

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 05 2019

CLERK OF THE SUPERIOR COURT

By CURTIYAH GANTER  
Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,  
12 Plaintiff,

13 vs.

14 AUGUST THOMSEN CORP., THE  
15 WEBSTaurant STORE, INC.,  
16 Defendants.

Case No.: RG19005658

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

(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.

**BACKGROUND OF THE CASE**

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 bisphenol A (BPA), a toxic chemical found in Ateco polycarbonate  
28

1 cutter sets sold and/or distributed by defendants August Thomsen Corp (“Ateco”), and The  
2 Webstaurant Store, Inc. (“The Webstaurant Store”) (collectively, “Defendants”) 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 Defendants manufacture, distribute, sell and/or offer for sale  
19 in California, without a requisite exposure warning, Ateco polycarbonate cutter sets (the  
20 “Products”) that expose persons to BPA.

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

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

27 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
28 Defendants to provide purchasers or users of the Product with exposure warnings related to the

1 dangers and health hazards associated with exposure to BPA pursuant to Health and Safety Code  
2 § 25249.7(a).

3 **PARTIES**

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

8 11. Ateco, through its business, effectively manufactures, imports, distributes, sells,  
9 and/or offers the Product for sale or use in the State of California, or it implies by its conduct that  
10 it manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of  
11 California. Plaintiff alleges that defendant Ateco is a “person” in the course of doing business  
12 within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.

13 12. The Webstaurant Store, through its business, effectively imports, distributes, sells,  
14 and/or offers the Product for sale or use in the State of California, or it implies by its conduct that  
15 it manufactures, imports, distributes, sells, and/or offers the Product for sale or use in the State of  
16 California. Plaintiff alleges that defendant The Webstaurant Store is a “person” in the course of  
17 doing business within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.

18 **VENUE AND JURISDICTION**

19 13. Venue is proper in the County of Alameda because one or more of the instances  
20 of wrongful conduct occurred, and continue to occur in this county and/or because Defendants  
21 conducted, and continue to conduct, business in the County of Alameda with respect to the  
22 Product.

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



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

3           22. The Products contain and expose persons to BPA, a hazardous chemical found on  
4 the Proposition 65 list of chemicals known to be hazardous to human health.

5           23. The Products do 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 February 6, 2018, continuing until the present, that Defendants have  
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 Product tested is expected to be in  
13 contact with foods such as dough or pastries products during normal expected use and thus BPA  
14 can transfer from the Product into foods that come into contact with the Product. Extraction of  
15 BPA may be enhanced when the Product is used under elevated temperatures or when the  
16 Product is contacted with alcohol or milk-based products. When BPA contaminated items due to  
17 contact with the cutter are consumed or mouthed, oral ingestion of BPA will result. Over time, it  
18 is expected that the Product will be exposed to hot water and abrasion during hand and/or  
19 machine washing and future BPA leaching rates can be expected to increase with continued  
20 exposure to hot water and washing cycles. Washing the Product with hard water and/or  
21 dishwashing soaps at elevated pH will result in higher extraction rates of BPA with subsequent  
22 uses of the Product. Dermal exposure to BPA will occur when the Product is handled with bare  
23 hands during normal expected use and cleaning. If the Product is stored or transported in a  
24 carrier, BPA that leaches from the polycarbonate may contaminate other articles contained  
25 within the storage area or carrier that are subsequently handled, worn, mouthed, or ingested by  
26 the user. Finally, some amount of exposure to BPA through ingestion can occur by handling the  
27 Product, with subsequent touching of the user's hand to mouth.

28

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

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

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

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

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

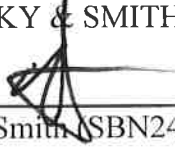
15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff demands judgment against Defendants and requests the  
17 following relief:

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

25 Dated: February 5, 2019

BRODSKY & SMITH, LLC

26 By:   
27 Evan J. Smith (SBN242352)  
28 Ryan P. Cardona (SBN302113)  
9595 Wilshire Boulevard, Suite 900

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Beverly Hills, CA 90212  
Telephone: (877) 534-2590  
Facsimile: (310) 247-0160

*Attorneys for Plaintiff*