

1 Evan J. Smith, Esquire (SBN 242352)
2 Ryan P. Cardona, Esquire (SBN 302113)
3 BRODSKY & SMITH, LLC
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*

**ENDORSED
FILED
ALAMEDA COUNTY
MAY 11 2017**

**CLERK OF THE SUPERIOR COURT.
By Lanette Buffin, Deputy**

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

11 ANTHONY FERREIRO,

12 Plaintiff,

13 v.

14 DKB HOUSEHOLD USA CORP.,

15 Defendant.

16
17
18
19
20
21
22
23
24
25
26
27
28

Case No.:

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

17 Plaintiff Anthony Ferreiro ("Plaintiff"), by and through his attorneys, alleges the
18 following cause of action in the public interest of the citizens of the State of California.

19
20
21
22
23
24
25
26
27
28

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
23 at 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 to enforce the People's right to be informed of the health

BY FAX

1 hazards caused by exposure to Bisphenol A (BPA), a toxic chemical found in Zyliss Mix'n
2 Measure Measuring Cup Sets manufactured, sold and/or distributed in California by defendant
3 DKB Household USA Corp. ("Zyliss" or "Defendant") in California.

4 3. BPA is a harmful chemical known to the State of California to cause reproductive
5 toxicity. On May 11, 2015, the State of California listed BPA as a chemical known to the State
6 to cause reproductive toxicity and it has come under the purview of Proposition 65 regulations
7 since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
8 25249.10(b).

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

14 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
15 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety
16 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin
17 the actions of a defendant which "violate[s] or threaten[s] to violate" the statute. Health &
18 Safety Code § 25249.7.

19 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,
20 and/or offers for sale in California, without the required warning, Zyliss polycarbonate
21 cookware, including but not limited to SKU No. 0 54067 13850 3 ("Product" or "Products"), that
22 contains BPA.

23 7. Defendant's failure to warn consumers and other individuals in California of the
24 health hazards associated with exposure to BPA in conjunction with the sale, manufacture,
25 and/or distribution of the Product is a violation of Proposition 65 and subjects Defendant to the
26 enjoinder and civil penalties described herein.

27 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition
28 65 in accordance with Health and Safety Code § 25249.7(b).

1 with the California Secretary of State as foreign corporations authorized to do business in the
2 State of California, and/or has otherwise purposefully availed itself of the California market.
3 Such purposeful availment has rendered the exercise of jurisdiction by California courts
4 consistent and permissible with traditional notions of fair play and substantial justice.

5 **SATISFACTION OF NOTICE REQUIREMENTS**

6 16. On October 31, 2016, Plaintiff gave notice of alleged violation of Health and
7 Safety Code § 25249.6 (the "Notice") to Zyliss concerning the exposure of California citizens to
8 BPA contained in the Product without proper warning, subject to a private action to Zyliss and to
9 the California Attorney General's office and the offices of the County District attorneys and City
10 Attorneys for each city with a population greater than 750,000 persons wherein the herein
11 violations allegedly occurred.

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

17 18. After receiving the Notice, and to Plaintiff's best information and belief, none of
18 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted
19 a cause of action against Zyliss under Proposition 65 to enforce the alleged violations which are
20 the subject of Plaintiff's notice of violation.

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

23 **FIRST CAUSE OF ACTION**

24 **(By Plaintiff against Defendant for the Violation of Proposition 65)**

25 20. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of
26 this complaint as though fully set forth herein.

27 21. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,
28 and/or retailer of the Product.

1 22. The Product contains BPA, a hazardous chemical found on the Proposition 65 list
2 of chemicals known to be hazardous to human health.

3 23. The Product does not comply with the Proposition 65 warning requirements.

4 24. Plaintiff, based on his best information and belief, avers that at all relevant times
5 herein, and at least since September 26, 2016, continuing until the present, that Zyliss has
6 continued to knowingly and intentionally expose California users and consumers of the Product
7 to BPA without providing required warnings under Proposition 65.

8 25. The exposures that are the subject of the Notice result from the purchase,
9 acquisition, handling and recommended use of the product. Consequently, the primary route of
10 exposure to these chemicals is through oral ingestion. The measuring cup is expected to be in
11 contact with food and liquids during normal expected use and thus BPA can leach from the
12 polycarbonate plastic into consumables contained within the chopper container. When BPA
13 contaminated food is consumed, oral ingestion of BPA will result. Over time, it is expected that
14 the measuring cup will be exposed to hot water during washing and future BPA leaching rates
15 can be expected to increase with continued exposure to hot water. Dermal exposure to BPA will
16 occur when the measuring cup is handled with bare hands during normal expected use. Finally,
17 some amount of exposure through ingestion can occur by handling the measuring cup, with
18 subsequent touching of the user's hand to mouth.

19 26. Plaintiff, based on his best information and belief, avers that such exposures will
20 continue every day until clear and reasonable warnings are provided to Product purchasers and
21 users or until this known toxic chemical is removed from the Product.

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

26 28. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
27 Complaint.

28

