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

10/06/2022  
Clerk of the Court  
BY: JEFFREY FLORES  
Deputy Clerk

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

11 EMA BELL,

12 Plaintiff,

13 vs.

14 RECREATIONAL EQUIPMENT, INC.

15 Defendants.

Case No.:

**CGC-22-602241**

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

16 Plaintiff Ema Bell (“Plaintiff”), by and through his attorneys, alleges the following cause  
17 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 defendant Recreational Equipment, Inc. (“REI” or  
27 “Defendant”) to enforce the People’s right to be informed of the health hazards caused by exposure  
28

1 to Bisphenol A (BPA) from the use of My Medic first aid kits, UPC# 850002402308 that are  
2 manufactured, distributed, offered for sale and/or sold by REI 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 REI distributes and/or offers for sale in California, without a  
19 requisite Proposition 65 exposure warning, My Medic first aid kits, UPC# 850002402308 (the  
20 “Products”) that expose persons to BPA when used as intended and/or for its intended purpose.

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

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

27 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring REI  
28 to provide purchasers or users of the Products with required warnings related to the dangers and

1 health hazards associated with exposure to BPA from use of the Products pursuant to Health and  
2 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 REI, 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 REI is a “person” in the course of doing business within the  
13 meaning of Health & Safety Code sections 25249.6 and 25249.11.

14 **VENUE AND JURISDICTION**

15 13. Venue is proper in the County of San Francisco because one or more of the  
16 instances of wrongful conduct occurred and continues to occur in this county and/or because REI  
17 conducted, and continues to conduct, business in the County of San Francisco with respect to the  
18 Products.

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

24 15. This Court has jurisdiction over REI because Defendant is either a citizen of the  
25 State of California, has sufficient minimum contacts with the State of California, is registered with  
26 the California Secretary of State as foreign corporations authorized to do business in the State of  
27 California and/or has otherwise purposefully availed itself of the California market. Such  
28

1 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and  
2 permissible with traditional notions of fair play and substantial justice.

3 **STATUTORY BACKGROUND**

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

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

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

13 18. An exposure to a chemical in a consumer product is one “which results from a  
14 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a  
15 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §  
16 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...  
17 shall provide a warning to any person to whom the product is sold or transferred unless the product  
18 is packaged or labeled with a clear and reasonable warning.”

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

- 21 a. A warning that appears on a product’s label or other labeling.
- 22 b. Identification of the product at the retail outlet in a manner which provides  
23 a warning. Identification may be through shelf labeling, signs, menus, or a combination  
24 thereof.

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

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

8 20. Proposition 65 provides that any "person who violates or threatens to violate" the  
9 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase  
10 "threaten to violate" is defined to mean creating "a condition in which there is a substantial  
11 probability that a violation will occur." (H&S Code § 25249.11(e).) Violators are liable for civil  
12 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to  
13 365 days.

14 **FACTUAL BACKGROUND**

15 21. On May 11, 2015, the State of California listed BPA as a chemical known to the  
16 State to cause reproductive toxicity and BPA has come under the purview of Proposition 65  
17 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8  
18 & 25249.10(b).

19 22. The exposures that are the subject of this Notice result from the purchase,  
20 acquisition, handling and recommended use of the Product. The primary route of exposure to the  
21 BPA is through dermal absorption directly through the skin when consumers use, touch, or handle  
22 the Products. Exposure through ingestion will occur by touching the Product with subsequent  
23 touching of the user's hand to mouth. No clear and reasonable warning is provided with the  
24 Products regarding the health hazards of exposure to BPA.

25  
26 23. REI has distributed, offered to sell and/or sold the Products in California since at  
27 least October 21, 2021. The Products continue to be distributed and sold in California without a  
28 requisite Proposition 65 compliant BPA exposure warning.



1 31. On October 21, 2021, Plaintiff gave notice of alleged violation of Health and Safety  
2 Code § 25249.6 (the "Notice") to Defendant concerning the exposure of California citizens to BPA  
3 from use of the Products without proper warning, subject to a private action to Defendant and to  
4 the California Attorney General's office and the offices of the County District attorneys and City  
5 Attorneys for each city with a population greater than 750,000 persons wherein the herein  
6 violations allegedly occurred.

7 32. The Notice complied with all procedural requirements of Proposition 65 including  
8 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at  
9 least one person with relevant and appropriate expertise who reviewed relevant data regarding  
10 BPA exposure, and that counsel believed there was meritorious and reasonable cause for a private  
11 action.

12 33. After receiving the Notice, and to Plaintiff's best information and belief, none of  
13 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a  
14 cause of action against Defendant under Proposition 65 to enforce the alleged violations which are  
15 the subject of the Notice.

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

18 **FIRST CAUSE OF ACTION**

19 **(By Plaintiff against Defendant for its Violation of Proposition 65)**

20 35. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 34 of  
21 this first amended complaint as though fully set forth herein.

22 36. Defendant has, at all times mentioned herein, acted as a distributor and/or retailer  
23 of the Products.

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

26 38. The Products do not comply with the Proposition 65 warning requirements.

27 39. Plaintiff, based on his best information and belief, avers that at all relevant times  
28 herein, and at least since October 21, 2021, continuing until the present, that Defendant has

1 continued to knowingly and intentionally expose California users and consumers of the Products  
2 to BPA without providing required warnings under Proposition 65.

3 40. The exposures that are the subject of this Notice result from the purchase,  
4 acquisition, handling and recommended use of the Product. The primary route of exposure to the  
5 BPA is through dermal absorption directly through the skin when consumers use, touch, or handle  
6 the Products. Exposure through ingestion will occur by touching the Product with subsequent  
7 touching of the user's hand to mouth. No clear and reasonable warning is provided with the  
8 Products regarding the health hazards of exposure to BPA.  
9

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

13 42. Defendant has knowledge that the normal and reasonably foreseeable use of the  
14 Product exposes individuals to BPA, and Defendant intends those exposures to BPA will occur by  
15 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the  
16 Products to consumers in California.

17 43. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to the  
18 filing of the first amended complaint.

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

21 45. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically  
22 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.  
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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against Defendant and requests the following  
3 relief:

4 A. That the court assess civil penalties against Defendant 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 Defendant 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: October 6, 2022

BRODSKY & SMITH

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