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ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**07/29/2021**  
**Clerk of the Court**  
BY: JACKIE LAPREVOTTE  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

ANTHONY FERREIRO,

Plaintiff,

vs.

INCIPIO, LLC, BEST BUY CO., INC.,

Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

**CGC-21-594167**

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

**BACKGROUND OF THE CASE**

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

2. This complaint is a representative action brought by Plaintiff in the public interest of the citizens of the State of California against defendants Incipio, LLC ("Incipio") and Best Buy Co., Inc. ("Best Buy") (collectively, the "Defendants") to enforce the People's right to be informed of the health hazards caused by exposure to Bisphenol A (BPA), a toxic chemical found in

1 polycarbonate cell phone cases manufactured, distributed, offered for sale and/or sold by Incipio  
2 in California, including but not limited to Griffin Survivor Samsung Galaxy S20 case, UPC #  
3 191058110961 and Rifle Paper Company iPhone case, UPC # 191058070982.

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

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

14 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
15 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be  
16 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code  
17 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the  
18 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §  
19 25249.7.

20 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,  
21 without a requisite exposure warning, polycarbonate cell phone cases manufactured, distributed,  
22 offered for sale and/or sold by Incipio in California, including but not limited to Incipio Gear Case  
23 for Samsung Galaxy S10, UPC # 812451031379 (the “Products”) that expose persons to BPA.

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

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

9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring Defendants to provide purchasers or users of the Products with required warnings related to the dangers and health hazards associated with exposure to BPA pursuant to Health and Safety Code § 25249.7(a).

10. Plaintiff further seeks a reasonable award of attorney's fees and costs.

## PARTIES

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

12. Defendant Incipio, through its business, effectively imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct that it imports, distributes, sells, and/or offers the Products for sale or use in the State of California. Plaintiff alleges that defendant Incipio is a “person” in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

13. Defendant Best Buy, through its business, effectively imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct that it imports, distributes, sells, and/or offers the Products for sale or use in the State of California. Plaintiff alleges that defendant Best Buy is a “person” in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

## VENUE AND JURISDICTION

14. Venue is proper in the County of San Francisco because one or more of the instances of wrongful conduct occurred, and continue to occur in this county and/or because Defendants conducted, and continue to conduct, business in the County of San Francisco with respect to the Products.

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

6           16.     This Court has jurisdiction over Defendants because each defendant is either a  
7 citizen of the State of California, has sufficient minimum contacts with the State of California, is  
8 registered with the California Secretary of State as foreign corporations authorized to do business  
9 in the State of California, and/or has otherwise purposefully availed itself of the California market.  
10 Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent  
11 and permissible with traditional notions of fair play and substantial justice.

12                               **STATUTORY BACKGROUND**

13           17.     The people of the State of California declared in Proposition 65 their right “[t]o be  
14 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
15 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

16           18.     To effect this goal, Proposition 65 requires that individuals be provided with a  
17 “clear and reasonable warning” before being exposed to substances listed by the State of California  
18 as causing cancer or reproductive toxicity. H&S Code § 25249.6 states, in pertinent part:

19                 No person in the course of doing business shall knowingly and intentionally expose any  
20 individual to a chemical known to the state to cause cancer or reproductive toxicity without  
21 first giving clear and reasonable warning to such individual...

22           19.     An exposure to a chemical in a consumer product is one “which results from a  
23 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a  
24 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §  
25 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...  
26 shall provide a warning to any person to whom the product is sold or transferred unless the product  
27 is packaged or labeled with a clear and reasonable warning.”  
28

20. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or more of the following methods individually or in combination:<sup>1</sup>

- a. A warning that appears on a product's label or other labeling.
- b. Identification of the product at the retail outlet in a manner which provides a warning. Identification may be through shelf labeling, signs, menus, or a combination thereof.
- c. The warnings provided pursuant to subparagraphs (a) and (b) shall be prominently placed upon a product's labels or other labeling or displayed at the retail outlet with such conspicuousness, as compared with other words, statements, designs, or devices in the label, labeling or display as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use.
- d. A system of signs, public advertising identifying the system and toll-free information services, or any other system that provides clear and reasonable warnings.

21. Proposition 65 provides that any “person who violates or threatens to violate” the statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase “threaten to violate” is defined to mean creating “a condition in which there is a substantial probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

## FACTUAL BACKGROUND

22. On May 11, 2015, the State of California listed BPA as a chemical known to the State to cause female reproductive toxicity and it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8

<sup>1</sup> Alternatively, a person in the course of doing business may elect to comply with the warning requirements set out in the amended version of 27 CCR 25601, *et.seq.* as amended on August 30, 2016, and operative on August 30, 2018.

