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ENDORSED  
FILED  
ALAMEDA COUNTY

FEB 02 2018

CLERK OF THE SUPERIOR COURT  
By: D. OLIVER, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,  
11 Plaintiff,  
12 vs.  
13 IMPULSE! ENTERPRISES, LLC,  
14 OVERSTOCK.COM, INC.,  
15 Defendants.

Case No.: **RG 18 891707**

**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 defendants Impulse! Enterprises, LLC (“Impulse!”) and  
3 Overstock.com, Inc. (“Overstock”) (collectively, “Defendants”) in California.

4 3. BPA is a harmful chemical known to the State of California to cause reproductive  
5 toxicity. On May 11, 2015, the State of California listed BPA as a chemical known to the State  
6 to cause reproductive toxicity and BPA has come under the purview of Proposition 65  
7 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§  
8 25249.8 & 25249.10(b).

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

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

19 6. Plaintiff alleges that Defendants produce, manufacture, distribute, import, sell,  
20 and/or offer for sale in California, without the requisite exposure warning, Impulse!  
21 polycarbonate food and drinkware items, including but not limited to Impulse! Capri Latte Sets  
22 (the “Products”) that expose persons to BPA.

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

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







1 with bare hands during normal expected use and cleaning. Finally, some amount of exposure to  
2 BPA through ingestion can occur by direct mouthing of the latte mug when drinking or through  
3 handling the product, with subsequent touching of the user's hand to mouth.

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

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

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

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

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

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff demands judgment against Defendants and requests the  
19 following relief:

- 20 A. That the court assess civil penalties against Defendants in the amount of  
21 \$2,500 per day for each violation in accordance with Health and Safety  
22 Code § 25249.7(b);
- 23 B. That the court preliminarily and permanently enjoin Defendants  
24 mandating Proposition 65 compliant warnings on the Product;
- 25 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 26 D. That the court grant any further relief as may be just and proper.

27 Dated: February 1, 2018

BRODSKY & SMITH, LLC

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