

1 Mark P. Kroner, Esq., Bar #090220
THE LAW OFFICE OF MARK P. KRONER
2 6340 Cascade Street
San Diego, California 92122-2421
3 (619) 457-3438

4 Attorney for Plaintiff
ABC COMPANY, INC.

5
6
7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO
8 NORTH COUNTY JUDICIAL DISTRICT

9 ABC COMPANY, INC., a California
10 corporation,
11 Plaintiff,
12 vs.
13 PLASTIC TECHNOLOGIES, INC., a Delaware
corporation qualified to do business in
14 California; and DOES 1 through 50,
inclusive,
15 Defendants
16

Case No.

COMPLAINT FOR DAMAGES

1. OPEN BOOK ACCOUNT
2. ACCOUNT STATED
3. REASONABLE VALUE
4. BREACH OF CONTRACT

17 Plaintiff complains and alleges as follows:

18 **FOR A FIRST CAUSE OF ACTION AGAINST**
19 **ALL DEFENDANTS**
20 **(Open Book Account)**

21 1. The cause of action hereinafter stated is a money demand for more
22 than \$25,000.00, and is one of which the above-entitled Court has jurisdiction.
23 The venue and jurisdiction requirements of C.C.P. §§ 395 and 396 are attached
hereto as **Exhibit "1"** and incorporated herein as though fully set forth.

24 2. At all times mentioned herein, Plaintiff was, and is, a California
25 corporation authorized to do business in the County of San Diego, State of

1 California and whose transaction of business with furnishing of goods to
2 Defendants gives rise to this lawsuit.

3 3. At all times mentioned herein, the site for venue in the credit
4 application is San Diego County. Defendant's principal place of business is in
5 this judicial district. Defendant executed the contracts in question in this
6 judicial district. Plaintiff and Defendants were and are doing business within
7 this judicial district. Defendants are liable to Plaintiff in the capacity sued
8 and named herein.

9 4. Said obligation is commercial in nature, not based upon a retail
10 installment sales contract or a conditional sales contract, and not subject to
11 the provisions of Civil Code §§ 1812.10 and/or 2984.4. Said obligation is based
12 on an open book account pursuant to Civil Code §1717.5 which entitles Plaintiff
13 herein to reasonable attorneys' fees in addition to other costs.

14 5. The true names and/or capacities, whether individual, corporate,
15 associate or otherwise, of Defendants named in this action as DOES 1 through 50,
16 inclusive, are unknown to Plaintiff at this time; therefore, Plaintiff will amend
17 this Complaint to show their true names and capacities upon discovery of same.

18 6. At all times herein mentioned, each of the Defendants was the agent
19 of each of their Co-Defendants, and, in committing the acts hereinafter alleged,
20 said Defendants were acting within the scope of their authority as such agents,
21 or employees, or authorized representatives, and with the permission and consent
22 of said Co-Defendants named herein.

23 7. Plaintiff alleges that within the past four (4) years, namely on
24 March 23, 1998, Defendants became indebted to Plaintiff on an open book account
25 for a balance due in the sum of \$28,915.62 for goods, wares, merchandise and/or
26 services, which were provided and delivered to Defendants at their request. No
27 part of the above sum has been paid and the sum of \$28,915.62 is now due and

1 owing from Defendants to Plaintiff, together with interest thereon at the legal
2 rate from and after March 23, 1998, plus reasonable attorneys' fees as allowed by
3 law.

4 **FOR A SECOND CAUSE OF**
5 **ACTION AGAINST ALL DEFENDANTS**
6 **(Account Stated)**

7 8. Plaintiff realleges and incorporates herein by reference each and
8 every allegation contained in ¶¶ 1 through 7 of the First Cause of Action, as
9 though fully set forth.

10 9. Plaintiff alleges that on or about March 23, 1998, there was an
11 account stated between Plaintiff and Defendants, in which the sum of \$28,915.62
12 was agreed upon as the balance due to Plaintiff. No part of said sum has been
13 paid, and the sum of \$28,915.62 is now due and owing from said Defendants to
14 Plaintiff, together with interest thereon at the legal rate from and after March
15 23, 1998, plus reasonable attorneys' fees as allowed by law.

