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KEEP AMERICA SAFE AND BEAUTIFUL

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN FRANCISCO
12 UNLIMITED CIVIL JURISDICTION
13

14 KEEP AMERICA SAFE AND BEAUTIFUL,
15 PLAINTIFF,

16 v.

17 TIGERCHEF; SUBURBAN BOWERY OF
18 SUFFERN, INC.; AMAZON.COM, INC.; and
DOES 1-30, inclusive,
19

20 DEFENDANTS.
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Case No. CGC-22-600606

CONSENT JUDGMENT

(Health & Safety Code § 25249.6 et seq. and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 This Consent Judgment is entered into by and between plaintiff Keep America Safe and
3 Beautiful (“KASB”) and defendant Suburban Bowery of Suffern dba TigerChef.com (“TigerChef”),
4 with KASB and TigerChef each individually referred to as a “Party” and collectively, as the
5 “Parties,” to resolve the allegations in the July 9, 2021 60-Day Notice of Violation in compliance
6 with the Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6
7 *et seq.* (“Proposition 65”).

8 **1.1 The Parties**

9 KASB is a California-based non-profit organization proceeding in the public interest pursuant
10 to California Health & Safety Code § 25249.7(d) to ensure that chemicals known to the State of
11 California to cause cancer, birth defects or other reproductive harm are properly disclosed in or
12 eliminated from consumer products sold in California. TigerChef is a person in the course of doing
13 business for purposes of California Health & Safety Code § 25249.11(b).

14 **1.2 Consumer Product Description**

15 KASB alleges that TigerChef manufactures, processes, sells and distributes for sale in
16 California food storage containers containing the chemical Bisphenol A (“BPA”), including, but not
17 limited to, *TigerChef Commercial Grade Food Storage Container, UPC# 7 89313 01011 0*,
18 collectively referred to hereinafter as the “Product(s),” without providing a compliant health hazard
19 warning that KASB alleges is required by Proposition 65. BPA is listed pursuant to Proposition 65 as
20 a chemical known to the State of California to cause reproductive harm and developmental harm.
21 TigerChef asserts that the Products were sold with a Proposition 65 warning titled “[California
22 Residents] Proposition 65 WARNING” that described the Products as containing BPA and that
23 identified BPA as a substance known to the State of California to cause birth defects or other
24 reproductive harm. KASB asserts that the warning does not comply with the Proposition 65 safe
25 harbor warning regulations. The Parties dispute whether the warning is “clear and reasonable” within
26 the meaning of Proposition 65.

27 **1.3 Notice of Violation**

28 On July 9, 2020, KASB served TigerChef, the California Attorney General, and the requisite

1 public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging that TigerChef
2 violated Proposition 65 when it failed to provide compliant warnings to its customers and consumers
3 in California that its Products can expose users to BPA. No public enforcer has commenced and is
4 diligently prosecuting an action to enforce the allegations set forth in the Notice. The Parties enter
5 into this Consent Judgment for the purpose of resolving KASB’s claims asserted in the Notice and to
6 avoid prolonged and costly litigation.

7 **1.4 Complaint**

8 On July 8, 2022, KASB commenced the instant action (“**Complaint**”), naming TigerChef as
9 a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

10 **1.5 No Admission**

11 TigerChef denies the material, factual, and legal allegations contained in the Notice and
12 Complaint, and maintains that all products it has sold or distributed for sale in California, including
13 the Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment
14 shall be construed as, nor shall compliance with this Consent Judgment constitute or be construed as,
15 an admission by TigerChef of any fact, finding, conclusion of law, issue of law, or violation of law.
16 This section shall not, however, diminish or otherwise affect TigerChef’s obligations, responsibilities,
17 and duties under this Consent Judgment.

18 **1.6 Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
20 jurisdiction over TigerChef as to the allegations contained in the Complaint, that venue is proper in
21 the County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions
22 of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

23 **1.7 Execution Date**

24 The term “Execution Date” shall mean the date on which all parties have signed this Consent
25 Judgment.

26 **1.8 Effective Date**

27 The term “Effective Date” shall mean the date on which the Court approves this Consent
28 Judgment and enters judgment pursuant to its terms.

