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ELECTRONICALLY  
**FILED**

Superior Court of California,  
County of San Francisco

**07/08/2022**  
Clerk of the Court

BY: KAREN VALDES  
Deputy Clerk

5 Attorneys for Plaintiff  
6 KEEP AMERICA SAFE AND BEAUTIFUL  
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

10 UNLIMITED CIVIL JURISDICTION  
11

12 KEEP AMERICA SAFE AND BEAUTIFUL,

13 Plaintiff,

14 v.

15 TIGERCHEF; SUBURBAN BOWERY OF  
SUFFERN, INC.; AMAZON.COM, INC.; and  
16 DOES 1-30, inclusive,

17 Defendants.  
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Case No.

**CGC-22-600606**

**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 TIGERCHEF, SUBURBAN BOWERY OF SUFFERN, INC.,  
3 AMAZON.COM, INC. and DOES 1-30.

#### 4 INTRODUCTION AND NATURE OF THE ACTION

5 1. This Complaint is a representative action brought by plaintiff Keep America Safe and  
6 Beautiful (“**KASB**”) in the public interest of the citizens of the State of California to enforce the  
7 People’s right to be informed of the health hazards caused by exposures to Bisphenol A (“**BPA**”), a  
8 toxic chemical found in and on the food storage containers manufactured, imported, distributed, sold  
9 or offered for sale by Defendants in the State of California.

10 2. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failure to warn  
11 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*  
12 (“**consumers**”) they are being exposed to substances known to the State of California to cause birth  
13 defects or other reproductive harm through exposures to BPA when they purchase, use or handle  
14 Defendants’ food storage containers.

15 3. Detectable levels of BPA are found in and on the food storage containers Defendants  
16 manufacture, import, sell or distribute for sale to individuals throughout California.

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

22 5. KASB contends and alleges Defendants manufacture, distribute, import, sell, and offer  
23 for sale, in and into California, food storage containers (“**PRODUCTS**”) containing BPA without  
24 Proposition 65’s requisite health hazard warning, regarding the harms associated with exposures to  
25 the chemical, including, but not limited to, the *TigerChef Commercial Grade Food Storage*  
26 *Container, UPC# 7 89313 01011 0*. Defendants’ conduct subjects them to civil penalties for each  
27 violation, enjoinder, and preliminary and permanent injunctive relief. Health & Safety Code  
28 § 25249.7(a) and (b).

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, dedicated to protecting the health of California citizens and  
4 the environment, through the elimination or reduction of toxic chemicals utilized in manufacturing  
5 consumer products and by increasing public awareness of those chemicals through the promotion of  
6 sound environmental practices and corporate responsibility. KASB is a person within the meaning of  
7 Health & Safety Code § 25249.11(a), and it brings this action in the public interest, pursuant to  
8 Health and Safety Code § 25249.7(d).

9 7. Plaintiff is informed, believes, and, thereon, alleges, at all relevant times Defendant  
10 TIGERCHEF was and is a “person” “in the course of doing business” with ten (10) or more  
11 employees, within the meanings of Health and Safety Code §§ 25249.6 and 25249.11.

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

15 9. Plaintiff is informed, believes, and, thereon, alleges, at all relevant times, Defendant  
16 SUBURBAN BOWERY OF SUFFERN, INC. (“**SUBURBAN BOWERY**”) was and is a “person”  
17 “in the course of doing business” with ten (10) or more employees, within the meanings of Health  
18 and Safety Code §§ 25249.6 and 25249.11.

19 10. SUBURBAN BOWERY manufactures, imports, distributes, sells, and/or offers the  
20 PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures,  
21 imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

22 11. Plaintiff is informed, believes, and, thereon, alleges, at all relevant times, Defendant  
23 AMAZON.COM, INC. (“**AMAZON**”) was and is a “person” “in the course of doing business” with  
24 ten (10) or more employees, within the meanings of Health and Safety Code §§ 25249.6 and  
25 25249.11.

26 12. AMAZON imports, distributes, sells, and/or offers the PRODUCTS for sale or use in  
27 the State of California, or implies by its conduct that it imports, distributes, sells, and/or offers the  
28 PRODUCTS for sale or use in the State of California.