1 & 25249.10(b). In summary, the Listed Chemical was listed under Proposition 65 as a chemical  
2 known to the State to cause reproductive toxicity in females.

3 23. The consumer exposures that are the subject of this Complaint result from through  
4 dermal absorption. Dermal exposure to BPA is possible when the user handles the Products or the  
5 Products are placed in contact with exposed areas of the user's skin that can include facial skin.  
6 Should the Products contact hard water and/or soaps at elevated pH, higher extraction rates of BPA  
7 and accumulation of BPA at the surface of the Products will result. If the Products are placed in  
8 contact with the user's mouth during a phone call, ingestion of BPA can occur. Finally, some  
9 amount of exposure through ingestion can occur by touching the Products with subsequent  
10 touching of the user's hand to mouth.

11 24. Defendants have manufactured, processed, marketed, distributed, offered to sell  
12 and/or sold the Products in California since at least July 31, 2020. The Products continue to be  
13 distributed and sold in California without the requisite warning information.

14 25. At all times relevant to this action, Defendants have knowingly and intentionally  
15 exposed users, consumers and/or patients to the Products and the Listed Chemical without first  
16 giving a clear and reasonable exposure warning to such individuals.

17 26. As a proximate result of acts by each defendant, as a person in the course of doing  
18 business within the meaning of H&S Code § 25249.11, individuals throughout the State of  
19 California, including in San Francisco County, have been exposed to the Listed Chemical without  
20 a clear and reasonable warning on the Products. The individuals subject to the violative exposures  
21 include normal and foreseeable users, consumers and patients that use the Products, as well as all  
22 others exposed to the Products.

### 23 SATISFACTION OF NOTICE REQUIREMENTS

24 27. On July 31, 2020 (Griffin Case) and October 19, 2020 (Rifle Paper Case), Plaintiff  
25 gave notice of alleged violation of Health and Safety Code § 25249.6 (collectively, the "Notices")  
26 to Defendants concerning the exposure of California citizens to BPA contained in the Products  
27 without proper warning, subject to a private action to Defendants and to the California Attorney  
28

1 General's office and the offices of the County District attorneys and City Attorneys for each city  
2 with a population greater than 750,000 persons wherein the herein violations allegedly occurred.

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

8 29. After receiving the Notices, and to Plaintiff's best information and belief, none of  
9 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a  
10 cause of action against Defendants under Proposition 65 to enforce the alleged violations which  
11 are the subject of the Notices.

12 30. Plaintiff is commencing this action more than sixty (60) days from the date of the  
13 Notices to Defendants, as required by law.

14 **FIRST CAUSE OF ACTION**

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

16 31. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 30 of  
17 this Complaint as though fully set forth herein.

18 32. Defendants have, at all times mentioned herein, acted as distributor, and/or retailer  
19 of the Products.

20 33. The Products contain BPA, a hazardous chemical found on the Proposition 65 list  
21 of chemicals known to be hazardous to human health.

22 34. The Products do not comply with the Proposition 65 warning requirements.

23 35. Plaintiff, based on his best information and belief, avers that at all relevant times  
24 herein, and at least since July 31, 2020, continuing until the present, that Defendants have  
25 continued to knowingly and intentionally expose California users and consumers of the Products  
26 to BPA without providing required warnings under Proposition 65.

27 36. The exposures that are the subject of the Notices result from the purchase,  
28 acquisition, handling and recommended use of the Products. Dermal exposure to BPA is possible

1 when the user handles the Products or the Products are placed in contact with exposed areas of the  
2 user's skin that can include facial skin. Should the Products contact hard water and/or soaps at  
3 elevated pH, higher extraction rates of BPA and accumulation of BPA at the surface of the  
4 Products will result. If the Products are placed in contact with the user's mouth during a phone  
5 call, ingestion of BPA can occur. Finally, some amount of exposure through ingestion can occur  
6 by touching the Products with subsequent touching of the user's hand to mouth.

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

10 38. Defendants have knowledge that the normal and reasonably foreseeable use of the  
11 Product exposes individuals to BPA, and Defendants intend that exposures to BPA will occur by  
12 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the  
13 Products to consumers in California

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

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

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



1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following  
3 relief:

4 A. That the court assess civil penalties against each defendant in the amount of \$2,500  
5 per day for each violation for up to 365 days (up to a maximum civil penalty amount per  
6 violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);

7 B. That the court preliminarily and permanently enjoin Defendants mandating  
8 Proposition 65 compliant warnings on the Products;

9 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the  
10 amount of \$50,000.00.

11 D. That the court grant any further relief as may be just and proper.

12 Dated: July 29, 2021

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