1 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

2 **2.1 Commitment to Reformulate or Warn**

3 Commencing on the Effective Date and continuing thereafter, all Products TigerChef
4 manufactures, imports, sells, ships, or distributes for sale, in or into California, directly or through
5 one or more third party retailers or e-commerce marketplaces, shall either (a) meet the Reformulation
6 Standard for Reformulated Products, as defined by Section 2.2; or (b) be accompanied by a clear and
7 reasonable warnings pursuant to Sections 2.3 through 2.5.

8 **2.2 Reformulated Products and Reformulation Standard Defined**

9 For purposes of this Consent Judgment, “**Reformulated Products**” are defined as
10 Products that are BPA-free, meaning they contain no detectable amount of BPA when analyzed
11 pursuant to ATS 367 Rev. 0 by LC/MS/MS, or other methodologies utilized by federal or state
12 government agencies to determine BPA content in a solid substance, by a laboratory accredited by the
13 State of California, a federal agency, or a nationally recognized accrediting
14 organization. Many BPA-free polycarbonate (“PC”) replacement products leach chemicals that can
15 activate estrogen receptor (“ER”) dependent cell signaling. As such, for purposes of this Agreement,
16 Reformulated Products are made entirely from materials that contain no detectable BPA or BPA-free
17 PC-replacement chemicals that can activate ER dependent cell signaling.

18 **2.3 Clear and Reasonable Warnings**

19 Commencing on or before the Execution Date, for all Products that do not meet the definition
20 of Reformulated Products, TigerChef shall provide clear and reasonable warnings for all Products it
21 manufactures, imports, distributes for sale or sells, in or into California, in accordance with this
22 Section pursuant to Title 27 California Code of Regulations § 25600, et seq. Each warning shall be
23 prominently placed with such conspicuousness, as compared with other words, statements, or
24 designs, as to render it likely to be read and understood by an ordinary individual under customary
25 conditions before purchase or use and shall be provided in a manner such that it is clearly associated
26 with the specific Product to which the warning applies.

27 **(a) Warning.** The Warning shall consist of the following statement:
28



WARNING: This product can expose you to BPA, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

(b) **Short-Form Warning.** As an alternative to the warning set forth in subsection 2.3(a), TigerChef may, but is not required to, use the following short-form warning (“**Short-Form Warning**”), subject to the additional requirements detailed in Sections 2.4 and 2.5:



WARNING: Reproductive Harm - www.P65Warnings.ca.gov.

(c) **Foreign Language Requirement.** Where a consumer product sign, label or shelf tag used to provide a warning includes consumer information, as that term is defined in Title 27 California Code of Regulations § 25600.1(c) (“Consumer Information”), in languages other than English, then the warning must also be provided in those languages, in addition to English.

2.4 Product Warnings

TigerChef shall affix a warning to the Product label or otherwise directly on each Product provided for sale, directly or indirectly, through customers with retail outlets in California, mail order catalogs and/or e-commerce websites, to consumers located in California. For purposes of this agreement, “**Product label**” means a display of written, printed or graphic material that is printed on or affixed to a Product or its immediate container or wrapper. A warning provided pursuant to section 2.3(a) or (b) must print the word “**WARNING:**” in all capital letters and in bold font. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except, if the labeling does not use the color yellow, then the symbol may be in black and white. For the short form warning, the entire warning shall appear in a type size of at least 6-point type and no smaller than the largest type size used for other Consumer Information on the product.

