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8 *Attorneys for Plaintiff*

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**03/08/2024**  
Clerk of the Court  
BY: MARK UDAN

Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

**CGC-24-612944**

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 vs.

14 GELSON'S MARKETS,

15 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

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

**BACKGROUND OF THE CASE**

18 1. Plaintiff brings this representative action on behalf of all California citizens to  
19 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
20 the Health and Safety Code § 25249.5 et seq ("Proposition 65"), which reads, in relevant part,  
21 "[n]o person in the course of doing business shall knowingly and intentionally expose any  
22 individual to a chemical known to the state to cause cancer or reproductive toxicity without first  
23 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

24 2. This complaint is a representative action brought by Plaintiff in the public interest  
25 of the citizens of the State of California to enforce the People's right to be informed of the health  
26 hazards caused by exposure to lead, a toxic chemical found in (a) Mekhala organic curry pastes,  
27 UPC # 8885009961017, (b) King Arthur Baking Company gluten fudge brownie mixes, UPC #  
28 071012075089, (c) Shaman Raman organic ramens, UPC # 860003963500, and (d) *Solely*®

1 organic mango halves, UPC # 856261006615 sold and/or distributed by defendant Gelson's  
2 Markets ("Gelson's" or "Defendant") in California.

3 3. Lead is a harmful chemical known to the State of California to cause cancer and  
4 birth defects or other reproductive harm. On October 1, 1992, the state of California listed lead as  
5 a chemical known to cause cancer and it has come under the purview of Proposition 65 regulations  
6 since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
7 25249.10(b). On February 27, 1987, the State of California listed lead as a chemical known to  
8 cause birth defects or other reproductive harm.

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

15 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
16 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be  
17 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code  
18 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the  
19 actions of a defendant which "violate or threaten to violate" the statute. Health & Safety Code §  
20 25249.7.

21 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,  
22 without a requisite exposure warning, (a) Mekhala organic curry pastes, UPC # 8885009961017,  
23 (b) King Arthur Baking Company gluten fudge brownie mixes, UPC # 071012075089, (c) Shaman  
24 Raman organic ramens, UPC # 860003963500, and (d) *Solely*® organic mango halves, UPC #  
25 856261006615 (collectively, the "Products") that expose persons to lead when used for their  
26 intended purpose.

1 7. Defendant's failure to warn consumers and other individuals in California of the  
2 health hazards associated with exposure to lead in conjunction with the sale and/or distribution of  
3 the Products is a violation of Proposition 65 and subjects Defendant to the enjoinder and civil  
4 penalties described herein.

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

7 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
8 Defendant to provide purchasers or users of the Products with required warnings related to the  
9 dangers and health hazards associated with exposure to lead pursuant to Health and Safety Code §  
10 25249.7(a).

11 10. Plaintiff further seeks a reasonable award of attorney's fees and costs.

#### 12 **PARTIES**

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

17 12. Defendant Gelson's, through its business, effectively imports, distributes, sells,  
18 and/or offers the Products for sale or use in the State of California, or it implies by its conduct that  
19 it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.  
20 Plaintiff alleges that defendant Gelson's is a "person" in the course of doing business within the  
21 meaning of Health & Safety Code sections 25249.6 and 25249.11.

#### 22 **VENUE AND JURISDICTION**

23 13. Venue is proper in the County of San Francisco because one or more of the  
24 instances of wrongful conduct occurred, and continue to occur in this county and/or because  
25 Defendant conducted, and continues to conduct, business in the County of San Francisco with  
26 respect to the Products.  
27  
28

1 14. This Court has jurisdiction over this action pursuant to California Constitution  
 2 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those  
 3 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the enforcement  
 4 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has  
 5 jurisdiction over this lawsuit.

6 15. This Court has jurisdiction over Defendant because Defendant is either a citizen of  
 7 the State of California, has sufficient minimum contacts with the State of California, is registered  
 8 with the California Secretary of State as foreign corporations authorized to do business in the State  
 9 of California, and/or has otherwise purposefully availed itself of the California market. Such  
 10 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and  
 11 permissible with traditional notions of fair play and substantial justice.

12 **STATUTORY BACKGROUND**

13 16. The people of the State of California declared in Proposition 65 their right “[t]o be  
 14 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
 15 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

16 17. To effect this goal, Proposition 65 requires that individuals be provided with a  
 17 “clear and reasonable warning” before being exposed to substances listed by the State of California  
 18 as causing cancer and/or birth defects or other reproductive harm. H&S Code § 25249.6 states, in  
 19 pertinent part:

20 No person in the course of doing business shall knowingly and intentionally expose any  
 21 individual to a chemical known to the state to cause cancer or reproductive toxicity without  
 first giving clear and reasonable warning to such individual...

