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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

01/14/2022
Clerk of the Court
BY: KAREN VALDES
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

9 ANTHONY FERREIRO,
10 Plaintiff,

11 vs.

12 ROBERT BOSCH TOOL CO.,
13 WALMART, INC.,
14 Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

CGC-22-597648

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

17 **BACKGROUND OF THE CASE**

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

24 2. This complaint is a representative action brought by Plaintiff in the public interest
25 of the citizens of the State of California to enforce the People’s right to be informed of the health
26 hazards caused by exposure to Bisphenol A (BPA), a toxic chemical found in Bosch tool cases
27
28

1 (UPC# 000346494829) sold and/or distributed by defendant Robert Bosch Tool Co. (“Bosch”)
2 and/or defendant Walmart, Inc. (“Walmart”) (collectively, “Defendants”) in California.

3 3. BPA is a harmful chemical known to the State of California to cause female
4 reproductive toxicity. On May 11, 2015, the State of California listed BPA as a chemical known
5 to the State 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 §§ 25249.8
7 & 25249.10(b).

8 4. Proposition 65 requires all businesses with ten (10) or more employees that operate
9 within California or sell products therein to comply with Proposition 65 regulations. Included in
10 such regulations is the requirement that businesses must label any product containing a Proposition
11 65-listed chemical that will create an exposure above safe harbor levels with a “clear and
12 reasonable” warning before “knowingly and intentionally” exposing any person to any such listed
13 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, Bosch tool cases (UPC# 000346494829) (the “Products”)
22 that expose persons to BPA when used as intended and/or for their intended purpose.

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

27 8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition
28 65 in accordance with Health and Safety Code § 25249.7(b).

1 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
2 Defendants to provide purchasers or users of the Products with required warnings related to the
3 dangers and health hazards associated with exposure to BPA pursuant to Health and Safety Code
4 § 25249.7(a).

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

6 **PARTIES**

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

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

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

21 **VENUE AND JURISDICTION**

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

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

1 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has
2 jurisdiction over this lawsuit.

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

9 **STATUTORY BACKGROUND**

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

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

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

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

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

3 37. Defendants have, at all times mentioned herein, acted as distributor, and/or retailer
4 of the Products.

5 38. The Products contain BPA, a hazardous chemical found on the Proposition 65 list
6 of chemicals known to be hazardous to human health.

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

8 40. Plaintiff, based on his best information and belief, avers that at all relevant times
9 herein, and at least since April 22, 2021, continuing until the present, that Defendants have
10 continued to knowingly and intentionally expose California users and consumers of the Product to
11 BPA without providing required warnings under Proposition 65.

12 41. The exposures that are the subject of the Notice result from the purchase,
13 acquisition, handling and recommended use of the Products. The primary route of exposure to
14 BPA from use of the Products is dermal exposure. Dermal exposure to BPA is possible when the
15 user handles the Products, or the Products are placed in contact with exposed areas of the user's
16 skin. If the Products contact hard water and/or soaps at elevated pH, higher extraction rates of BPA
17 and accumulation of BPA at the surface of the Products will result. Additionally, exposure through
18 ingestion will occur by touching the Products with subsequent touching of the user's hand to
19 mouth.

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

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

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

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

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

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following
7 relief:

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


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

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

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

16 Dated: January 14, 2022

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