2.5 Internet Warnings

If, after the Effective Date, TigerChef sells Products via the internet directly, or indirectly through customers with e-commerce websites, to customers located in California, then TigerChef shall provide warnings for each Product both on the Product label in accordance with Sections 2.3 and 2.4, and by including either the warning or a clearly marked hyperlink using the word “**WARNING**” on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase and without requiring the purchaser to search for the

1 warning in the general content of the website. If TigerChef sells Products directly to customers with
2 e-commerce websites, TigerChef shall inform those customers in writing of their obligation to
3 provide online warnings consistent with Title 27 California Code of Regulations § 25602(b) in
4 conjunction with Products sold to customers located in California. Internet warnings may consist of
5 the Short-Form Warning, as set forth in Section 2.3(b), if the warning provided on the Product label
6 also uses the Short-Form Warning. For third-party websites, as a condition of sale, TigerChef shall
7 notify the sellers that the Products must be accompanied by a warning, prior to and as a condition of
8 sale, in or into California, and shall supply the warning requirements, as detailed above.

9 **3. MONETARY SETTLEMENT TERMS**

10 **3.1 Civil Penalty**

11 Pursuant to Health and Safety Code § 25249.7(b), within ten (10) business days of the
12 Effective Date, TigerChef agrees to pay a civil penalty of \$2,500. TigerChef’s civil penalty payment
13 will be allocated according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five
14 percent (75%) of the penalty paid to the California Office of Environmental Health Hazard
15 Assessment (“**OEHHA**”), and the remaining twenty-five percent (25%) retained by KASB.
16 TigerChef shall issue its payment in two checks made payable to: (1) “**OEHHA**” in the amount of
17 \$1,875; and (2) “**Keep America Safe and Beautiful**” in the amount of \$625. KASB’s counsel shall
18 deliver to OEHHA and KASB their respective portion of the penalty payment.

19 **3.2 Reimbursement of Attorneys’ Fees and Costs**

20 KASB and its counsel offered to resolve the allegations in the Notice without reaching terms
21 on the amount of reimbursement of attorneys’ fees and costs. Shortly after the Parties finalized the
22 other material settlement terms, they negotiated and reached an accord on the amount of
23 reimbursement to be paid to KASB’s counsel, under general contract principles and the private
24 attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work
25 performed through the mutual execution and reporting of this Agreement to the Office of the
26 California Attorney General.

27 TigerChef shall pay a total sum of \$23,000 for all fees and other costs incurred through
28 investigating, bringing this matter to TigerChef’s attention, negotiating a settlement in the public

1 interest, and reporting its terms to Office of the California Attorney General, pursuant to Section
2 9. The attorneys' fees and costs payments shall be made as detailed below in section 3.2.a. and shall
3 be deposited according to the schedule detailed there and subject to its terms., detailed below in
4 section 3.2.b.

5 **a. Attorneys' Fees & Costs: Installment Agreement Timing**

6 TigerChef agrees to deliver checks to Seven Hills LLP for all attorneys' fees and costs
7 payments due under this Agreement within ten (10) business days of the Effective Date. The Parties,
8 however, agree the payment of attorneys' fees and costs, totaling \$23,000, shall be broken into an
9 initial installment of \$4,600 and five equal installments of \$3,680. All payments under this Section
10 shall be made in the form of individual checks payable to "Seven Hills LLP" and delivered
11 concurrently to the address below, in Section 3.3, within ten (10) business days of the Effective
12 Date. Upon receipt, Seven Hills LLP shall immediately deposit the initial payment of \$4,600. Seven
13 Hills LLP agrees to hold the remaining payments and deposit them on the following schedule. Seven
14 Hills LLP agrees to hold the remaining payments and deposit them according to the following
15 schedule. Seven Hills LLP shall deposit the remaining five (5) installment payments of \$3,680 each
16 roughly thirty days apart timed according to the date of the initial payment, or the 1st business day of
17 each of the following months: August, September, October, November and December, with all
18 attorneys' fees and costs deposited no later than January 1, 2024.

