

1 Evan Smith (Bar No. SBN 242352)
2 BRODSKY & SMITH, LLC.
3 9595 Wilshire Blvd., Ste. 900
4 Beverly Hills, CA 90212
5 Tel: (877) 534-2590
6 Fax: (310) 247-0160

7 *Attorneys for Plaintiff*

ENDORSED
FILED
ALAMEDA COUNTY
DEC - 6 2018
CLERK OF THE SUPERIOR COURT
By DIANNE HYATT
Deputy

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

11 ANTHONY FERREIRO,
12 Plaintiff,
13 v.
14 PLANO SYNERGY HOLDINGS, INC.,
15 Defendant.

Case No.: RG18916392
CONSENT JUDGMENT
Judge: Dennis Hayashi
Dept.: 518
Hearing Date: December 5, 2018
Hearing Time: 2:30 PM
Reservation #: R-1998709

16
17
18
19
20
21
22
23
24
25
26
27 **BY FAX**
28

1 **1. INTRODUCTION**

2 **1.1 The Parties.** This Consent Judgment is entered into by and between on the one
3 hand, Anthony Ferreiro, acting on behalf of himself and the public interest (hereinafter “Ferreiro”),
4 and, on the other hand, Plano Molding Company and its parent, Plano Synergy Holdings, Inc.
5 (collectively referred to as “Plano” or “Defendant”) with Ferreiro and Defendant collectively
6 referred to as the “Parties” and each of them as a “Party.” Ferreiro is an individual residing in
7 California that seeks to promote awareness of exposures to toxic chemicals and improve human
8 health by reducing or eliminating hazardous substances contained in consumer products. Plano is
9 alleged to be a person in the course of doing business for purposes of Proposition 65, Cal. Health
10 & Safety Code §§ 25249.6 et seq.

11 **1.2 Allegations and Representations.** Ferreiro alleges that Defendant has exposed
12 individuals to diisononyl phthalate (DINP) from its sales of Plano tackle cases without providing a
13 clear and reasonable exposure warning pursuant to Proposition 65. DINP is listed under
14 Proposition 65 as a chemical known to the State of California to cause cancer.

15 **1.3 Notice of Violation/Complaint.** On or about November 13, 2017, Ferreiro served
16 Plano and various public enforcement agencies with documents entitled “60-Day Notice of
17 Violation” pursuant to Health & Safety Code §25249.7(d) (the “Notice”), alleging that Defendant
18 violated Proposition 65 for failing to warn consumers and customers that use of Plano tackle cases
19 expose users in California to DINP. No public enforcer has brought and is diligently prosecuting
20 the claims alleged in the Notice. On August 10, 2018, Ferreiro filed a complaint (the “Complaint”)
21 in the matter.

22 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Defendant as to the allegations contained in the Complaint filed in this matter, that
24 venue is proper in the County of Alameda, and that this Court has jurisdiction to approve, enter,
25 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all
26 claims which were or could have been raised in the Complaint based on the facts alleged therein
27 and/or in the Notice.
28

1
2 1.5 Defendant denies the material allegations contained in Ferreiro's Notice and
3 Complaint and maintains that it has not violated Proposition 65. Nothing in this Consent Judgment
4 shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of
5 law; nor shall compliance with this Consent Judgment constitute or be construed as an admission
6 by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being
7 specifically denied by Defendant. However, this section shall not diminish or otherwise affect the
8 obligations, responsibilities, and duties of Defendant under this Consent Judgment.

9 **2. DEFINITIONS**

10 2.1 **Covered Products.** The term "Covered Products" means Plano tackle cases that
11 are manufactured, distributed and/or offered for sale in California by Plano.

12 2.2 **Effective Date.** The term "Effective Date" means the date this Consent Judgment is
13 entered as a Judgment of the Court.

14 **3. INJUNCTIVE RELIEF: WARNINGS**

15 3.1 As of the date this Consent Judgment is signed by both Parties, Plano shall not
16 manufacture or order from any supplier any Covered Products intended for retail sale in California
17 that contains DINP on any component to which consumers are exposed in excess of 0.1% (1,000
18 ppm) (hereinafter "Reformulated Products") unless the Covered Product is accompanied by a
19 warning that complies with Title 27 California Code of Regulations Section 25600 et. seq. Covered
20 Products sold by Plano before the date this Consent Judgment is signed by both Parties may sell
21 through without a warning even if not Reformulated Products. Until August 30, 2018, the warning
22 shall consist of either:

23 (a) The statement: "**WARNING:** This product contains a chemical known to the State
24 of California to cause cancer."; or (b)(1) A symbol consisting of a black exclamation point
25 in a yellow equilateral triangle with a bold black outline to the left of the word
26 "**WARNING**" in bold all capital letters, followed by the statement "This product can
27 expose you to chemicals including diisononyl phthalate (DINP) which is known to the State
28 of California to cause cancer. For more information, go to www.P65Warnings.ca.gov"; or