16 **FOR A THIRD CAUSE OF**
17 **ACTION AGAINST ALL DEFENDANTS**
18 **(Reasonable Value)**

19 10. Plaintiff realleges and incorporates herein by reference each and
20 every allegation contained within ¶¶ 1 through 9 above, as though fully set
21 forth.

22 11. Plaintiff alleges that on or about March 23, 1998, Defendants became
23 indebted to Plaintiff in the sum of \$28,915.62 for goods, wares, merchandise
24 and/or services, which were provided and furnished to Defendants at their
25 request. Despite demands, no part of that sum has been paid and the sum of
26 \$28,915.62 is now due and owing from the Defendants to Plaintiff, together with
27 interest thereon at the legal rate from and after March 23, 1998, plus reasonable
28

1 attorneys' fees as allowed by law. The above sum represents the reasonable value
2 of said goods, wares, merchandise and/or services.

3 **FOR A FOURTH CAUSE OF**
4 **ACTION AGAINST ALL DEFENDANTS**
5 **(Breach of Contract)**

6 12. Plaintiff realleges and incorporates herein by reference each and
7 every allegation contained within ¶¶ 1 through 11 above, as though fully set
8 forth.

9 13. On or about February 6, 1998 Plaintiff and Defendants entered into a
10 written contract and/or agreement wherein Plaintiff agreed to provide and furnish
11 goods, wares, merchandise and/or services according to the terms and conditions
12 of said written contract and/or agreement. A copy of said contract is attached
13 as **Exhibit "2"** to the Complaint and incorporated herein.

14 14. Pursuant to said contract and/or agreement, Plaintiff has performed
15 all of the terms and conditions on its part to be performed. Any and all non-
16 performance on Plaintiff's part was and is excused by the Defendants' acts,
17 omissions and/or other conduct.

18 15. Defendants breached said contract and/or agreement by failing and
19 refusing to pay the Plaintiff in accordance therewith. As a result, there is now
20 due owing and unpaid from Defendants to Plaintiff the sum of \$28,915.62 together
21 with interest thereon at the rate of ten percent (10%) per annum from and after
22 March 23, 1998, pursuant to said contract and/or agreement.

23 16. Said contract and/or agreement provides for attorneys' fees and
24 Plaintiff demands an award of reasonable attorneys' fees based upon the
25 institution of litigation herein.

26 **WHEREFORE**, Plaintiff prays for judgment against Defendants, and each of
27 them, as follows:

28 **AS TO ALL DEFENDANTS ON THE**
FIRST, SECOND AND THIRD CAUSES OF ACTION

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

1. For the principal sum of \$28,915.62;

2. For interest at the proper legal rate on said principal sum from and after March 23, 1998, and

3. For reasonable attorneys' fees pursuant to Civil Code § 1717.5.

**AS TO ALL DEFENDANTS ON THE
FOURTH CAUSE OF ACTION**

1. For the principal sum of \$28,915.62;

2. For interest at the proper legal rate on said principal sum from and after March 23, 1998, and

3. For reasonable attorneys' fees.

AS TO ALL CAUSES OF ACTION

1. For costs of suit incurred herein; and

2. For such other and further relief as is just and proper in this case.

DATED: _____

Mark P. Kronos, Esq.
Attorneys for Plaintiff ABC
COMPANY, INC.

DECLARATION IN SUPPORT OF VENUE AND JURISDICTION

I, MARK P. KRONES, declare,

1. I am an attorney duly licensed to practice law, and am attorney of record for Plaintiff ABC COMPANY, INC., a California corporation. If called as a witness, I could and would competently testify to the facts stated below.

2. The Superior Court of the North County Judicial District is the proper Court to commence and try the above-entitled action because:

2.1 The site of venue in the credit application is this judicial district.

2.2 The Defendant's principal place of business is in this judicial district. Defendant executed the contracts in question in this judicial district. Defendant is and was doing business in this Judicial District.

2.3 The obligation sued upon was and is payable and merchandise made/services performed within this Judicial District.

2.4 The subject agreements were and are payable within this Judicial District.

2.5 The goods were manufactured and the agreements were made in this judicial district.

3. The causes of action sued upon are not subject to the provisions of Civil Code § 1812.10; and

4. The causes of action sued upon are not subject to the provisions of Civil Code § 2984.4.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this ___ day of _____, 1998 in San Diego, California.

Mark P. Krones