19 **b. Installment Agreement Terms & Understandings**

20 Upon full execution of this Consent Judgment, attorneys for KASB shall remit Federal Form
21 W9s for all payees herein to attorneys for TigerChef via electronic mail, allowing TigerChef to
22 comply with its Federal income reporting requirements. TigerChef agrees and understands, should
23 any installment payment due under this Section or this Agreement fail due to insufficient funds,
24 KASB shall advise TigerChef in the manner set forth in Section 7, as well as by electronic mail to
25 TigerChef's counsel, and will provide TigerChef ten (10) business days, calculated from the date
26 notice is provided, to cure any non-compliance under this Agreement, before any remaining
27 payments become due and payable. If TigerChef fails to cure an issue based on insufficient funds
28 or a failed payment, then, after a notice and opportunity to cure, TigerChef acknowledges all

1 payments herein shall become due and payable. If Seven Hills LLP incurs fees for any returned
2 checks, TigerChef agrees to reimburse Seven Hills LLP for such fees.

3 TigerChef acknowledges that, until the last installment payment is deposited and clears with
4 sufficient funds, KASB reserves the right to institute a proceeding under Proposition 65, including
5 the filing of a complaint based on the allegations in the Notice, a suit based on breach of or failure
6 to perform under a contract, or any other remedy allowable under law. TigerChef agrees this
7 Consent Judgment will effectively toll the statute of limitations, until it fulfills its payment
8 obligations, allowing KASB an opportunity to enforce the original noticed violations. In the event
9 any such action is brought, TigerChef retains all defenses and does not hereby waive any potential
10 defenses.

11 **3.3 Payments Due Date**

12 All payments payable and due under this Consent Judgment shall be delivered to KASB's
13 counsel at the address listed in Section 3.4 within ten (10) business days of the Effective Date.

14 **3.4 Delivery Address**

15 All payments required by this Consent Judgment shall be delivered to the following address:

16 Seven Hills LLP
17 Attn: Kimberly Gates Johnson
18 4 Embarcadero Center, Suite 1400
19 San Francisco, CA 94111

20 **4. CLAIMS COVERED AND RELEASED**

21 **4.1 KASB's Release of Proposition 65 Claims**

22 KASB, acting on its own behalf and in the public interest, and on behalf of its past and
23 current agents, representatives, attorneys, successors and assignees ("**Releasers**") releases
24 TigerChef, its past and present parents, subsidiaries, affiliated entities under common ownership,
25 directors, officers, employees, attorneys, and each entity to whom TigerChef directly or indirectly
26 distributes or sells Products including its downstream distributors, wholesalers, marketplace hosts,
27 customers, retailers, franchisees, cooperative members, and licensees ("**Releasees**") based on the
28 failure to provide a clear and reasonable warning, arising under Proposition 65, about alleged
exposures to BPA contained in the Products that were manufactured, processed, distributed, sold

1 and/or offered for sale in California before the Effective Date, as set forth in the Notice and
2 Complaint. The Parties further agree that compliance with Section 2 of this Consent Judgment shall
3 be deemed compliance with Proposition 65 with respect to alleged exposures to BPA in the
4 Products.

5 **4.2 KASB's Individual Release of Claims**

6 KASB, in its individual capacity only and *not* in his representative capacity, also provides a
7 release to TigerChef and Releasees which shall be effective as a full and final accord and
8 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
9 damages, losses, claims, liabilities and demands of KASB of any nature, character or kind, whether
10 known or unknown, suspected or unsuspected, arising out of alleged or actual failure to provide a
11 clear and reasonable warning about exposures to BPA, arising under Proposition 65, in Products
12 manufactured, processed, distributed or sold to consumers in California before the Effective Date.
13 Nothing in this section shall affect KASB's right to commence or prosecute an action under
14 Proposition 65 against a Releasee that does not involve TigerChef Products.

15 The Parties understand and agree these Section 4 releases shall not extend upstream to any
16 entities who sold, supplied, or manufactured the Products, or any component parts thereof, to
17 TigerChef. The Parties further agree and intend these Section 4 release shall not extend downstream
18 to any third-party entities who had a duty to warn, pursuant to Proposition 65, and failed to do so.
19 Nothing in these Section 4 releases shall affect KASB's right to commence or prosecute an action
20 under Proposition 65 against a Releasee that does not involve TigerChef's Products.