1 (2) a short form warning on the product label consisting of a symbol that is a black
2 exclamation point in a yellow equilateral triangle with a bold black outline to the left of the
3 word “**WARNING**” in bold all capital letters, followed by the statement “Cancer -
4 www.P65Warnings.ca.gov.” or (3) any other warning that substantially and materially
5 complies with the requirements of Proposition 65, including Title 27 of the California Code
6 of Regulations, Section 25600 et. seq., as may be amended from time-to-time.¹

7 For Covered Products manufactured on and after August 30, 2018, the warning set forth in Section
8 3.1(b) shall be used.

9 3.2 The warning provided pursuant to Section 3.1 shall be affixed to or printed on the
10 Covered Product’s packaging or labeling, or on a placard, shelf tag, sign or electronic device or
11 automatic process, providing that the warning is displayed with such conspicuousness, as compared
12 with other words, statements, or designs as to render it likely to be read and understood by an
13 ordinary individual under customary conditions of purchase or use. A warning may be contained
14 in the same section of the packaging, labeling, or instruction booklet that states other safety
15 warnings, if any, concerning the use of the product and shall be at least the same size as those other
16 safety warnings.

17 **4. MONETARY TERMS**

18 4.1 **Civil Penalty.** Plano shall pay \$3,000.00 as a Civil Penalty pursuant to Health and
19 Safety Code § 25249.7(b), to be apportioned in accordance with California Health & Safety Code
20 § 25192, with 75% of these funds remitted to the State of California’s Office of Environmental
21 Health Hazard Assessment (“OEHHA”) and the remaining 25% of the Civil Penalty remitted to
22 Ferreiro, as provided by California Health & Safety Code § 25249.12(d).

23 4.1.1 Within ten (10) days of the Effective Date, Plano shall issue two separate
24 checks for the Civil Penalty payment to (a) “OEHHA” in the amount of \$2,250.00; and to (b)
25

26
27 ¹ The triangular symbol need only be in yellow where the sign, label, shelf tag or other
28 transmission format is being printed in color for purposes of other language, symbols or designs.

1 “Brodsky & Smith, LLC in Trust for Ferreiro” in the amount of \$750.00. Payment owed to Ferreiro
2 pursuant to this Section shall be delivered to the following payment address:

3 Evan J. Smith, Esquire
4 Brodsky & Smith, LLC
5 Two Bala Plaza, Suite 510
6 Bala Cynwyd, PA 19004

6 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly
7 to OEHHA (Memo Line “Prop 65 Penalties”) at one of the following address(es):

8 For United States Postal Service Delivery:

9 Mike Gyurics
10 Fiscal Operations Branch Chief
11 Office of Environmental Health Hazard Assessment
12 P.O. Box 4010
13 Sacramento, CA 95812-4010

12 For Non-United States Postal Service Delivery:

13 Mike Gyurics
14 Fiscal Operations Branch Chief
15 Office of Environmental Health Hazard Assessment
16 1001 I Street
17 Sacramento, CA 95814

16 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith, LLC at the address
17 set forth above as proof of payment to OEHHA.

18 4.2 **Attorneys’ Fees.** Within ten (10) days of the Effective Date, Plano shall pay
19 \$22,000.00 to Brodsky & Smith, LLC (“Brodsky Smith”) as complete reimbursement for Ferreiro’s
20 attorneys’ fees and costs incurred as a result of investigating, bringing this matter to Plano’
21 attention, litigating and negotiating and obtaining judicial approval of a settlement in the public
22 interest, pursuant to Code of Civil Procedure § 1021.5.

23 **5. RELEASE OF ALL CLAIMS**

24 5.1 This Consent Judgment is a full, final, and binding resolution between Ferreiro
25 acting on his own behalf, and on behalf of the public interest, and Plano, and its parents,
26 shareholders, members, directors, officers, managers, employees, representatives, agents,
27 attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their
28

1 predecessors, successors and assigns (“Defendant Releasees”), and all entities from whom they
2 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but
3 not limited to manufacturers, suppliers, distributors, wholesalers, customers, purchasers, licensors,
4 licensees, retailers, franchisees, and cooperative members, and the successors and assigns of any of
5 them, including, but not limited to, American Sports Licensing, LLC t/a Dick’s Sporting Goods,
6 and American Sports Licensing, Inc. (“Downstream Releasees”), from any violations of
7 Proposition 65 or claimed violations of Proposition 65 that have been, could have been or may in
8 the future be asserted against the Defendant Releasees and Downstream Releasees arising out of or
9 related to the claims asserted in the Notice, regarding the failure to warn about exposure to DINP
10 in any Covered Products manufactured, distributed, or sold by Plano prior to the Effective Date,
11 even if the Products are sold by Downstream Releasees after the Effective Date. This Consent
12 Judgment shall have preclusive effect such that no other person or entity, whether purporting to act
13 in his, her, or its interests or the public interest shall be permitted to pursue and/or take any action
14 with respect to any violation of Proposition 65 that was alleged in the Complaint. Compliance with
15 the terms of this Consent Judgment constitutes compliance with Proposition 65 with regard to the
16 Covered Products.

