

1 Evan J. Smith, Esquire (SBN 242352)
2 Ryan P. Cardona, Esquire (SBN 302113)
3 BRODSKY & SMITH
4 9595 Wilshire Blvd., Ste. 900
5 Beverly Hills, CA 90212
6 Telephone: (877) 534-2590
7 Facsimile: (310) 247-0160

8 *Attorneys for Plaintiff*

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Superior Court of California,
County of San Francisco

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

12 GABRIEL ESPINOZA,

13 Plaintiff,

14 vs.

15 THE MIBRO GROUP, L.C.; TRACTOR
16 SUPPLY COMPANY,

17 Defendants.

Case No.:

CGC-22-599737

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

18 Plaintiff Gabriel Espinoza (“Plaintiff”), by and through his attorneys, alleges the following
19 cause of action in the public interest of the citizens of the State of California.

20 **BACKGROUND OF THE CASE**

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

27 2. This complaint is a representative action brought by Plaintiff in the public interest
28 of the citizens of the State of California against defendants The Mibro Group, L.C. (“Mibro”) and
Tractor Supply Company (Tractor Supply) to enforce the People’s right to be informed of the

1 health hazards caused by exposure to Bisphenol A (BPA) from the use of Mibro Tap & Die Sets
2 that are manufactured, distributed, offered for sale and/or sold by Mibro 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 (up to a maximum civil penalty amount per violation of \$912,000.00) to be
15 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
16 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
17 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
18 25249.7.

19 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,
20 without a requisite Proposition 65 exposure warning, Mibro Tap & Die Sets (the “Products”) that
21 expose persons to BPA when used as intended and/or for its intended purpose.

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

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

28

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 from use of the Products pursuant to
4 Health and Safety Code § 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 Mibro, 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 Mibro 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 Tractor Supply, through its business, effectively imports, distributes,
17 sells and/or offers the Products for sale or use in the State of California, or it implies by its conduct
18 that it imports, distributes, sells and/or offers the Products for sale or use in the State of California.
19 Plaintiff alleges that defendant Tractor Supply is a “person” in the course of doing business within
20 the 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 continues 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 themselves of the California
7 market. Such purposeful availment has rendered the exercise of jurisdiction by California courts
8 consistent 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 23. The exposures that are the subject of this complaint result from the purchase,
2 acquisition, handling and recommend use of the Products. The primary route of exposure to BPA
3 from use of the Products is dermal exposure. Dermal exposure to BPA is possible when the user
4 handles the Products, or the Products are placed in contact with exposed areas of the user's skin.
5 Finally, exposure through ingestion will occur by touching the Products with subsequent touching
6 of the user's hand to mouth.

7 24. Defendants have distributed, offered to sell and/or sold the Products in California
8 since at least August 16, 2021. The Products continue to be distributed and sold in California
9 without a requisite Proposition 65 compliant BPA exposure warning.

10 25. At all times relevant to this action, Defendants have knowingly and intentionally
11 exposed users, consumers and/or purchasers of the Products to BPA without first providing a clear
12 and reasonable exposure warning to such individuals.

13 26. As a proximate result of Defendants' actions, and as a person in the course of doing
14 business within the meaning of H&S Code § 25249.11, individuals throughout the State of
15 California, including in San Francisco County, have been exposed to BPA from use of the Products
16 without having first been provided a clear and reasonable exposure warning. The individuals
17 subject to the violative exposures include normal and foreseeable users and consumers that use the
18 Products.

19 **SATISFACTION OF NOTICE REQUIREMENTS**

20 27. On June 12, 2021, Plaintiff purchased the Product from Tractor Supply. At the time
21 of purchase, Tractor Supply and Mibro did not provide a Proposition 65 exposure warning for
22 BPA or any other Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1
23 as described *supra*.

24 28. On or about August 9, 2021, the Product was sent to a testing laboratory to
25 determine the concentration of BPA present on the surface of the Product.

26 29. On August 10, 2021, the laboratory provided the results of its analysis. Surface
27 BPA was collected using a wipe test. Results of this test concluded the presence of BPA at the
28 surface of the product (the "Chemical Test Report").

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

6 31. On August 16, 2021, Plaintiff received from the analytical chemist an exposure
7 assessment report which concluded that persons in California who use the Products will be exposed
8 to levels of BPA that require a Proposition 65 exposure warning.

9 32. On August 16, 2021, Plaintiff gave notice of alleged violation of Health and Safety
10 Code § 25249.6 (the “Notice”) to Defendants concerning the exposure of California citizens to
11 BPA from use of the Products without proper warning, subject to a private action to Defendants
12 and to the California Attorney General’s office and the offices of the County District attorneys and
13 City Attorneys for each city with a population greater than 750,000 persons wherein the herein
14 violations allegedly occurred.

15 33. The Notice complied with all procedural requirements of Proposition 65 including
16 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at
17 least one person with relevant and appropriate expertise who reviewed relevant data regarding
18 BPA exposure, and that counsel believed there was meritorious and reasonable cause for a private
19 action.

20 34. After receiving the Notice, and to Plaintiff’s best information and belief, none of
21 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
22 cause of action against Defendants under Proposition 65 to enforce the alleged violations which
23 are the subject of the Notice.

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

26 **FIRST CAUSE OF ACTION**

27 **(By Plaintiff against Defendants for their Violation of Proposition 65)**

1 36. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 35 of
2 this first amended complaint as though fully set forth herein.

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

5 38. Use of the Products will expose users and consumers thereof to BPA, a hazardous
6 chemical found on the Proposition 65 list of chemicals known to be hazardous to human health.

7 39. The Products do 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 August 16, 2021, continuing until the present, that Defendants have
10 continued to knowingly and intentionally expose California users and consumers of the Products
11 to 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 Product. The primary route of exposure to the
14 BPA is through dermal absorption directly through the skin when consumers use, touch, or handle
15 the Products. Some amount of exposure through ingestion can occur by touching the Product with
16 subsequent touching of the user's hand to mouth.

17 42. Plaintiff, based on his best information and belief, avers that such exposures will
18 continue every day until clear and reasonable warnings are provided to purchasers and users or
19 until BPA is removed from the Products.

20 43. Defendants have knowledge that the normal and reasonably foreseeable use of the
21 Product exposes individuals to BPA, and Defendants intend those exposures to BPA will occur by
22 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the
23 Products to consumers in California.

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

26 45. Pursuant to Health and Safety Code § 25249.7(b), because of the above-described
27 acts, each Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.
28

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

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following
5 relief:

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

9 B. That the Court preliminarily and permanently enjoin Defendants mandating
10 Proposition 65 compliant warnings on the Products;

11 C. That the Court grant Plaintiff reasonable attorney's fees and costs of suit, in the
12 amount of \$50,000.00.

13 D. That the Court grant any further relief as may be just and proper.

14 Dated: May 23, 2022

BRODSKY & SMITH

15 By: 

16 Evan J. Smith (SBN242352)

17 Ryan P. Cardona (SBN302113)

9595 Wilshire Boulevard, Suite 900

Beverly Hills, CA 90212

18 Telephone: (877) 534-2590

19 Facsimile: (310) 247-0160

20 *Attorneys for Plaintiff*