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County of San Francisco

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CGC-25-625280

GABRIEL ESPINOZA,

Plaintiff,

vs.

ACE HARDWARE CORPORATION,

Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

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

BACKGROUND OF THE CASE

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

2. This complaint is a representative action brought by Plaintiff in the public interest of the citizens of the State of California against defendant Ace Hardware Corporation ("Ace" or "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 *Ross*® root feeders that are manufactured, distributed,
2 offered for sale and/or sold by Defendant 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 Defendant distributes and/or offers for sale in California,
20 without a requisite Proposition 65 exposure warning, *Ross*® root feeders (the “Products”) that
21 expose persons to BPA when used as intended and/or for its intended purpose.

22 7. Defendant’s 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 Defendant to
25 the enjoinder and civil penalties described herein.

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

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

PARTIES

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

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

15. This Court has jurisdiction over Defendant because Defendant is either a citizen of the State of California, has sufficient minimum contacts with the State of California, is registered with the California Secretary of State as foreign corporations authorized to do business in the State

1 of California and/or has otherwise purposefully availed itself of the California market. Such
2 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and
3 permissible with traditional notions of fair play and substantial justice.

4 **STATUTORY BACKGROUND**

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

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

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

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

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

23 a. A warning that appears on a product’s label or other labeling.
24
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.

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

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

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

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

FACTUAL BACKGROUND

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

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

1 23. Defendant has distributed, offered to sell and/or sold the Products in California
2 since at least February 26, 2025. The Products continue to be distributed and sold in California
3 without a requisite Proposition 65 compliant BPA exposure warning.

4 24. At all times relevant to this action, Defendant has knowingly and intentionally
5 exposed users, consumers and/or purchasers of the Products to BPA without first providing a clear
6 and reasonable exposure warning to such individuals.

7 25. As a proximate result of Defendant's actions, and as a person in the course of doing
8 business within the meaning of H&S Code § 25249.11, individuals throughout the State of
9 California, including in San Francisco County, have been exposed to BPA from use of the Products
10 without having first been provided a clear and reasonable exposure warning. The individuals
11 subject to the violative exposures include normal and foreseeable users and consumers that use the
12 Products.

13 **SATISFACTION OF NOTICE REQUIREMENTS**

14 26. On December 12, 2024, Plaintiff purchased the Product from Ace. At the time of
15 purchase, Defendant did not provide a Proposition 65 exposure warning for BPA or any other
16 Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described
17 *supra*.

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

20 28. On February 13, 2025, the laboratory provided the results of its analysis. Results of
21 this test concluded the Products expose users to BPA (the "Chemical Test Report").

22 29. Plaintiff provided the Chemical Test Report and Product to an analytical chemist
23 to determine if, based on the findings of the Chemical Test Report and the reasonable and
24 foreseeable use of the Product, exposure to BPA will occur at levels that require Proposition 65
25 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California
26 Code of Regulations.

30. On February 26, 2025, Plaintiff received from the analytical chemist an exposure assessment report which concluded that persons in California who use the Products will be exposed to levels of BPA that require a Proposition 65 exposure warning.

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

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

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

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

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

2 39. Plaintiff, based on his best information and belief, avers that at all relevant times
3 herein, and at least since February 26, 2025, continuing until the present, that Defendant has
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 40. The exposures that are the subject of the Notice result from the purchase,
7 acquisition, handling and recommended use of the Product. The primary route of exposure to BPA
8 is through dermal absorption directly through the skin when consumers use, touch, or handle the
9 Products. Exposure through ingestion will occur by touching the Product with subsequent touching
10 of the user's hand to mouth. No clear and reasonable warning is provided with the Products
11 regarding the health hazards of exposure.

12 41. 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 42. Defendant has knowledge that the normal and reasonably foreseeable use of the
16 Product exposes individuals to BPA, and Defendant intends those exposures to BPA will occur by
17 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the
18 Products to consumers in California.

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

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

23 45. 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 each Defendant.

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 (up to a maximum civil penalty amount per
6 violation of \$912,000.00) in accordance with Health and Safety Code § 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: May 13, 2025

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