17 5.2 In addition to the foregoing, Ferreiro, on behalf of himself, his past and current
18 agents, representatives, attorneys, and successors and/or assignees, and not in his representative
19 capacity, hereby waives all rights to institute or participate in, directly or indirectly, any form of
20 legal action and releases Plano, Defendant Releasees, and Downstream Releasees from any and all
21 manner of actions, causes of action, claims, demands, rights, suits, obligations, debts, contracts,
22 agreements, promises, liabilities, damages, charges, losses, costs, expenses, and attorneys’ fees, of
23 any nature whatsoever, known or unknown, in law or equity, fixed or contingent, now or in the
24 future, with respect to any alleged violations of Proposition 65 related to or arising from Covered
25 Products manufactured, distributed, or sold by Plano, Defendant Releasees or Downstream
26 Releasees. With respect to the foregoing waivers and releases in this paragraph, Ferreiro hereby
27 specifically waives any and all rights and benefits which he now has, or in the future may have,
28

1 conferred by virtue of the provisions of § 1542 of the California Civil Code, which provides as
2 follows:

3
4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
5 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
6 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
7 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
8 SETTLEMENT WITH THE DEBTOR.

9 5.3 Plano waives any and all claims against Ferreiro, his attorneys and other
10 representatives, for any and all actions taken or statements made (or those that could have been
11 taken or made) by Ferreiro and his attorneys and other representatives, whether in the course of
12 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
13 and/or with respect to Covered Products.

14 **6. INTEGRATION**

15 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and
16 any and all prior negotiations and understandings related hereto shall be deemed to have been
17 merged within it. No representations or terms of agreement other than those contained herein exist
18 or have been made by any Party with respect to the other Party or the subject matter hereof.

19 **7. GOVERNING LAW**

20 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
21 California and apply within the State of California. In the event that Proposition 65 is repealed or
22 is otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then
23 Defendant shall have no further obligations pursuant to this Consent Judgment with respect to, and
24 to the extent that, Covered Products are so affected.

25 **8. NOTICES**

26 8.1 Unless specified herein, all correspondence and notices required to be provided
27 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
28 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party
by the other party at the following addresses:

For Defendant:

1 Josephine Benkers
2 General Counsel
3 Plano Synergy
431 E. South Street
5 Plano, Illinois 60545

6 And

7 For Ferreiro:

8 Evan Smith
9 Brodsky & Smith, LLC
10 9595 Wilshire Blvd., Ste. 900
11 Beverly Hills, CA 90212

12 Any Party, from time to time, may specify in writing to the other Party a change of address to
13 which all notices and other communications shall be sent.

14 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

15 9.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
16 which shall be deemed an original, and all of which, when taken together, shall constitute one and
17 the same document.

18 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**
19 **APPROVAL**

20 10.1 Ferreiro agrees to comply with the requirements set forth in California Health &
21 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment.
22 Defendant agrees it shall support approval of such Motion.

23 10.2 This Consent Judgment shall not be effective until it is approved and entered by the
24 Court and shall be null and void if, for any reason, it is not approved by the Court. In such case,
25 the Parties agree to meet and confer on how to proceed and if such agreement is not reached within
26 30 days, the case shall proceed on its normal course.

27 10.3 If the Court approves this Consent Judgment and is reversed or vacated by an
28 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
Judgment. If the Parties do not jointly agree on a course of action to take, the case shall proceed on
its normal course on the trial court's calendar.

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

11. MODIFICATION

11.1 This Consent Judgment may be modified only by further stipulation of the Parties and the approval of the Court or upon the granting of a motion brought to the Court by either Party.

12. RETENTION OF JURISDICTION

12.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment.

13. AUTHORIZATION

13.1 The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this document and certify that he or she is fully authorized by the Party he or she represents to execute the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as explicitly provided herein each Party is to bear its own fees and costs.

AGREED TO:

AGREED TO:

Date: 8/10/18
By: Anthony Ferrero
ANTHONY FERREIRO

Date: 8/11/2018
By: Angeline Benkers
PLANO SYNERGY HOLDINGS, INC.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: 12/15/18

D. J. [Signature]
Judge of Superior Court