

1 Evan J. Smith, Esquire (SBN 242352)
2 Ryan P. Cardona, Esquire (SBN 302113)
3 BRODSKY & SMITH, LLC
4 9595 Wilshire Blvd., Ste. 900
5 Beverly Hills, CA 90212
6 Telephone: (877) 534-2590
7 Facsimile: (310) 247-0160

8 *Attorneys for Plaintiff*

**ENDORSED
FILED
ALAMEDA COUNTY**
FEB 2 2018
CLERK OF THE SUPERIOR COURT
By _____ Deputy
TANIA PIERCE

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

12 ANTHONY FERREIRO,
13 Plaintiff,
14 vs.
15 BABY CIE, INC.,
16 Defendant.

17 Case No.:

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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

20 **BACKGROUND OF THE CASE**

21 1. Plaintiff brings 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 Plaintiff in the public interest
28 of the citizens of the State of California to enforce the People's right to be informed of the health

1 hazards caused by exposure Bisphenol A (BPA), a toxic chemical found in polycarbonate food
2 and drinkware sold and/or distributed by defendant Baby Cie, Inc. (“Defendant”) in California.

3 3. BPA is a harmful chemical known to the State of California to cause reproductive
4 toxicity. On May 11, 2015, the State of California listed BPA as a chemical known to the State
5 to cause reproductive toxicity and BPA 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).

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

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

18 6. Plaintiff alleges that Defendant manufactures, distributes, imports, sells and/or
19 offers for sale in California, without the requisite exposure warning, polycarbonate food and
20 drinkware items, including but not limited to Le Cadeaux Fleur Wine Glasses (the “Products”)
21 that expose persons to BPA.

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

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

28

1 with the California Secretary of State as foreign corporations authorized to do business in the
2 State of California, and/or has otherwise purposefully availed itself of the California market.
3 Such purposeful availment has rendered the exercise of jurisdiction by California courts
4 consistent and permissible with traditional notions of fair play and substantial justice.

5 **SATISFACTION OF NOTICE REQUIREMENTS**

6 16. On February 21, 2017, Plaintiff gave notice of alleged violation of Health and
7 Safety Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California
8 citizens to BPA contained in the Products without proper warning, subject to a private action to
9 Defendant and to the California Attorney General’s office and the offices of the County District
10 attorneys and City Attorneys for each city with a population greater than 750,000 persons
11 wherein the herein violations allegedly occurred.

12 17. The Notice complied with all procedural requirements of Proposition 65 including
13 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at
14 least one person with relevant and appropriate expertise who reviewed relevant data regarding
15 BPA exposure, and that counsel believed there was meritorious and reasonable cause for a
16 private action.

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

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

23 **FIRST CAUSE OF ACTION**

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

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

27 21. Defendant have, at all times mentioned herein, acted as manufacturer, distributor,
28 and/or retailer of the Product.

1 22. The Products contain BPA, a hazardous chemical found on the Proposition 65 list
2 of chemicals known to be hazardous to human health.

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

4 24. Plaintiff, based on his best information and belief, avers that at all relevant times
5 herein, and at least since October 18, 2016, continuing until the present, that Defendant has
6 continued to knowingly and intentionally expose California users and consumers of the Product
7 to BPA without providing required warnings under Proposition 65.

8 25. The exposures that are the subject of this notice result from the purchase,
9 acquisition, handling and recommended use of the product. Consequently, the primary route of
10 exposure to these chemicals is dermal exposure. The wine glass is expected to be in contact with
11 liquids during normal expected use and thus BPA can leach from the polycarbonate plastic into
12 liquids contained within the wine glass, which may be exacerbated when the wine glass contains
13 alcohol. When BPA contaminated liquids are consumed, oral ingestion of BPA will result. Over
14 time, it is expected that the wine glass will be exposed to hot water during washing and future
15 BPA leaching rates can be expected to increase with continued exposure to hot water. Washing
16 the product with hard water and/or dishwashing soaps can increase the pH and higher extraction
17 rates of BPA into subsequent items placed in the wine glass. Dermal exposure to BPA will occur
18 when the wine glass is handled with bare hands during normal expected use and cleaning. Direct
19 ingestion of BPA due to mouthing will occur when the user's mouth parts contact the wine glass
20 during drinking. Finally, some amount of exposure through ingestion can occur by handling the
21 product, with subsequent touching of the user's hand to mouth.

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

25 27. Defendant have knowledge that the normal and reasonably foreseeable use of the
26 Product exposes individuals to BPA, and Defendant intend that exposures to BPA will occur by
27 their deliberate, non-accidental participation in the manufacture, importation, distribution, sale
28 and offering of the Product to consumers in California

1 28. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
2 Complaint.

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

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


7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff demands judgment against Defendant and requests the
9 following relief:

- 10 A. That the court assess civil penalties against Defendant in the amount of
11 \$2,500 per day for each violation in accordance with Health and Safety
12 Code § 25249.7(b);
- 13 B. That the court preliminarily and permanently enjoin Defendant mandating
14 Proposition 65 compliant warnings on the Product;
- 15 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 16 D. That the court grant any further relief as may be just and proper.

17 Dated: February 1, 2018

BRODSKY & SMITH, LLC

18 By: 
19 _____
20 Evan J. Smith (SBN242352)
21 Ryan P. Cardona (SBN302113)
22 9595 Wilshire Boulevard, Suite 900
23 Beverly Hills, CA 90212
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