1           13. Defendants DOES 1-10 (“**MANUFACTURER DEFENDANTS**”) are each a person  
2 in the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and  
3 25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and  
4 manufacture, or each implies by its conduct that it does such for one or more of the PRODUCTS  
5 offered for sale or use in California.

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

11           15. Defendants DOES 21-30 (“**RETAILER DEFENDANTS**”) are each a person in the  
12 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.  
13 RETAILER DEFENDANTS, and each of them, by and through their conduct, offer the PRODUCTS  
14 for sale to individuals in the State of California.

15           16. At this time, the true names of Defendants DOES 1 through 30, inclusive, are  
16 unknown to plaintiff who, therefore, sues said DOES Defendants by their fictitious names, pursuant  
17 to Code of Civil Procedure § 474. Plaintiff is informed and believes and, on that basis, alleges each  
18 of the fictitiously named Defendants is responsible in some manner for the acts and occurrences  
19 alleged herein and the damages caused thereby. When ascertained, their true names and capacities  
20 shall be reflected in an amended complaint.

21           17. At all times mentioned herein, TIGERCHEF, SUBURBAN BOWERY, AMAZON,  
22 MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER  
23 DEFENDANTS shall, hereinafter, where appropriate, be referred to collectively as the  
24 “**DEFENDANTS.**”

### **JURISDICTION AND VENUE**

25  
26           18. This Court has jurisdiction over this action, pursuant to Cal. Health & Safety Code  
27 § 25249.7, allowing enforcement by any court of competent jurisdiction. The California Superior  
28 Court has jurisdiction over this action, pursuant to California Constitution Article VI, section 10,

1 which grants the Superior Court “original jurisdiction in all causes except those given by statute to  
2 other trial courts.” The statute under which this action is brought does not specify any other basis of  
3 subject matter jurisdiction.

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

12 20. Venue is proper in the Superior Court for the County of San Francisco, pursuant to  
13 Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent  
14 jurisdiction; because plaintiff seeks civil penalties against DEFENDANTS; because one or more  
15 instances of wrongful conduct occurred, and continue to occur, in this county; and/or because  
16 DEFENDANTS conducted, and continue to conduct, business in the County of San Francisco with  
17 respect to the PRODUCTS that are the subject of this action.

18 **REGULATORY BACKGROUND AND LAW**

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

23 22. Formally known as the Safe Drinking Water and Toxic Enforcement Act of 1986 and  
24 codified at Health & Safety Code § 25249.6 *et seq.*, Proposition 65 states, in relevant part, “[n]o  
25 person in the course of doing business shall knowingly and intentionally expose any individual to a  
26 chemical known to cause cancer or reproductive toxicity without first giving a clear and reasonable  
27 warning to such individual...”  
28

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

5 24. Exposing individuals to hazardous chemicals means to cause individuals to ingest,  
6 inhale, contact via body surfaces or otherwise come into contact with a listed chemical. 27 CCR  
7 § 25102(i). An exposure to a hazardous chemical is defined as one that “results from a person’s  
8 acquisition, purchase, storage, consumption or other reasonably foreseeable use of a product...”  
9 27 C.C.R. § 25600(h).

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

13 26. On May 11, 2015, pursuant to Proposition 65’s implementing regulations, California  
14 identified and listed BPA as a chemical known to the State cause female reproductive toxicity. BPA  
15 became subject to the “clear and reasonable warning” requirements one year later, on May 11, 2016.  
16 Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b).

17 **STATEMENT OF FACTS**

18 27. Plaintiff purchased DEFENDANTS’ PRODUCTS, without a warning, in California.

19 28. Plaintiff investigated and tested DEFENDANTS’ PRODUCTS at an accredited lab,  
20 and consulted with a person with relevant and appropriate knowledge and expertise, who, after  
21 reviewing the collected data and analyzing the risk of exposure to BPA, determined the PRODUCTS  
22 subject consumers in California to exposure to the listed chemical at unsafe levels, based on touching,  
23 handling or otherwise utilizing PRODUCTS in accordance with their reasonably foreseeable and  
24 intended usages.

