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Superior Court of California,  
County of San Francisco

**01/30/2023**  
Clerk of the Court  
BY: BOWMAN LIU  
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO

11 ANTHONY FERREIRO,  
12 Plaintiff,

13 vs.

14 AIRGAS, INC., AIRGAS SAFETY,  
15 INC., HD SUPPLY, INC., HDS IP  
16 HOLDING, LLC, HD SUPPLY  
17 HOLDINGS, INC.,

18 Defendants.

Case No.: CGC-22-598547

**FIRST AMENDED COMPLAINT FOR CIVIL  
PENALTIES AND INJUNCTIVE RELIEF**

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

19 Plaintiffs Anthony Ferreiro (“Ferreiro”) and Donatus McCoy (“McCoy” or collectively  
20 with Ferreiro, “Plaintiffs”), by and through their attorneys, allege the following cause of action in  
21 the public interest of the citizens of the State of California.

22 **BACKGROUND OF THE CASE**

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

2. This first amended complaint is a representative action brought by Plaintiffs 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) and/or di(2-ethylhexyl) phthalate

1 (DEHP) (collectively, the “Listed Chemicals”), toxic chemicals found in products sold and/or  
2 distributed by defendants Airgas, Inc., Airgas Safety, Inc. (Collectively “Airgas”), Hd Supply,  
3 Inc., HDS IP Holding, LLC, HD Supply Holdings, Inc. (“HD Supply” and collectively with Airgas,  
4 “Defendants”) in California.

5 3. BPA is a harmful chemical known to the State of California to cause female  
6 reproductive toxicity. On May 11, 2015, the State of California listed BPA as a chemical known  
7 to the State to cause reproductive toxicity and BPA has come under the purview of Proposition 65  
8 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8  
9 & 25249.10(b).

10 4. DEHP is a harmful chemical known to the State of California to cause cancer and  
11 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical known  
12 to the State to cause cancer and it has come under the purview of Proposition 65 regulations since  
13 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).  
14 On October 24, 2003, the State of California listed DEHP as a chemical known to cause  
15 reproductive toxicity.

16 5. Proposition 65 requires all businesses with ten (10) or more employees that operate  
17 within California or sell products therein to comply with Proposition 65 regulations. Included in  
18 such regulations is the requirement that businesses must label any product containing a Proposition  
19 65-listed chemical that will create an exposure above safe harbor levels with a “clear and  
20 reasonable” warning before “knowingly and intentionally” exposing any person to any such listed  
21 chemical.

22 6. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
23 for up to 365 days to be imposed upon defendants in a civil action for violations of Proposition 65.  
24 Health & Safety Code § 25249.7(b). Proposition 65 also allows for any court of competent  
25 jurisdiction to enjoin the actions of a defendant which “violate or threaten to violate” the statute.  
26 Health & Safety Code § 25249.7.

27 7. Plaintiffs allege that Defendants distribute, sell and/or offer for sale in California,  
28 without a requisite exposure warning (a) Radnor glasses, UPC# 639890512159, (b) Radnor

1 Hammers, UPC# 639890020081, (c) Weldmark soapstone tools, UPC# 702125002371, (d) Tuff-  
2 Gard safety vests, UPC# 839409003714, and (e) Strong Hand clamps, UPC# 679352003986 (the  
3 “Products”) that expose persons to Proposition 65 Listed Chemicals when used for their intended  
4 purpose.

5 8. Defendants’ failure to warn consumers and other individuals in California of the  
6 health hazards associated with exposure to Listed Chemicals in conjunction with the sale and/or  
7 distribution of the Products is a violation of Proposition 65 and subjects Defendants to the  
8 enjoinder and civil penalties described herein.

9 9. Plaintiffs seek civil penalties against Defendants for its violations of Proposition 65  
10 in accordance with Health and Safety Code § 25249.7(b).

11 10. Plaintiffs also seek injunctive relief, preliminarily and permanently requiring  
12 Defendants to provide purchasers or users of the Products with required warnings related to the  
13 dangers and health hazards associated with exposure to Listed Chemicals, pursuant to Health and  
14 Safety Code § 25249.7(a).

15 11. Plaintiffs further seek a reasonable award of attorney’s fees and costs.

16 **PARTIES**

17 12. Plaintiffs are citizens of the State of California acting in the interest of the general  
18 public to promote awareness of exposures to toxic chemicals in products sold in California and to  
19 improve human health by reducing hazardous substances contained in such items. They bring this  
20 action in the public interest pursuant to Health and Safety Code § 25249.7(d).

