

1 Kimberly Gates Johnson, State Bar No. 282369  
Seven Hills LLP  
2 4 Embarcadero Center, Suite 1400  
San Francisco, CA 94111  
3 Telephone: (415) 926-7247  
kimberly@sevenhillslp.com

4 Attorneys for Plaintiff  
5 KEEP AMERICA SAFE AND BEAUTIFUL

ELECTRONICALLY  
**FILED**

Superior Court of California,  
County of San Francisco

**05/07/2021**  
Clerk of the Court  
BY: KALENE APOLONIO  
Deputy Clerk

6  
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 COUNTY OF SAN FRANCISCO

9 UNLIMITED CIVIL JURISDICTION

**CGC-21-591666**

10  
11 KEEP AMERICA SAFE AND BEAUTIFUL,

12 Plaintiff,

13 v.

14 CPI GROUP INC. *D/B/A* BIGKITCHEN; and  
DOES 1-30, inclusive,

15 DEFENDANTS.  
16

Case No.

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

Violation of Proposition 65, The Safe  
Drinking Water and Toxic Enforcement Act of  
1986 (Health & Safety Code § 25249.5 *et*  
*seq.*)

UNLIMITED CIVIL

1 Plaintiff KEEP AMERICA SAFE AND BEAUTIFUL, acting in the public interest, alleges a  
2 cause of action against DEFENDANTS CPI GROUP INC. D/B/A BIGKITCHEN and DOES 1-30.

3 **INTRODUCTION AND NATURE OF THE ACTION**

4 1. This Complaint is a representative action brought by plaintiff Keep America Safe and  
5 Beautiful (“KASB”) in the public interest of the citizens of the State of California to enforce the  
6 People’s right to be informed of the health hazards caused by exposures to di(2-ethylhexyl)phthalate  
7 (“DEHP”), a toxic chemical found in and on the shower curtains manufactured, imported, distributed,  
8 sold and offered for sale by Defendants in the State of California.

9 2. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
10 Health and Safety Code § 25249.6 *et seq.* (“Proposition 65” or the “statute”), it is unlawful for a  
11 person in the course of doing business to knowingly and intentionally expose consumers in California  
12 to chemicals known to the State to cause cancer, birth defects or other reproductive harm without first  
13 providing a “clear and reasonable” health hazard warning to such individuals prior to purchase or use.

14 3. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failure to warn  
15 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*  
16 (“consumers”) they are being exposed to substances known to the State of California to cause cancer,  
17 birth defects and other reproductive harm through exposures to DEHP, when they purchase, use or  
18 handle Defendants’ shower curtains.

19 4. Detectable levels of DEHP are found in and on the shower curtains Defendants  
20 manufacture, import, sell or distribute for sale to individuals throughout California.

21 5. KASB contends and alleges Defendants manufacture, distribute, import, sell, and  
22 offer for sale, in and into California shower curtains (“PRODUCTS”) containing DEHP, without  
23 Proposition 65’s requisite health hazard warning regarding the harms associated with exposures to  
24 the chemical, including, but not limited to, the *Linens and Bath Vinyl Shower Curtain with 7 Mesh*  
25 *Pockets; Model # 17127; UPC #0 79522 17127 7*. Defendants’ conduct subjects them to civil  
26 penalties for each violation, as well an enjoinder and preliminary and permanent injunctive relief.  
27 Health & Safety Code § 25249.7(a) and (b).  
28

1 **PARTIES**

2 6. Plaintiff KASB is a non-profit corporation organized under the laws of California and  
3 acting in the interest of the general public. KASB is dedicated to protecting the environment and the  
4 health of California citizens through the elimination of toxic chemicals utilized in the manufacture of  
5 consumer products and by increasing the public’s awareness of those chemicals through the  
6 promotion of sound environmental practices and corporate responsibility. KASB is a person within  
7 the meaning of Health & Safety Code § 25249.11(a), and it brings this action in the public interest,  
8 pursuant to Health and Safety Code § 25249.7(d).

9 7. Plaintiff is informed, believes and thereon alleges, at all relevant times, Defendant CPI  
10 GROUP INC. D/B/A BIGKITCHEN (“BIGKITCHEN”), was and is a “person” “in the course of  
11 doing business” with ten (10) or more employees, within the meaning of Health and Safety Code  
12 §§ 25249.6 and 25249.11.

