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County of San Francisco

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 COUNTY OF SAN FRANCISCO

CGC-26-638897

10 GABRIEL ESPINOZA,
11 Plaintiff,

12 vs.

13 SPORTSMAN'S WAREHOUSE, INC.,
14 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

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

17 **BACKGROUND OF THE CASE**

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

24 2. This complaint is a representative action brought by Plaintiff in the public interest
25 of the citizens of the State of California to enforce the People's right to be informed of the health
26 hazards caused by exposure to bisphenol A (BPA), a toxic chemical found in The Deceiver game
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calls distributed by Haydel's Game Calls, Inc. and sold, offered for sale, and/or distributed by defendant Sportsman's Warehouse, Inc. ("Sportsman's Warehouse" or "Defendant") in California.

1. BPA is a harmful chemical known to the State of California to cause birth defects or other reproductive harm. 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).

2. Proposition 65 requires all businesses with ten (10) or more employees that operate within California or sell products therein to comply with Proposition 65 regulations. Included in such regulations is the requirement that businesses must label any product containing a Proposition 65-listed chemical with a "clear and reasonable" warning before "knowingly and intentionally" exposing any person to any such listed chemical.

3. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the actions of a defendant which "violate or threaten to violate" the statute. Health & Safety Code § 25249.7.

4. Plaintiff alleges that Defendant distributes and/or offers for sale in California, without a requisite Proposition 65 exposure warning, The Deceiver game calls distributed by Haydel's Game Calls, Inc. and sold, offered for sale, and/or distributed by Defendant in California (the "Products") that expose persons to BPA when used as intended and/or for its intended purpose.

5. Defendant's failure to warn consumers and other individuals in California of the health hazards associated with exposure to BPA from use of the Products in conjunction with the sale and/or distribution of the Products is a violation of Proposition 65 and subjects Defendant to the enjoinder and civil penalties described herein.

6. Plaintiff seeks civil penalties against Defendant for their violations of Proposition 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 13. This Court has jurisdiction over Defendant because Defendant is either a citizen of
4 the State of California, has sufficient minimum contacts with the State of California, is registered
5 with the California Secretary of State as foreign corporations authorized to do business in the State
6 of California and/or has otherwise purposefully availed itself of the California market. Such
7 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and
8 permissible with traditional notions of fair play and substantial justice. Public policy further
9 supports this conclusion.

10 STATUTORY BACKGROUND

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

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

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

21 16. An exposure to a chemical in a consumer product is one “which results from a
22 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
23 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
24 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
25 shall provide a warning to any person to whom the product is sold or transferred unless the product
26 is packaged or labeled with a clear and reasonable warning.”
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1 17. 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 18. 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 19. Pursuant to Cal. Code Regs. Tit. 27, § 25600.2(e), a retail seller is responsible for
21 providing the warning required by § 25249.6 of the Act for a consumer product exposure when
22 one or more of the following circumstances exist: (a) the retailer seller is selling the product under
23 a brand or trademark that is owned or licensed by the retail seller or an affiliated entity; (b) the
24 retailer seller has knowingly introduced a listed chemical into the product, or knowingly caused
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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 the listed chemical to be created in the product; (c) the retail seller has covered, obscured or altered
2 a warning label that has been affixed to the product pursuant to § 25600.2(b); (d) the retail seller
3 has received a notice and warning materials for the exposure pursuant to § 25600.2(b)-(c) and the
4 retail seller has sold the product without conspicuously posting or displaying the warning; or (e)
5 the retailer seller has actual knowledge of the potential consumer product exposure requiring the
6 warning, and there is no manufacturer, producer, packager, importer, supplier, or distributor of the
7 product who: (i) is a “person in the course of doing business under § 25249.11(b) of the Act, and
8 (ii) has designated an agent for service of process in California, or has a place of business in
9 California.

10 **FACTUAL BACKGROUND**

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

15 21. On July 8, 2025, Plaintiff purchased the Product from Defendant in California. At
16 the time of purchase, Defendant did not provide a Proposition 65 exposure warning for BPA or
17 any other Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as
18 described *supra*.

19 22. On September 26, 2025, Plaintiff served notice of alleged violation of Health and
20 Safety Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California citizens
21 to BPA from use of the Products without proper warning, subject to a private action to Defendant
22 and to the California Attorney General’s office and the offices of the County District attorneys and
23 City Attorneys for each city with a population greater than 750,000 persons wherein the herein
24 violations allegedly occurred. The exposures that are the subject of the Notice result from the
25 purchase, acquisition, handling and recommended use of the Product. The primary route of
26 exposure to BPA is through dermal absorption directly through the skin when consumers use,
27 touch, or handle the Products. Exposure through ingestion will occur by touching the Product with
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1 subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided
2 with the Products regarding the health hazards of exposure.

