

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

NOV 22 2017

CLERK OF THE SUPERIOR COURT
By: ERICA BAKER, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

ANTHONY FERREIRO,
Plaintiff,

v.

BARPRODUCTS.COM DISTRIBUTION,
INC.,
Defendant.

Case No.: **RG17883457**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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

BACKGROUND OF THE CASE

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

2. This complaint is a representative action brought by Plaintiff in the public 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 Bisphenol A (BPA), a toxic chemical found in polycarbonate cups, chalices, mugs, goblets, tumblers and assorted other drinking and/or serving vessels

BY FAX

1 manufactured, sold and/or distributed in California by defendant BarProducts.com Distribution,
2 Inc, (“BarProducts.com” or “Defendant”) in California.

3 3. BPA is a harmful chemical known to the State of California to cause birth defects
4 or other reproductive harm. On May 11, 2015, the State of California listed BPA as a chemical
5 known to cause adverse developmental and reproductive effects and the chemical has come
6 under the purview of Proposition 65 regulation since such time. Cal. Code Regs. Tit. 27, §
7 27001(c); Health & Safety Code §§ 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[s] or threaten[s] to violate” the statute. Health &
17 Safety Code § 25249.7.

18 6. Plaintiff alleges that Defendant manufactures, distributes, imports, sells, and/or
19 offers for sale in California, without the required Proposition 65 exposure warning,
20 polycarbonate cups, chalices, mugs, goblets, tumblers and assorted other drinking and/or serving
21 vessels (“Product” or “Products”), that contain 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 Product 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 State of California, and/or has otherwise purposefully availed itself of the California market.
2 Such purposeful availment has rendered the exercise of jurisdiction by California courts
3 consistent and permissible with traditional notions of fair play and substantial justice.

4 **SATISFACTION OF NOTICE REQUIREMENTS**

5 16. On July 14, 2017, Plaintiff gave notice of alleged violation of Health and Safety
6 Code § 25249.6 (the “Notice”) to BarProducts.com concerning the exposure of California
7 citizens to BPA contained in the Product without proper warning, subject to a private action to
8 BarProducts.com and to the California Attorney General’s office and the offices of the County
9 District attorneys and City Attorneys for each city with a population greater than 750,000
10 persons wherein the herein violations allegedly occurred.

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

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

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

22 **FIRST CAUSE OF ACTION**

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

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

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

28

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

3 23. The Product does 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 May 18, 2017, continuing until the present, that BarProducts.com 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 the 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 through oral ingestion. The polycarbonate tested is expected to be
11 in contact with liquid beverages during normal expected use and thus BPA can leach from the
12 polycarbonate plastic into liquids that come into contact with the polycarbonate. Extraction of
13 BPA may be enhanced into liquids when the glass contains liquids at elevated temperatures or
14 when the glass contains alcohol or mil. When BPA contaminated liquids contained in the glass
15 are consumed, oral ingestion of BPA will result. Over time, it is expected that the polycarbonate
16 will be exposed to hot water and abrasion during hand and/or machine washing and future BPA
17 leaching rates can be expected to increase with continued exposure to hot water and washing
18 cycles. Washing the product with hard water and/or dishwashing soaps at elevated Ph will result
19 in higher extraction rates of BPA with subsequent uses of the glass. Dermal exposure to BPA
20 will occur when the polycarbonate is handled with bare hands during normal expected use and
21 cleaning. Finally, some amount of exposure to BPA through ingestion can occur by direct
22 mouthing of the glass when drinking or through handling the product, with subsequent touching
23 of the user's hand to mouth.

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

27 27. Defendant has knowledge that the normal and reasonably foreseeable use of the
28 Product exposes individuals to BPA, and Defendant intends that exposures to BPA will occur by

1 their deliberate, non-accidental participation in the manufacture, importation, distribution, sale
2 and offering of the Product to consumers in California

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

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

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

9
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff demands judgment against Defendant and requests the
12 following relief:

- 13 A. That the court assess civil penalties against Defendant in the amount of
14 \$2,500 per day for each violation in accordance with Health and Safety
15 Code § 25249.7(b);
- 16 B. That the court preliminarily and permanently enjoin Defendant mandating
17 Proposition 65 compliant warnings on the Product;
- 18 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 19 D. That the court grant any further relief as may be just and proper.
- 20

21 Dated: November 21, 2017

BRODSKY & SMITH, LLC

22 By: 

23 Evan J. Smith (SBN242352)

24 Ryan P. Cardona (SBN302113)

9595 Wilshire Boulevard, Suite 900

Beverly Hills, CA 90212

25 Telephone: (877) 534-2590

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