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**ENDORSED  
FILED  
ALAMEDA COUNTY**  
FEB 05 2019  
CLERK OF THE SUPERIOR COURT  
By CURTIYAH GANTER  
Deputy

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7  
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA

10 ANTHONY FERREIRO,  
11 Plaintiff,  
12 vs.  
13 THE WEBSTAIRANT STORE, INC.,  
14 Defendant.

Case No.:

RG19005659

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

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16 Plaintiff Anthony Ferreiro (“Plaintiff”), by and through his attorneys, alleges the  
17 following 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  
21 at 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 to enforce the People’s right to be informed of the health  
27 hazards caused by exposure bisphenol A (BPA), a toxic chemical found in Webstaurant Store  
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1 branded polycarbonate measuring cup sets sold and/or distributed by defendant The Webstaurant  
2 Store, Inc. (“The Webstaurant Store” or “Defendant”) 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  
5 to cause reproductive toxicity and BPA has come under the purview of Proposition 65  
6 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§  
7 25249.8 & 25249.10(b).

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

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

18 6. Plaintiff alleges that Defendant manufactures, distributes, sells and/or offers for  
19 sale in California, without a requisite exposure warning, Webstaurant Store branded  
20 polycarbonate measuring cup sets (the “Products”) that expose persons to BPA.

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

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

27 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
28 Defendant to provide purchasers or users of the Product with exposure warnings related to the

1 dangers and health hazards associated with exposure to BPA pursuant to Health and Safety Code  
2 § 25249.7(a).

3 **PARTIES**

4 10. Plaintiff is a citizen of the State of California acting in the interest of the general  
5 public to promote awareness of exposures to toxic chemicals in products sold in California and  
6 to improve human health by reducing hazardous substances contained in such items. He brings  
7 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

8 11. The Webstaurant Store, through its business, effectively manufactures, imports,  
9 distributes, sells, and/or offers the Product for sale or use in the State of California, or it implies  
10 by its conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale  
11 or use in the State of California.

12 12. Plaintiff alleges that defendant The Webstaurant Store is a “person” in the course  
13 of doing business within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.

14 **VENUE AND JURISDICTION**

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

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  
22 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,  
23 this Court has jurisdiction over this lawsuit.

24 15. This Court has jurisdiction over Defendant because Defendant is either a citizen  
25 of the State of California, has sufficient minimum contacts with the State of California, is  
26 registered with the California Secretary of State as foreign corporations authorized to do business  
27 in the State of California, and/or has 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 **SATISFACTION OF NOTICE REQUIREMENTS**

4 16. On May 14, 2018, Plaintiff gave notice of alleged violation of Health and Safety  
5 Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California citizens to  
6 BPA contained in the Products without proper warning, subject to a private action to Defendant  
7 and to the California Attorney General’s office and the offices of the County District attorneys  
8 and City Attorneys for each city with a population greater than 750,000 persons wherein the  
9 herein violations allegedly occurred.

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

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

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

21 **FIRST CAUSE OF ACTION**

22 **(By Plaintiff against Defendant for its Violations of Proposition 65)**

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

25 21. Defendant have, at all times mentioned herein, acted as a manufacturer, distributor  
26 and/or retailer of the Product.

27 22. The Products contain and expose persons to BPA, a hazardous chemical found on  
28 the Proposition 65 list of chemicals known to be hazardous to human health.

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

2           24.     Plaintiff, based on his best information and belief, avers that at all relevant times  
3 herein, and at least since February 6, 2018, continuing until the present, that Defendant have  
4 continued to knowingly and intentionally expose California users and consumers of the Product  
5 to BPA without providing required warnings under Proposition 65.

6           25.     The exposures that are the subject of the Notice result from the purchase,  
7 acquisition, handling and recommended use of the Product. Consequently, the primary route of  
8 exposure to these chemicals is through oral ingestion. The Product tested will be in contact with  
9 food and liquids during normal expected use and thus BPA can leach from the polycarbonate  
10 plastic into food and liquids that come into contact with the polycarbonate. Extraction of BPA  
11 may be enhanced into liquids when the Product contains liquids or food at elevated temperatures  
12 or when the measuring cup contains alcohol or milk. When BPA contaminated liquids contained  
13 in the measuring are consumed, oral ingestion of BPA will result. Over time, it is expected that  
14 the Product will be exposed to hot water and abrasion during hand and/or machine washing and  
15 future BPA leaching rates can be expected to increase with continued exposure to hot water and  
16 washing cycles. Washing the Product with hard water and/or dishwashing soaps at elevated pH  
17 will result in higher extraction rates of BPA with subsequent uses of the measuring cup. Dermal  
18 exposure to BPA will occur when the measuring cup is handled with bare hands during normal  
19 expected use and cleaning. If contents are ingested directly from the Product, direct mouthing of  
20 the polycarbonate will occur and ingestion of BPA is possible through mouthing. Finally, some  
21 amount of exposure to BPA through ingestion can occur by handling the product, with  
22 subsequent touching of the user's hand to mouth.

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

26           27.     Defendant has knowledge that the normal and reasonably foreseeable use of the  
27 Products expose individuals to BPA, and Defendant intend that exposures to BPA will occur by  
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1 their deliberate, non-accidental participation in the manufacture, importation, distribution, sale  
2 and offering of the Product to consumers in California

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

5 29. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above  
6 described acts, Defendant are liable for a maximum civil penalty of \$2,500 per day per violation.

7 30. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically  
8 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff demands judgment against Defendant and requests the  
11 following relief:

- 12 A. That the court assess civil penalties against Defendant in the amount of  
13 \$2,500 per day for each violation in accordance with Health and Safety  
14 Code § 25249.7(b);
- 15 B. That the court preliminarily and permanently enjoin Defendant mandating  
16 Proposition 65 compliant warnings on the Product;
- 17 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 18 D. That the court grant any further relief as may be just and proper.

19 Dated: February 5, 2019

BRODSKY & SMITH, LLC

20 By:  \_\_\_\_\_

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