

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*

ELECTRONICALLY
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Superior Court of California,
County of San Francisco

11/17/2023
Clerk of the Court

BY: DAEJA ROGERS
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

CGC-23-610516

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 vs.

14 APEX TOOL GROUP, LLC,
15 ANAWALT LUMBER CO., INC.,

Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

16 Plaintiff Gabriel Espinoza (“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 defendant Apex Tool Group, LLC (“Apex”) and/or
27 defendant Anawalt Lumber Co., Inc. (“Anawalt”) (collectively, “Defendants” and each a
28 “Defendant”) to enforce the People’s right to be informed of the health hazards caused by exposure

1 to bisphenol A (BPA) from the use of Crescent *Apex*® tool cases, UPC # 697099340003, that are
2 manufactured, distributed, offered for sale and/or sold by Defendants in California.

3 3. BPA is a harmful chemical known to the State of California to cause birth defects
4 or other reproductive harm. On May 11, 2015, the State of California listed BPA as a chemical
5 known to the State to cause birth defects or other reproductive harm and BPA has come under the
6 purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health
7 & Safety Code §§ 25249.8 & 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 distributes and/or offers for sale in California,
20 without a requisite Proposition 65 exposure warning, Crescent *Apex*® tool cases, UPC #
21 697099340003, (the “Products”) that expose persons to BPA when used as intended and/or for its
22 intended purpose.

23 7. Defendants’ failure to warn consumers and other individuals in California of the
24 health hazards associated with exposure to BPA from use of the Products in conjunction with the
25 sale and/or distribution of the Products is a violation of Proposition 65 and subjects Defendants to
26 the enjoinder and civil 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 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 and birth defects or other reproductive harm. H&S Code § 25249.6 states, in
16 pertinent part:

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

20 19. An exposure to a chemical in a consumer product is one “which results from a
21 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
22 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
23 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
24 shall provide a warning to any person to whom the product is sold or transferred unless the product
25 is packaged or labeled with a clear and reasonable warning.”
26
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28

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

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

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

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

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

14 21. Proposition 65 provides that any “person who violates or threatens to violate” the
15 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
16 “threaten to violate” is defined to mean creating “a condition in which there is a substantial
17 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil
18 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
19 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

20 **FACTUAL BACKGROUND**

21 22. On May 11, 2015, the State of California listed BPA as a chemical known to the
22 State to cause birth defects or other reproductive harm and BPA has come under the purview of
23 Proposition 65 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety
24 Code §§ 25249.8 & 25249.10(b).

25
26
27 ¹ 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 23. The exposures that are the subject of the Notice result from the purchase,
2 acquisition, handling and recommended use of the Product. The primary route of exposure to the
3 is through dermal absorption directly through the skin when consumers use, touch, or handle the
4 Products. Exposure through ingestion will occur by touching the Product with subsequent touching
5 of the user's hand to mouth. No clear and reasonable warning is provided with the Products
6 regarding the health hazards of exposure.

7 24. Defendants have distributed, offered to sell and/or sold the Products in California
8 since at least December 1, 2022. 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. Plaintiff purchased the Product from Anawalt. At the time of purchase, Defendants
21 did not provide a Proposition 65 exposure warning for BPA or any other Proposition 65 listed
22 chemical in a manner consistent with H&S Code § 25603.1 as described *supra*.

23 28. The Product was sent to a testing laboratory to determine if, and what amount of,
24 BPA would migrate and/or leach from the Product.

25 29. On November 22, 2022, the laboratory provided the results of its analysis and
26 Plaintiff received a chemical test report ("Chemical Test Report"). The Chemical Test Report
27 findings determined the Product exposes users to BPA.

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 December 1, 2022, 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 December 1, 2022, Plaintiff gave notice of alleged violation of Health and
10 Safety Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California citizens
11 to 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.

1 **FIRST CAUSE OF ACTION**

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

3 36. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 35 of
4 this Complaint as though fully set forth herein.

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

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

9 39. The Products do not comply with the Proposition 65 warning requirements.

10 40. Plaintiff, based on his best information and belief, avers that at all relevant times
11 herein, and at least since December 1, 2022, continuing until the present, that Defendants have
12 continued to knowingly and intentionally expose California users and consumers of the Products
13 to BPA without providing required warnings under Proposition 65.

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

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 BPA 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 Defendants intend those 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 the
28 filing of the Complaint.

1 45. Pursuant to Health and Safety Code § 25249.7(b), because of the above-described
2 acts, each Defendant is 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: November 17, 2023

BRODSKY SMITH

17 By: 

18 Evan J. Smith (SBN242352)
19 Ryan P. Cardona (SBN302113)
20 9595 Wilshire Boulevard, Suite 900
21 Beverly Hills, CA 90212
22 Telephone: (877) 534-2590
23 Facsimile: (310) 247-0160

Attorneys for Plaintiff