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Superior Court of California,
County of San Francisco

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Clerk of the Court
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Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

ANTHONY FERREIRO,

Plaintiff,

vs.

CWI, INC., REVO BRAND GROUP
HOLDINGS, INC.,

Defendants.

Case No.:

CGC-22-597913

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

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 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 Real Avid Smart
Drive Gunsmithing Kits sold and/or distributed by defendant CWI, Inc. ("CWI") and/or defendant
Revo Brand Group Holdings, Inc. ("Revo") (collectively, "Defendants") in California.

1 3. BPA is a harmful chemical known to the State of California to cause female
2 reproductive toxicity. On May 11, 2015, the State of California listed BPA as a chemical known
3 to the State 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 §§ 25249.8
5 & 25249.10(b).

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

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

18 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,
19 without a requisite exposure warning, Real Avid Smart Drive Gunsmithing Kits (the “Products”)
20 that expose persons to BPA when used as intended and/or for their intended purpose.

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 and/or distribution of
23 the Products is a violation of Proposition 65 and subjects Defendants to the enjoinder and civil
24 penalties described herein.

25 8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition
26 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 Products with required 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 10. Plaintiff further seeks a reasonable award of attorney's fees and costs.

4 **PARTIES**

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

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

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

19 **VENUE AND JURISDICTION**

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

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

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

7 **STATUTORY BACKGROUND**

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

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

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

17 19. An exposure to a chemical in a consumer product is one “which results from a
18 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
19 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
20 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
21 shall provide a warning to any person to whom the product is sold or transferred unless the product
22 is packaged or labeled with a clear and reasonable warning.”

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

25 a. A warning that appears on a product’s label or other labeling.

26
27 ¹ Alternatively, a person in the course of doing business may elect to comply with the warning
28 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 and/or sold the Products in California since at least February 3, 2021. The Products continue to be
2 distributed and sold in California without the requisite warning information.

3 25. At all times relevant to this action, Defendants have knowingly and intentionally
4 exposed users and/or consumers of the Products to BPA without first giving a clear and reasonable
5 exposure warning to such individuals.

6 26. As a proximate result of acts by each defendant, as a person in the course of doing
7 business within the meaning of H&S Code § 25249.11, individuals throughout the State of
8 California, including in San Francisco County, have been exposed to BPA without a clear and
9 reasonable warning on the Products. The individuals subject to the violative exposures include
10 normal and foreseeable users and consumers that use the Products, as well as all others exposed to
11 the Products.

12 **SATISFACTION OF NOTICE REQUIREMENTS**

13 27. Plaintiff purchased the Product from Gander Outdoors. At the time of purchase
14 Revo and Gander Outdoors did not provide a Proposition 65 exposure warning for BPA or any
15 other Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described
16 *supra*.

17 28. The Product was sent to a testing laboratory to determine the concentration of BPA
18 present on the surface of the Product.

19 29. On January 29, 2021, the laboratory provided results of its analysis. Surface BPA
20 was collected using a wipe test. Results of this wipe test concluded the presence of BPA at the
21 surface of the Product (the "Chemical Test Report").

22 30. Plaintiff provided the Chemical Test Report and Product to an analytical chemist
23 to determine if, based on the findings of the Chemical Test Report and the reasonable and
24 foreseeable use of the Product, exposure to BPA will occur at levels that require Proposition 65
25 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California
26 Code of Regulations.

31. On February 2, 2021, Plaintiff received from the analytical chemist an exposure assessment report which concluded that persons in California who use the Products will be exposed to levels of BPA that require a Proposition 65 exposure warning.

33. 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 BPA exposure, and that counsel believed there was meritorious and reasonable cause for a private action.

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

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

37. Defendants have, at all times mentioned herein, acted as distributors, and/or retailers of the Products.

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

2 40. Plaintiff, based on his best information and belief, avers that at all relevant times
3 herein, and at least since February 3, 2021, continuing until the present, that Defendants have
4 continued to knowingly and intentionally expose California users and consumers of the Product to
5 BPA without providing required warnings under Proposition 65.

6 41. The exposures that are the subject of the Notice result from the purchase,
7 acquisition, handling and recommended use of the Products. The primary route of exposure to
8 BPA from use of the Products is dermal exposure. Dermal exposure to BPA is possible when the
9 user handles the Products, or the Products are placed in contact with exposed areas of the user's
10 skin. Additionally, exposure through ingestion will occur by touching the Products with
11 subsequent touching of the user's hand to mouth.

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

15 43. Defendants have knowledge that the normal and reasonably foreseeable use of the
16 Product exposes individuals to BPA, and Defendant intends that exposures to BPA will occur by
17 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the
18 Products to consumers in California.

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

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

23 46. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
24 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: January 31, 2022

BRODSKY & SMITH

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