

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

SEP 12 2019

CLERK OF THE SUPERIOR COURT  
By Roni Cit

Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,

12 Plaintiff,

13 vs.

14 SHOPBEYONDLIMITS, LLC,

15 Defendant.

Case No.:

**HG 19034820**

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

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

18 **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 CARBON MONOXIDE, a toxic chemical byproduct from use of  
28 Quickfire Fire Starter pouches sold and/or distributed by defendant Shopbeyondlimits, LLC  
("Shopbeyondlimits" or "Defendant") in California.

Filed By Fax

1           3.       CARBON MONOXIDE is a harmful chemical known to the State of California to  
2 cause reproductive toxicity. On July 1, 1989, the State of California listed CARBON  
3 MONOXIDE as a chemical known to the State to cause reproductive toxicity and it has come  
4 under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, §  
5 27001(c); Health & Safety Code §§ 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 Defendant manufactures, distributes and/or offers for sale in  
17 California, without a requisite exposure warning, Quickfire Fire Starter pouches (the “Products”)  
18 that expose persons to CARBON MONOXIDE.

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

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

25          9.       Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
26 Defendant to provide purchasers or users of the Products with required warnings related to the  
27 dangers and health hazards associated with exposure to CARBON MONOXIDE pursuant to  
28 Health and Safety Code § 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. Defendant Shopbeyondlimits, through its business, effectively manufactures,  
7 imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or  
8 it implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the  
9 Products for sale or use in the State of California.

10 12. Plaintiff alleges that defendant Shopbeyondlimits is a “person” in the course of  
11 doing business within the meaning of Health & Safety Code sections 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 Defendant  
15 conducted, and continues to conduct, business in the County of Alameda with respect to the  
16 Products.

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

28 **SATISFACTION OF NOTICE REQUIREMENTS**

16. On September 13, 2018, Plaintiff gave notice of alleged violation of Health and Safety Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California citizens to CARBON MONOXIDE contained in the Products without proper warning, subject to a private action to Defendant and to the California Attorney General’s office and the offices of the County District attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein the herein violations allegedly occurred.

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

18. After receiving the Notice, and to Plaintiff's best information and belief, none of the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a cause of action against Defendant under Proposition 65 to enforce the alleged violations which are the subject of the Notice.

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

### FIRST CAUSE OF ACTION

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

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

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

22. Use of the Products will expose persons to CARBON MONOXIDE, a hazardous chemical found on the Proposition 65 list of chemicals known to be hazardous to human health.

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

24. Plaintiff, based on his best information and belief, avers that at all relevant times herein, and at least since September 13, 2018, continuing until the present, that Defendant has

continued to knowingly and intentionally expose California users and consumers of the Product to CARBON MONOXIDE without providing required warnings under Proposition 65.

25. The exposures that are the subject of this notice result from the combustion and inhalation of the products. The Products are used primarily for cooking, in order to promote fast and easy ignition. Consequently, a primary route of exposure to the chemicals contained in these Products is through inhalation. Inhalation exposure occurs when persons using these Products, or persons nearby when the Products are being used, inhale that which is emitted during its use. These Products cause carbon monoxide exposures to occur in people's yards and everywhere else throughout California where these Products are used. These violations occur during the foreseeable use of the Products and when the Products is used as intended.

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

27. Defendant has knowledge that the normal and reasonably foreseeable use of the Product exposes individuals to CARBON MONOXIDE, and Defendant intends that exposures to CARBON MONOXIDE will occur by its deliberate, non-accidental participation in the manufacture, importation, distribution, sale and offering of the Products to consumers in California.

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

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

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

### PRAYER FOR RELIEF

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

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

8 Dated: September 12, 2019

BRODSKY & SMITH, LLC

9 By:  \_\_\_\_\_

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