3 23. Defendant has actual knowledge that sales of the Products in California will result
4 in an actionable consumer product exposure pursuant to Cal. Health & Safety Code § 25249.5 et
5 seq.

6 24. Defendant has sold the Product under a brand or trademark that is owned or licensed
7 by Defendant or an affiliated entity; and/or Defendant has knowingly introduced BPA into the
8 Product, or knowingly caused BPA to be created in the Product; and/or Defendant has covered,
9 obscured or altered a warning label that has been affixed to the Product pursuant to § 25600.2(b);
10 and/or Defendant has received a notice and warning materials for the exposure pursuant to §
11 25600.2(b)-(c) and Defendant has sold the product without conspicuously posting or displaying
12 the warning; and/or Defendant has actual knowledge of the potential consumer product exposure
13 requiring the warning, and there is no manufacturer, producer, packager, importer, supplier, or
14 distributor of the Product who: (i) is a "person in the course of doing business under § 25249.11(b)
15 of the Act, and (ii) has designated an agent for service of process in California, or has a place of
16 business in California.

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

20 26. On March 10, 2026, Plaintiff purchased the Product a second time from Defendant.
21 At the time of the purchase, Defendant did not provide a clear and reasonable exposure warning
22 pursuant to Cal. Code Regs. Tit. 27, § 25602

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

SATISFACTION OF NOTICE REQUIREMENTS

28. On July 8, 2025, Plaintiff purchased the Product from Defendant in California. At the time of purchase, Defendant did not provide a Proposition 65 exposure warning for BPA or any other Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described *supra*.

29. The Product was sent to a testing laboratory to determine if, and what amount of, BPA would migrate and/or leach from the Product. The laboratory provided the results of its analysis. Results of this test concluded the Products expose users to BPA (the “Chemical Test Report”).

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

31. On September 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. On September 26, 2025, Plaintiff gave notice of alleged violation of Health and Safety Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California citizens to BPA from use of the Products without proper warning, subject to a private action to Defendant and to the California Attorney General’s office and the offices of the County District attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein the herein violations allegedly occurred.

33. 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.

1 34. After receiving the Notice, and to Plaintiff's best information and belief, none of
2 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
3 cause of action against Defendant under Proposition 65 to enforce the alleged violations which are
4 the subject of the Notice.

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

7 **FIRST CAUSE OF ACTION**

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

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

11 37. Defendant has manufactured, processed, marketed, distributed, offered to sell
12 and/or sold the Products in California since at least July 8, 2025.

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

15 39. On September 26, 2025, Plaintiff served the Notice on Defendant concerning the
16 exposure of California citizens to BPA from use of the Products without proper warning, subject
17 to a private action to Defendant and to the California Attorney General's office and the offices of
18 the County District attorneys and City Attorneys for each city with a population greater than
19 750,000 persons wherein the herein violations allegedly occurred.

20 40. The Notice gives Defendant actual knowledge of the potential consumer product
21 exposure requiring the warning pursuant to Cal. Code Regs, Tit. 27, § 25600.2. Use of the
22 Products will expose users and consumers thereof to BPA, a hazardous chemical found on the
23 Proposition 65 list of chemicals known to be hazardous to human health.

24 41. The Products do not comply with the Proposition 65 warning requirements.

25 42. Plaintiff, based on his best information and belief, avers that at all relevant times
26 herein, and at least since September 26, 2025, continuing until the present, that Defendant has
27 continued to knowingly and intentionally expose California users and consumers of the Products
28 to BPA without providing required warnings under Proposition 65.

1 43. Defendant continues to sell the Product under a brand or trademark that is owned
2 or licensed by Defendant or an affiliated entity; and/or Defendant has knowingly introduced BPA
3 into the Product, or knowingly caused BPA to be created in the Product; and/or Defendant has
4 covered, obscured or altered a warning label that has been affixed to the Product pursuant to §
5 25600.2(b); and/or Defendant has received a notice and warning materials for the exposure
6 pursuant to § 25600.2(b)-(c) and Defendant has sold the product without conspicuously posting or
7 displaying the warning; and/or Defendant has actual knowledge of the potential consumer product
8 exposure requiring the warning, and there is no manufacturer, producer, packager, importer,
9 supplier, or distributor of the Product who: (i) is a “person in the course of doing business under §
10 25249.11(b) of the Act, and (ii) has designated an agent for service of process in California, or has
11 a place of business in California.

12 44. On March 10, 2026, more than five business days after Defendant received the
13 Notice, Plaintiff purchased the Product from Defendant. At the time of purchase, Defendant did
14 not provide a Proposition 65 compliant exposure warning.

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

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

24 47. Defendant has knowledge that the normal and reasonably foreseeable use of the
25 Product exposes individuals to BPA, and Defendant intends those exposures to BPA will occur by
26 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the
27 Products to consumers in California.