21 13. Defendant Airgas, through its business, effectively imports, distributes, sells,  
22 and/or offers the Products for sale or use in the State of California, or it implies by its conduct that  
23 it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.  
24 Plaintiffs allege that defendant Airgas is a “person” in the course of doing business within the  
25 meaning of Health & Safety Code sections 25249.6 and 25249.11.

26 14. Defendant HD Supply, through its business, effectively imports, distributes, sells,  
27 and/or offers the Products for sale or use in the State of California, or it implies by its conduct that  
28 it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.

1 Plaintiffs allege that defendant HD Supply is a “person” in the course of doing business within the  
2 meaning of Health & Safety Code sections 25249.6 and 25249.11.

3 **VENUE AND JURISDICTION**

4 15. Venue is proper in the County of San Francisco because one or more of the  
5 instances of wrongful conduct occurred and continue to occur in this county and/or because each  
6 Defendant conducted, and continues to conduct, business in the County of San Francisco with  
7 respect to the Products.

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

13 17. This Court has jurisdiction over each Defendant because each Defendant is either  
14 a citizen of the State of California, has sufficient minimum contacts with the State of California,  
15 is registered with the California Secretary of State as a foreign corporation authorized to do  
16 business in the State of California, and/or has otherwise purposefully availed itself of the California  
17 market. Such purposeful availment has rendered the exercise of jurisdiction by California courts  
18 consistent and permissible with traditional notions of fair play and substantial justice.

19 **STATUTORY BACKGROUND**

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

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

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

1           20.     An exposure to a chemical in a consumer product is one “which results from a  
2 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a  
3 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §  
4 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...  
5 shall provide a warning to any person to whom the product is sold or transferred unless the product  
6 is packaged or labeled with a clear and reasonable warning.”

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

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

10           b.       Identification of the product at the retail outlet in a manner which provides  
11 a warning. Identification may be through shelf labeling, signs, menus, or a combination  
12 thereof.

13           c.       The warnings provided pursuant to subparagraphs (a) and (b) shall be  
14 prominently placed upon a product’s labels or other labeling or displayed at the retail outlet  
15 with such conspicuousness, as compared with other words, statements, designs, or devices  
16 in the label, labeling or display as to render it likely to be read and understood by an  
17 ordinary individual under customary conditions of purchase or use.

18           d.       A system of signs, public advertising identifying the system and toll-free  
19 information services, or any other system that provides clear and reasonable warnings.

20           22.     Proposition 65 provides that any “person who violates or threatens to violate” the  
21 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase  
22 “threaten to violate” is defined to mean creating “a condition in which there is a substantial  
23 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil  
24

25  
26  
27 <sup>1</sup> 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 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to  
2 365 days.

### 3 FACTUAL BACKGROUND

4 23. On January 1, 1988, the State of California listed DEHP as a chemical known to  
5 the State to cause cancer and it has come under the purview of Proposition 65 regulations since  
6 that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).  
7 On October 24, 2003, the State of California listed DEHP as a chemical known to cause  
8 reproductive toxicity.

9 24. The exposures that are the subject of the Notice result from the purchase,  
10 acquisition, handling, and recommended use of the Products. The primary route of exposure to the  
11 Listed Chemicals is through dermal absorption. Dermal absorption can occur through direct skin  
12 contact when the Products are contacted with bare hands or exposed skin. Exposure through  
13 ingestion will occur by touching the Products with subsequent touching of the user's hand to  
14 mouth.

15 25. Defendants have marketed, distributed, offered to sell and/or sold (a) Radnor  
16 glasses, UPC# 639890512159 since at least March 8, 2021 and (b) Radnor Hammers, UPC#  
17 639890020081, (c) Weldmark soapstone tools, UPC# 702125002371, (d) Tuff-Gard safety vests,  
18 UPC# 839409003714, and (e) Strong Hand clamps, UPC# 679352003986 since August 18, 2021.  
19 The Products continue to be distributed and sold in California without the requisite warning  
20 information.

21 26. At all times relevant to this action, Defendants have knowingly and intentionally  
22 exposed users of the Products to Listed Chemicals without first giving a clear and reasonable  
23 exposure warning to such individuals.

24 27. As a proximate result of acts by Defendants, as a person in the course of doing  
25 business within the meaning of H&S Code § 25249.11, individuals throughout the State of  
26 California, including in San Francisco County, have been exposed to Proposition 65 listed  
27 chemicals without a clear and reasonable warning on the Products. The individuals subject to the  
28

1 violative exposures include normal and foreseeable users and consumers that use the Products, as  
2 well as all others exposed to the Products.

