens about the risk of exposure to DINP in binders that are manufactured,
13 distributed, and/or offered for sale or use to consumers throughout the State of California.

14 4. Exposure to high levels of DINP are commonly produced through the normal and
15 foreseeable use of binders that defendants manufacture, distribute, and/or offer for sale to
16 consumers throughout the State of California without requisite health hazard warnings.

17 5. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
18 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of
19 doing business shall knowingly and intentionally expose any individual to a chemical known to
20 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
21 warning to such individual” Health & Safety Code § 25249.6.

22 6. Pursuant to Proposition 65, on December 20, 2013, California identified and listed
23 DINP as a chemical known to cause cancer. DINP became subject to the “clear and reasonable
24 warning” requirements of the act one year later on December 20, 2014, for cancer. Cal. Code
25 Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). DINP is referred to
26 hereinafter as the “LISTED CHEMICAL.”

1 7. Defendants manufacture or otherwise process for sale, distribute, and sell binders
2 including, but not limited to the *7 Ring Approach Plate Binder, Item # ASA-AP-BD-7RNG*, the
3 normal and foreseeable use of which results in exposure to DINP at levels that require health
4 hazard warnings under Proposition 65. All such binders are referred to collectively hereinafter
5 as the “PRODUCTS.”

6 8. Defendants’ failure to warn consumers and other individuals in the State of
7 California about their exposure to the LISTED CHEMICAL in conjunction with defendants’
8 sales of the PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder
9 of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a)
10 & (b)(1).

11 9. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and
12 permanent injunctive relief to compel defendants to provide purchasers or users of the
13 PRODUCTS with the required warning regarding the health hazards of the LISTED
14 CHEMICAL. Health & Safety Code § 25249.7(a).

15 10. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
16 penalties against defendants for their violations of Proposition 65.

17 **PARTIES**

18 11. Plaintiff MICHAEL DIPIRRO is a citizen of the State of California who is
19 dedicated to protecting the health of California citizens through the elimination or reduction of
20 toxic exposures from consumer products; and he brings this action in the public interest
21 pursuant to Health and Safety Code section 25249.7(d).

22 12. Defendant AVIATION SUPPLIES & ACADEMICS, INC. (“ASA”) is a person
23 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

24 13. ASA manufactures (or otherwise processes for sale), distributes, and/or offers the
25 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
26 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California.

27
28

1 22. The California Superior Court has jurisdiction over this action pursuant to
2 California Constitution Article VI, section 10, which grants the Superior Court “original
3 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
4 which this action is brought does not specify any other basis of subject matter jurisdiction.

5 23. The California Superior Court has jurisdiction over DEFENDANTS based on
6 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
7 association that is a citizen of the State of California, has sufficient minimum contacts in the
8 State of California, and/or otherwise purposefully avails itself of the California market.
9 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
10 California courts consistent with traditional notions of fair play and substantial justice.

11 **FIRST CAUSE OF ACTION**

12 **(Violation of Proposition 65 - Against All Defendants)**

13 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
14 Paragraphs 1 through 48, inclusive.

15 25. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
16 Enforcement Act of 1986, the People of California expressly declare their right “[t]o be
17 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
18 harm.”

19 26. Proposition 65 states, “[n]o person in the course of doing business shall
20 knowingly and intentionally expose any individual to a chemical known to the state to cause
21 cancer or reproductive toxicity without first giving clear and reasonable warning to such
22 individual” Health & Safety Code § 25249.6.

23 27. On June 17, 2022, plaintiff’s 60-Day Notice of Violation, together with the
24 requisite certificate of merit, was provided to ASA and certain public enforcement agencies
25 stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the LISTED
26 CHEMICAL, purchasers and users in the State of California were being exposed to the LISTED
27 CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS, without the
28

1 individual purchasers and users first having been provided with a “clear and reasonable
2 warning” regarding such toxic exposures, as required by Proposition 65.

3 28. DEFENDANTS have engaged in the manufacture, distribution, and/or offering of
4 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
5 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s 60-Day
6 Notices of Violation. As such, DEFENDANTS’ violations are ongoing and continuous in
7 nature, and will continue to occur in the future.

8 29. After receiving the claims asserted in the 60-day Notices of Violation, the
9 appropriate public enforcement agencies have failed to commence and diligently prosecute a
10 cause of action against DEFENDANTS under Proposition 65.

11 30. The PRODUCTS manufactured, distributed, and offered for sale or use in
12 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the
13 allowable state limits, such that they require a “clear and reasonable” warning under Proposition
14 65.

15 31. DEFENDANTS knew or should have known that the PRODUCTS they
16 manufacture, distribute, and offer for sale or use in California contain the LISTED
17 CHEMICAL.

18 32. The exposures to the LISTED CHEMICAL result from the normal use of the
19 PRODUCTS in such a way as to expose individuals through dermal contact during reasonably
20 foreseeable use.

21 33. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
22 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
23 defined by California Code of Regulations title 27, section 25602(b).

24 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
25 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact.

26 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
27 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-
28

1 accidental participation in the manufacture, distribution, and/or offering of the PRODUCTS for
2 sale or use to individuals in the State of California.

3 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
4 consumers and other individuals in the State of California who were or who would become
5 exposed to the LISTED CHEMICAL through dermal contact during the reasonably foreseeable
6 uses of the PRODUCTS.

7 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
8 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
9 contact resulting from the reasonably foreseeable use of the PRODUCTS sold by
10 DEFENDANTS without a “clear and reasonable warning”, have suffered, and continue to
11 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

12 38. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
13 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day
14 for each violation.

15 39. As a consequence of the above-described acts, Health and Safety Code
16 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
17 DEFENDANTS.

18 **PRAYER FOR RELIEF**

19 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

20 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess
21 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;

22 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
23 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
24 offering the PRODUCTS for sale or use in California without first providing a “clear and
25 reasonable warning” as defined by California Code of Regulations title 27, section 25601 *et*
26 *seq.*, as to the harms associated with exposures to the LISTED CHEMICAL;

27 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

4. That the Court grant such other and further relief as may be just and proper.

Dated: 09/22/2022

Respectfully Submitted,
LAW OFFICE OF DAVID R. BUSH



By: _____
David Bush
Attorneys for Plaintiff
MICHAEL DIPIRRO