13 8. BIG KITCHEN manufactures, imports, distributes, sells, and offers the PRODUCTS  
14 for sale or use in the State of California or implies by its conduct that it manufactures, imports,  
15 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

16 9. Defendants DOES 1-10 (“Manufacturer Defendants”) are each a person in the course  
17 of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.  
18 Manufacturer Defendants, and each of them, assemble, fabricate and manufacture, or each implies by  
19 its conduct it does such for one or more of the PRODUCTS offered for sale or use in California.

20 10. Defendants DOES 11-20 (“Distributor Defendants”) are each a person in the course of  
21 doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11. Distributor  
22 Defendants, and each of them, distribute, transfer and transport, or each impliedly does so by its  
23 conduct, one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in the  
24 State of California.

25 11. Defendants DOES 21-30 (“Retailer Defendants”) are each a person in the course of  
26 doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11. Retailer  
27 Defendants, and each of them, by and through their conduct, offer the PRODUCTS for sale to  
28

1 individuals in the State of California.

2 12. At this time, the true names of Defendants DOES (“Doe Defendants”) 1 through 30,  
3 inclusive, are unknown to plaintiff, who, therefore, sues said Doe Defendants by their fictitious  
4 names, pursuant to Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that  
5 basis alleges, each of the fictitiously named Defendants is responsible in some manner for the acts  
6 and occurrences alleged herein and the damages caused thereby. When ascertained, their true names  
7 and capacities shall be reflected in an amended complaint.

8 13. At all times mentioned herein, BIGKITCHEN, Manufacturer Defendants, Distributor  
9 Defendants, Retailer Defendants and Doe Defendants shall, hereinafter, where appropriate, be  
10 referred to collectively as the “DEFENDANTS.”

11 **JURISDICTION AND VENUE**

12 14. This Court has jurisdiction over this action, pursuant to Cal. Health & Safety Code  
13 § 25249.7, allowing enforcement by any court of competent jurisdiction. The California Superior  
14 Court has jurisdiction over this action, pursuant to California Constitution Article VI, section 10  
15 which grants the Superior Court “original jurisdiction in all causes except those given by statute to  
16 other trial courts.” The statute under which this action is brought does not specify any other basis of  
17 subject matter jurisdiction.

18 15. The California Superior Court has jurisdiction over DEFENDANTS, based on  
19 plaintiff’s information and good faith belief DEFENDANTS are each a person, firm, corporation or  
20 association that is a citizen of the State of California; does sufficient business in California; has  
21 sufficient minimum contacts in California; and/or otherwise purposefully and intentionally avail  
22 themselves of the California market through their manufacture, importation, distribution, promotion,  
23 marketing or sale of PRODUCTS within the State. DEFENDANTS’ purposeful availment renders  
24 the exercise of personal jurisdiction by California courts consistent with traditional notions of fair  
25 play and substantial justice.

26 16. Venue is proper in the Superior Court for the County of San Francisco, pursuant to  
27 Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent  
28

1 jurisdiction; because plaintiff seeks civil penalties against DEFENDANTS; because one or more  
2 instances of wrongful conduct occurred, and continue to occur, in this county; and/or because  
3 DEFENDANTS conducted, and continue to conduct, business in the County of San Francisco with  
4 respect to the PRODUCTS; the subject of this action.

5 **REGULATORY BACKGROUND AND LAW**

6 17. In 1986, the people of the State of California approved an initiative addressing the  
7 harms caused by hazardous chemicals and declared their right “[t]o be informed about exposures the  
8 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp., Proposed  
9 General Law, Gen. Elec. (Nov. 4, 1986) at p.3.

10 18. Formally known as the Safe Drinking Water and Toxic Enforcement Act of 1986 and  
11 codified at Health & Safety Code §§ 25249.6 *et seq.*, Proposition 65 states, in relevant part, “[n]o  
12 person in the course of doing business shall knowingly and intentionally expose any individual to a  
13 chemical known to cause cancer or reproductive toxicity without first giving a clear and reasonable  
14 warning to such individual...”

15 19. Under the Act, a “person the course of doing business” is defined as a business with  
16 ten (10) or more employees. Health & Safety Code § 25249.11(b). Businesses are prohibited from  
17 exposing individuals to hazardous chemicals without first giving a “clear and reasonable” warning.  
18 Health & Safety Code § 25249.6.

19 20. An exposure to a hazardous chemical is defined as one that “results from a person’s  
20 acquisition, purchase, storage, consumption or other reasonably foreseeable use of a product...” 27  
21 C.C.R. § 25600(h).

