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ENDORSED  
FILED  
ALAMEDA COUNTY  
NOV 19 2018  
SUE PESKO

5 *Attorneys for Plaintiff*

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF ALAMEDA

9 ANTHONY FERREIRO,  
10 Plaintiff,  
11 v.  
12 BARPRODUCTS.COM DISTRIBUTION,  
13 INC.,  
14 Defendant.

Case No.: RG17883457  
Dept.: 517  
Judge: Stephen Pulido

**FIRST AMENDED COMPLAINT FOR  
CIVIL PENALTIES AND INJUNCTIVE  
RELEIF**  
**(Violation of Health & Safety Code §25249.5  
et seq.)**

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

19 **BACKGROUND OF THE CASE**

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

26 2. This complaint is a representative action brought by Plaintiff in the public interest  
27 of the citizens of the State of California to enforce the People's right to be informed of the health  
28

BY FAX

1 hazards caused by exposure to Bisphenol A (BPA), a toxic chemical found in polycarbonate  
2 cups, chalices, mugs, goblets, tumblers and assorted other drinking and/or serving vessels  
3 manufactured, sold and/or distributed in California by defendant BarProducts.com Distribution,  
4 Inc, (“BarProducts.com” or “Defendant”) in California.

5 3. BPA is a harmful chemical known to the State of California to cause birth defects  
6 or other reproductive harm. On May 11, 2015, the State of California listed BPA as a chemical  
7 known to cause adverse developmental and reproductive effects and the chemical has come  
8 under the purview of Proposition 65 regulation since such time. Cal. Code Regs. Tit. 27, §  
9 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

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

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

20 6. Plaintiff alleges that Defendant manufactures, distributes, imports, sells, and/or  
21 offers for sale in California, without the required Proposition 65 exposure warning,  
22 polycarbonate cups, chalices, mugs, goblets, tumblers and assorted other drinking and/or serving  
23 vessels (“Product” or “Products”), that contain BPA.

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

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

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

5           23.     The Product does not comply with the Proposition 65 warning requirements.

6           24.     Plaintiff, based on his best information and belief, avers that at all relevant times  
7 herein, and at least since May 18, 2017, continuing until the present, that BarProducts.com has  
8 continued to knowingly and intentionally expose California users and consumers of the Product  
9 to BPA without providing required warnings under Proposition 65.

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

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



*Attorneys for Plaintiff*

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