3 **SATISFACTION OF NOTICE REQUIREMENTS**

4 28. Plaintiffs purchased the Products from HD Supply. At the time of purchase, HD  
5 Supply and Airgas did not provide a Proposition 65 exposure warning for DEHP, BPA, or any  
6 other Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described  
7 supra.

8 29. The Product was sent to a testing laboratory for testing to determine the phthalate  
9 content of the Product and/or the concentration of BPA present on the surface of the Product.

10 30. The laboratory provided the results of its analysis. Results of this test determined  
11 the Product exposes users to Listed Chemicals (the “Chemical Test Reports”).

12 31. Plaintiffs provided the Chemical Test Reports and Product to an analytical chemist  
13 to determine if, based on the findings of the Chemical Test Report and the reasonable and  
14 foreseeable use of the Product, exposure to Listed Chemicals will occur at levels that require  
15 Proposition 65 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of  
16 the California Code of Regulations.

17 32. Plaintiffs received from the analytical chemist an exposure assessment report which  
18 concluded that persons in California who use the Products will be exposed to levels of Listed  
19 Chemicals that require a Proposition 65 exposure warning.

20 33. Plaintiffs gave notice of alleged violation of Health and Safety Code § 25249.6 (the  
21 “Notice”) to Defendants concerning the exposure of California citizens to Listed Chemicals from  
22 use of the Products without proper warning, subject to a private action to Defendants and to the  
23 California Attorney General’s office and the offices of the County District attorneys and City  
24 Attorneys for each city with a population greater than 750,000 persons wherein the herein  
25 violations allegedly occurred.

26 34. The Notices complied with all procedural requirements of Proposition 65 including  
27 the attachment of a Certificate of Merit affirming that Plaintiffs’ counsel had consulted with at  
28 least one person with relevant and appropriate expertise who reviewed relevant data regarding

1 chemical exposure, and that counsel believed there was meritorious and reasonable cause for a  
2 private action.

3 35. After receiving the Notices, and to Plaintiffs' best information and belief, none of  
4 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a  
5 cause of action against Defendants under Proposition 65 to enforce the alleged violations which  
6 are the subject of the Notices.

7 36. Plaintiffs are commencing this action more than sixty (60) days from the date of  
8 each Notice to Defendants, as required by law.

9 **FIRST CAUSE OF ACTION**

10 **(By Plaintiffs against Defendants for the Violation of Proposition 65)**

11 37. Plaintiffs hereby repeat and incorporate by reference paragraphs 1 through 36 of  
12 this Complaint as though fully set forth herein.

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

15 39. Use of the Products will expose users and consumers thereof to Listed Chemicals,  
16 hazardous chemicals found on the Proposition 65 list of chemicals known to be hazardous to  
17 human health.

18 40. The Products do not comply with the Proposition 65 warning requirements.

19 41. Plaintiffs, based on their best information and belief, avers that at all relevant times  
20 herein, and at least March 8, 2021, continuing until the present, that Defendants have continued to  
21 knowingly and intentionally expose California users and consumers of the Products to Listed  
22 Chemicals without providing required warnings under Proposition 65.

23 42. The exposures that are the subject of the Notices result from the purchase,  
24 acquisition, handling and recommended use of the Products. The primary route of exposure to  
25 these chemicals is through dermal absorption. Dermal absorption of Listed Chemicals can occur  
26 through direct skin contact when the Products are contacted with bare hands or exposed skin.  
27 Exposure through ingestion will occur by touching the Products with subsequent touching of the  
28 user's hand to mouth, or direct contact with the user's mouth.



1           43.     Plaintiffs, based on their best information and belief, aver that such exposures will  
2 continue every day until clear and reasonable warnings are provided to purchasers and users or  
3 until this known toxic chemical is removed from the Products.

4           44.     Defendants have knowledge that the normal and reasonably foreseeable use of the  
5 Products exposes individuals to Listed Chemicals, and Defendants intend that exposures to Listed  
6 Chemicals will occur by its deliberate, non-accidental participation in the importation, distribution,  
7 sale and offering of the Products to consumers in California.

8           45.     Plaintiffs have engaged in good faith efforts to resolve the herein claims prior to  
9 this Complaint.

10          46.     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 violation.

12          47.     Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically  
13 authorized to grant injunctive relief in favor of Plaintiffs and against each Defendant.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs demand 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 in accordance with Health and Safety Code §  
6 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 Plaintiffs 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 27, 2023

BRODSKY & SMITH

13 By: \_\_\_\_\_

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