22 21. Under Proposition 65, persons violating the statute may be enjoined in any court of  
23 competent jurisdiction and may be subject to civil penalties of up to \$2,500 per day, per violation.  
24 Health & Safety Code § 25249.7.

25 22. On January 1, 1988, pursuant to Proposition 65’s implementing regulations, the State  
26 of California identified and listed DEHP as a chemical known to cause cancer. DEHP became  
27 subject to the “clear and reasonable warning’ requirements one year later, on January 1, 1989.  
28

1 Thereafter, on October 24, 2003, California identified and listed DEHP as a chemical known to cause  
2 birth defects and reproductive harm, and DEHP became subject to the warning requirements on  
3 October 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8,  
4 25249.10(b).

5 **STATEMENT OF FACTS**

6 23. Plaintiff purchased DEFENDANTS’ PRODUCTS in California without a warning.

7 24. Plaintiff investigated and tested DEFENDANTS’ PRODUCTS at an accredited lab  
8 and consulted with a person with relevant and appropriate knowledge and expertise, who, after  
9 reviewing the collected data and analyzing the risk of exposure to DEHP, determined the  
10 PRODUCTS subject consumers in California to exposure to the listed chemical at levels requiring a  
11 warning under the statute, based on consumers touching, handling or otherwise utilizing PRODUCTS  
12 in accordance with their reasonably foreseeable and intended usages.

13 25. DEFENDANTS are each a person in the course of doing business.

14 26. Based on the foregoing, Plaintiff’s attorney executed a certificate of merit, attesting  
15 there was a reasonable and meritorious case for this private action and included the factual  
16 information supporting the certificate when it served the notice on the California Attorney General’s  
17 Office, as required. Health & Safety Code § 25249.7(d); Title 11 C.C.R. § 3102.

18 27. Thereafter, on October 7, 2020, plaintiff served a 60-Day Notice of Violation  
19 (“Notice”), together with the certificate of merit, on BIGKITCHEN, the California Attorney  
20 General’s Office, and the requisite public enforcement agencies, alleging, as a result of  
21 DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California were, and are, being  
22 exposed to DEHP through their reasonably foreseeable use of the PRODUCTS as intended without  
23 first receiving a “clear and reasonable warning” as required by Proposition 65.

24 28. After receiving plaintiff’s Notice, no public enforcement agency has commenced and  
25 is diligently prosecuting a cause of action against DEFENDANTS under Proposition 65 to enforce  
26 the alleged violations that are the subject of the Notice.

27  
28

1 **FIRST CAUSE OF ACTION**

2 **(Violation of Proposition 65 - Against All DEFENDANTS)**

3 29. KASB realleges and incorporates by reference, as if fully stated herein, the allegations  
4 set forth in Paragraphs 1 through 28, inclusive.

5 30. DEFENDANTS' PRODUCTS contain DEHP in levels requiring a clear and  
6 reasonable warning under Proposition 65.

7 31. DEFENDANTS know or should have known the PRODUCTS they manufacture,  
8 import, distribute, sell and offer for sale in California contain DEHP. As a result of Plaintiff's Notice,  
9 DEFENDANTS also have actual knowledge of the presence of DEHP in the PRODUCTS.

10 32. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell and offer for  
11 sale in or into the State of California cause exposures to DEHP, through both dermal contact and  
12 ingestion, based on the reasonably foreseeable use of the PRODUCTS.

13 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
14 continues to cause, exposures to DEHP.

15 34. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS  
16 exposes individuals to DEHP through direct and indirect dermal contact and ingestion.

17 35. Through their deliberate, non-accidental participation in the California marketplace,  
18 DEFENDANTS intend the result of their actions.

19 36. DEFENDANTS' intentional, non-accidental participation in the California  
20 marketplace resulted in consumer exposures to DEHP, arising from the reasonably foreseeable use of  
21 the PRODUCTS as intended.

22 37. The exposures to DEHP, caused by DEFENDANTS and endured by consumers and  
23 other individuals in California, are not exempt from the "clear and reasonable" warning requirements  
24 of Proposition 65.

25 38. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers  
26 and other individuals in California who have been, or who will be, exposed to DEHP through dermal  
27 contact and ingestion resulting from the use of the PRODUCTS as intended.  
28





1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

5. That the Court grant any further relief as it deems just and equitable.

Dated: May 7, 2021

Respectfully submitted,

SEVEN HILLS LLP



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

Kimberly Gates Johnson  
Attorneys for Plaintiff  
*Keep America Safe and Beautiful*