25 29. Based on the foregoing, Plaintiff’s attorney executed a certificate of merit, attesting  
26 there was a reasonable and meritorious case for this private action, based on exposure to BPA at  
27 levels requiring a warning, and included the factual information supporting the certificate when it  
28

1 served the notice on the California Attorney General’s Office, as required. Health & Safety Code §  
2 25249.7(d); Title 11 C.C.R. § 3102.

3 30. Thereafter, on July 9, 2021, plaintiff served a 60-Day Notice of Violation (“**Notice**”),  
4 together with the certificate of merit, on TIGERCHEF, SUBURBAN BOWERY, AMAZON, the  
5 California Attorney General’s Office, and the requisite public enforcement agencies, alleging, as a  
6 result of DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California were, and  
7 are, being exposed to BPA through their reasonably foreseeable use of the PRODUCTS as intended  
8 without first receiving a “clear and reasonable warning,” as required by Proposition 65.

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

12 **FIRST CAUSE OF ACTION**

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

14 32. KASB realleges and incorporates by reference, as if fully stated herein, the allegations  
15 set forth in Paragraphs 1 through 31, inclusive.

16 33. DEFENDANTS’ PRODUCTS contain BPA in levels requiring a clear and reasonable  
17 warning under Proposition 65.

18 34. DEFENDANTS know or should have known the PRODUCTS they manufacture,  
19 import, distribute, sell, and offer for sale in California contain BPA. As a result of plaintiff’s Notice,  
20 DEFENDANTS also have actual knowledge of the presence of BPA in the PRODUCTS.

21 35. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell, and offer for  
22 sale in or into the State of California cause exposures to BPA, both direct and/or indirect dermal  
23 contact and ingestion, through the reasonably foreseeable use of the PRODUCTS.

24 36. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
25 continues to cause, exposures to BPA.

26 37. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS  
27 exposes individuals to BPA through direct and indirect dermal contact and/or ingestion.

28

1           38.     DEFENDANTS intend that exposures to BPA from the reasonably foreseeable use of  
2 the PRODUCTS will occur by their deliberate, non-accidental participation in the California  
3 marketplace.

4           39.     The exposures to BPA, caused by DEFENDANTS and endured by consumers and  
5 other individuals in California, are not exempt from the “clear and reasonable” warning requirements  
6 of Proposition 65.

7           40.     DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers  
8 and other individuals in California who have been, or who will be, exposed to BPA through direct  
9 and indirect dermal contact and/or ingestion resulting from the use of the PRODUCTS as intended.

10          41.     Contrary to the express policy and statutory prohibition of Proposition 65, consumers  
11 and other individuals, exposed to BPA through dermal contact and ingestion as a result of their use of  
12 the PRODUCTS that DEFENDANTS sold without a “clear and reasonable” health hazard warning,  
13 have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or  
14 adequate remedy at law.

15          42.     DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for  
16 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS’ violations have  
17 continued beyond their receipt of plaintiff’s Notice. As such, DEFENDANTS’ violations are  
18 ongoing and continuous in nature and, unless enjoined, will continue in the future.

19          43.     Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-  
20 described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty of \$2,500  
21 per day for each violation.

22          44.     As a consequence of the above-described acts, Health and Safety Code § 25249.7(a)  
23 also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

24                                   **PRAYER FOR RELIEF**

25           Wherefore, KASB prays for relief and judgment against DEFENDANTS, and each of them,  
26 as follows:

27           1.     That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and  
28 permanently enjoin DEFENDANTS from manufacturing, distributing, importing, marketing or



1 otherwise offering the PRODUCTS for sale or use in California without first providing a “clear and  
2 reasonable warning” to consumers addressing the harms associated with exposures to BPA;

3 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary  
4 and permanent injunctions mandating DEFENDANTS recall all PRODUCTS currently in the chain  
5 of commerce in California that do not bear a clear and reasonable health hazard warning;

6 3. That the Court assess civil penalties against DEFENDANTS, and each of them, in the  
7 amount of \$2,500 per day for each violation of Proposition 65, in an amount to be determined at trial;

8 4. That the Court award plaintiff its reasonable attorneys’ fees and costs of suit, incurred  
9 herein; and


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

11 Dated: July 8, 2022

Respectfully submitted,

SEVEN HILLS LLP

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13  
14 By: \_\_\_\_\_

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