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ENDORSED  
FILED  
ALAMEDA COUNTY

JUL 27 2018  
CLERK OF THE SUPERIOR COURT  
By: ERICA BAKER Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,  
11 Plaintiff,  
12 vs.  
13 TECH-E, INC.,  
14 Tech-E.

Case No.: RG 18914620  
**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**  
**(Violation of Health & Safety Code §25249.5 et  
seq.)**

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

**BACKGROUND OF THE CASE**

18  
19 1. Plaintiff brings this representative action on behalf of all California citizens to  
20 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified  
21 at the Health and Safety Code § 25249.5 et seq. (“Proposition 65”), which reads, in relevant part,  
22 “[n]o person in the course of doing business shall knowingly and intentionally expose any  
23 individual to a chemical known to the state to cause cancer or reproductive toxicity without first  
24 giving clear and reasonable warning to such individual ...”. Health & Safety Code § 25249.6.

25 2. This complaint is a representative action brought by Plaintiff in the public interest  
26 of the citizens of the State of California to enforce the People’s right to be informed of the health  
27 hazards caused by exposure to bisphenol A (BPA), a toxic chemical found in XPACK unique  
28 wine glasses sold and/or distributed by defendant Tech-E, Inc. (“Tech-E”) in California.

BY FAX

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

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

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

16          6.       Plaintiff alleges that Tech-E manufactures, distributes, sells and/or offers for sale  
17 in California, without a requisite exposure warning, XPACK unique wine glasses (the  
18 “Products”) that expose persons to BPA.

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

23          8.       Plaintiff seeks civil penalties against Tech-E for its violations of Proposition 65 in  
24 accordance with Health and Safety Code § 25249.7(b).

25          9.       Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
26 Tech-E to provide purchasers or users of the Product with exposure warnings related to the  
27 dangers and health hazards associated with exposure to BPA pursuant to Health and Safety Code  
28 § 25249.7(a).

1 **PARTIES**

2 10. Plaintiff is a citizen of the State of California acting in the interest of the general  
3 public to promote awareness of exposures to toxic chemicals in products sold in California and  
4 to improve human health by reducing hazardous substances contained in such items. He brings  
5 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

6 11. Tech-E, through its business, effectively manufactures, imports, distributes, sells,  
7 and/or offers the Product for sale or use in the State of California, or it implies by its conduct that  
8 it manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of  
9 California.

10 12. Plaintiff alleges that defendant Tech-E is a “person” in the course of doing  
11 business within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.

12 **VENUE AND JURISDICTION**

13 13. Venue is proper in the County of Alameda because one or more of the instances  
14 of wrongful conduct occurred, and continue to occur in this county and/or because Tech-E  
15 conducted, and continues to conduct, business in the County of Alameda with respect to the  
16 Product.

17 14. This Court has jurisdiction over this action pursuant to California Constitution  
18 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those  
19 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the  
20 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,  
21 this Court has jurisdiction over this lawsuit.

22 15. This Court has jurisdiction over Tech-E because it is a citizen of the State of  
23 California, has sufficient minimum contacts with the State of California, is registered with the  
24 California Secretary of State as foreign corporations authorized to do business in the State of  
25 California, and/or has purposefully availed itself of the California market. Such purposeful  
26 availment has rendered the exercise of jurisdiction by California courts consistent and  
27 permissible with traditional notions of fair play and substantial justice.

28 **SATISFACTION OF NOTICE REQUIREMENTS**

1 16. On September 15, 2017, Plaintiff gave notice of alleged violation of Health and  
2 Safety Code § 25249.6 (the "Notice") to Tech-E concerning the exposure of California citizens  
3 to BPA contained in the Products without proper warning, subject to a private action to Tech-E  
4 and to the California Attorney General's office and the offices of the County District attorneys  
5 and City Attorneys for each city with a population greater than 750,000 persons wherein the  
6 herein violations allegedly occurred.

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

12 18. After receiving the Notice, and to Plaintiff's best information and belief, none of  
13 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted  
14 a cause of action against Tech-E under Proposition 65 to enforce the alleged violations which are  
15 the subject of Plaintiff's notice of violation.

16 19. Plaintiff is commencing this action more than sixty (60) days from the date of the  
17 Notice to Tech-E, as required by law.

18 **FIRST CAUSE OF ACTION**

19 **(By Plaintiff against Tech-E for the Violation of Proposition 65)**

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

22 21. Tech-E has, at all times mentioned herein, acted as a manufacturer, distributor  
23 and/or retailer of the Product.

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

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

27 24. Plaintiff, based on his best information and belief, avers that at all relevant times  
28 herein, and at least since July 12, 2017, continuing until the present, that Tech-E has continued to

1 knowingly and intentionally expose California users and consumers of the Product to BPA  
2 without providing required warnings under Proposition 65.

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

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

23         27.     Tech-E has knowledge that the normal and reasonably foreseeable use of the  
24 Products expose individuals to BPA, and Tech-E intends that exposures to BPA will occur by its  
25 deliberate, non-accidental participation in the manufacture, importation, distribution, sale and  
26 offering of the Product to consumers in California

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

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

3           30. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically  
4 authorized to grant injunctive relief in favor of Plaintiff and against Tech-E.

5                                       **PRAYER FOR RELIEF**

6           WHEREFORE, Plaintiff demands judgment against Tech-E and requests the following  
7 relief:

- 8                       A. That the court assess civil penalties against Tech-E in the amount of  
9                                       \$2,500 per day for each violation in accordance with Health and Safety  
10                                      Code § 25249.7(b);
- 11                      B. That the court preliminarily and permanently enjoin Tech-E mandating  
12                                      Proposition 65 compliant warnings on the Product;
- 13                      C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 14                      D. That the court grant any further relief as may be just and proper.

15 Dated: July 27, 2018

BRODSKY & SMITH, LLC

16 By:  \_\_\_\_\_

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