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

06/29/2022  
Clerk of the Court  
BY: JEFFREY FLORES  
Deputy Clerk

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

CGC-22-600431

11 ANTHONY FERREIRO,

12 Plaintiff,

13 vs.

14 Q.E.P. CO., INC., ACE HARDWARE  
15 CORPORATION,

Defendants.

Case No.:

**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 following  
17 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 at  
21 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 against defendants Q.E.P. Co., Inc. (“QEP”) and Ace  
27 Hardware Corporation (“Ace Hardware” and collectively with QEP “Defendants”) to enforce the  
28 People’s right to be informed of the health hazards caused by exposure to Bisphenol A (BPA) from

1 the use of Diamond Hole Saws that are manufactured, distributed, offered for sale and/or sold by  
2 QEP in California.

3 3. BPA is a harmful chemical known to the State of California to cause reproductive  
4 toxicity. On May 11, 2015, the State of California listed BPA as a chemical known to the State to  
5 cause reproductive toxicity and BPA has come under the purview of Proposition 65 regulations  
6 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 with a “clear and reasonable” warning before “knowingly and intentionally”  
12 exposing any person to any such listed chemical.

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

18 6. Plaintiff alleges that defendants distribute and/or offer for sale in California,  
19 without a requisite Proposition 65 exposure warning, Diamond Hole Saws (the “Products”) that  
20 expose persons to BPA when used as intended and/or for its intended purpose.

21 7. Defendants’ failure to warn consumers and other individuals in California of the  
22 health hazards associated with exposure to BPA from use of the Products in conjunction with the  
23 sale and/or distribution of the Products is a violation of Proposition 65 and subjects defendants to  
24 the enjoinder and civil 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 from use of the Products pursuant to  
2 Health and Safety Code § 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 QEP, 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 QEP 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 Ace Hardware, through its business, effectively imports, distributes,  
15 sells and/or offers the Products for sale or use in the State of California, or it implies by its conduct  
16 that it imports, distributes, sells and/or offers the Products for sale or use in the State of California.  
17 Plaintiff alleges that defendant Ace Hardware is a "person" in the course of doing business within  
18 the 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 continues 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 39. The Products do 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 August 13, 2021, continuing until the present, that Defendants have  
4 continued to knowingly and intentionally expose California users and consumers of the Products  
5 to 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 is through dermal absorption directly through the skin when consumers use, touch, or handle  
9 the Products. Exposure through ingestion will occur by touching the Product with subsequent  
10 touching of the user's hand to mouth. No clear and reasonable warning is provided with the  
11 Products regarding the health hazards of exposure to BPA.

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 BPA 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 Defendants intend that those exposures to BPA will occur  
17 by its deliberate, non-accidental participation in the importation, distribution, sale and offering of  
18 the Products to consumers in California.

19 44. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to the  
20 filing of the first amended complaint.

21 45. Pursuant to Health and Safety Code § 25249.7(b), because of the above-described  
22 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 Defendants in the amount of \$2,500 per  
5 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 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: June 29, 2022

BRODSKY & SMITH

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