21 **4.3 TigerChef's Release of KASB**

22 TigerChef, on behalf of itself, its past and current agents, representatives, attorneys,
23 successors, and assignees, hereby waives any and all claims against KASB and its attorneys and
24 other representatives, for any and all actions taken or statements made (or those that could have been
25 taken or made) by KASB and its attorneys and other representatives in the course of investigating
26 claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the
27 Products.

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1 **5. COURT APPROVAL**

2 Pursuant to California Health and Safety Code § 25249.7(f)(4), KASB shall file a noticed
3 motion for judicial approval of this Consent Judgment. The Parties agree to mutually employ their
4 best efforts, and those of their counsel, to support entry of a judgment pursuant to the terms of this
5 Consent Judgment, and to obtain judicial approval of their settlement in the form of this Consent
6 Judgment in a timely manner. For purposes of this section, “best efforts” shall include, at a
7 minimum, supporting the motion for approval, responding to any third-party objection, and
8 appearing at the hearing before the Court if so requested.

9 **6. SEVERABILITY**

10 If, subsequent to the Court’s approval and entry of this Consent Judgment as a judgment, any
11 provision of this Consent Judgment is deemed by a court to be unenforceable, the validity of the
12 remaining provisions shall not be adversely affected.

13 **7. GOVERNING LAW**

14 The terms of this Consent Judgment shall be governed by the laws of the State of California
15 and apply within California. In the event Proposition 65 is repealed, preempted, or is otherwise
16 rendered inapplicable by reason of law generally, or as to the Products, then TigerChef may provide
17 KASB the other Party with written notice of any asserted change in the law and shall have no further
18 injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
19 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve TigerChef
20 from its obligation to comply with any pertinent state or federal law or regulation.

21 **8. NOTICE**

22 Unless specified herein, all correspondence and notice required by this Consent Judgment
23 shall be in writing and sent by: (i) first-class registered or certified mail, return receipt requested; or
24 (ii) a recognized overnight courier to any Party by the other at the following addresses:

25 For TigerChef:

26 Ezra Markovic, President
27 TigerChef
27 Chestnut Street
28 Suffern, NY 10901

For KASB:

Kimberly Gates Johnson
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
kimberly@sevenhillslp.com

1 *With a Copy to:*

2 David A, Diepenbrock
3 Weintraub Tobin Cediak Coleman
4 Grodin, L.C.
5 400 Capital Mall, 11th Floor
6 Sacramento, CA 95814
7 DDiepenbrock@weintraub.com with a
8 copy to Sheller@weintraub.com

9 Any Party may, from time to time, specify in writing to the other Party a change of address to which
10 all Notice and other communications shall be sent.

11 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

12 This Consent Judgment may be executed in counterparts and by portable document format
13 (pdf) signature, each of which shall be deemed an original and, all of which, when taken together,
14 shall constitute one and the same document.

15 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

16 KASB and its counsel agree to comply with the reporting form requirements referenced in
17 California Health and Safety Code § 25249.7(f).

18 **11. ENTIRE AGREEMENT**

19 This Consent Judgment contains the sole and entire agreement and understanding of the
20 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
21 negotiations, commitments, or understandings related thereto, if any, are hereby merged into this
22 Consent Judgment. There are no warranties, representations, or other agreements between the
23 Parties except as expressly set forth herein. No representations, oral or otherwise, express or
24 implied, other than those specifically referred to in this Consent Judgment have been made by any
25 Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
26 shall be deemed to exist or to bind any of the Parties hereto.

27 **12. MODIFICATION**

28 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
any party and the entry of a modified Consent Judgment by the Court thereon.

1 **13. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agreed to all of the terms and conditions of this
4 Consent Judgment.

5 **AGREED TO:**

AGREED TO:

6 Date: 10/10/2023

Date: 10/9/2023

7
8
9 By:  _____

My Nguyen, CFO
Keep America Safe and Beautiful

By:  _____

Ezra Markovic, President
TigerChef

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