22 18. In this case, exposures are caused by consumer products. A “Consumer Product” is  
 23 defined as “any article, or component part thereof, including food, that is produced, distributed, or  
 24 sold for the personal use, consumption or enjoyment of a consumer.” (Cal. Code Regs., tit. 27, §  
 25 25600.1, subd. (d).) Food includes “dietary supplements” as defined in California Code of  
 26 Regulations, title 17, section 10200. (*Id.* at subd. (g).) An exposure to a chemical in a Consumer  
 27 Product is one “which results from a person’s acquisition, purchase, storage, consumption or other  
 28

1 reasonably foreseeable use of a consumer good, or any exposure that results from receiving a  
2 consumer service.” (27 CCR § 25602, para (b).) H&S Code § 25603(c) states that “a person in the  
3 course of doing business ... shall provide a warning to any person to whom the product is sold or  
4 transferred unless the product is packaged or labeled with a clear and reasonable warning.”

5 19. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or  
6 more of the following methods individually or in combination:<sup>1</sup>

7 a. A warning that appears on a product’s label or other labeling.

8 b. Identification of the product at the retail outlet in a manner which provides  
9 a warning. Identification may be through shelf labeling, signs, menus, or a combination  
10 thereof.

11 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be  
12 prominently placed upon a product’s labels or other labeling or displayed at the retail outlet  
13 with such conspicuousness, as compared with other words, statements, designs, or devices  
14 in the label, labeling or display as to render it likely to be read and understood by an  
15 ordinary individual under customary conditions of purchase or use.

16 d. A system of signs, public advertising identifying the system and toll-free  
17 information services, or any other system that provides clear and reasonable warnings.

18 20. Proposition 65 provides that any “person who violates or threatens to violate” the  
19 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase  
20 “threaten to violate” is defined to mean creating “a condition in which there is a substantial  
21 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil  
22 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to  
23 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

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27 <sup>1</sup> Alternatively, a person in the course of doing business may elect to comply with the warning  
28 requirements set out in the amended version of 27 CCR 25601, *et.seq.*, as amended on August 30,  
2016, and operative on August 30, 2018.

1 **FACTUAL BACKGROUND**

2 21. On October 1, 1992, the state of California listed lead as a chemical known to cause  
3 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code  
4 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On February 27,  
5 1987, the State of California listed lead as a chemical known to cause birth defects or other  
6 reproductive harm. In summary, lead was listed under Proposition 65 as a chemical known to the  
7 State to cause cancer and birth defects or other reproductive harm.

8 22. The exposures that are the subject of the Notices result from the purchase,  
9 acquisition, and recommended use of the Products. The primary route of exposure to lead is  
10 through ingestion. When foods contaminated with lead are consumed, ingestion of lead will occur  
11 which will increase blood lead levels. No clear and reasonable warning is provided with the  
12 Products regarding the health hazards of exposure.

13 23. Defendant has processed, marketed, distributed, offered to sell and/or sold the  
14 Products in California since at least March 9, 2023 with respect to the Mekhala organic curry  
15 pastes and the King Arthur Baking Company gluten fudge brownie mixes; and since at least July  
16 14, 2023 with respect to the Shaman Raman organic ramens and the *Solely*® organic mango  
17 halves. The Products continue to be distributed and sold in California without the requisite warning  
18 information.

19 24. At all times relevant to this action, Defendant has knowingly and intentionally  
20 exposed users and/or consumers of the Products to lead without first giving a clear and reasonable  
21 exposure warning to such individuals.

22 25. As a proximate result of acts by Defendant, as a person in the course of doing  
23 business within the meaning of H&S Code § 25249.11, individuals throughout the State of  
24 California, including in San Francisco County, have been exposed to lead without a clear and  
25 reasonable warning on the Products. The individuals subject to the violative exposures include  
26 normal and foreseeable users and consumers that use the Products, as well as all others exposed to  
27 the Products.

1 SATISFACTION OF NOTICE REQUIREMENTS

2 26. Plaintiff purchased the Products from Gelson's. At the time of purchase, Defendant  
3 did not provide a Proposition 65 exposure warning for lead or any other Proposition 65 listed  
4 chemical in a manner consistent with H&S Code § 25603.1 as described *supra*.

5 27. The Products were sent to a testing laboratory to determine if, and what amount of,  
6 lead a consumer would be exposed to per serving size.

7 28. The laboratory provided the results of its analysis. Results of these tests determined  
8 the Products expose users to lead (collectively, the "Chemical Test Reports" and each a "Chemical  
9 Test Report").

10 29. Plaintiff provided the Chemical Test Reports and Products to an analytical chemist  
11 to determine if, based on the findings of the Chemical Test Reports and the reasonable and  
12 foreseeable use of the Products, exposure to lead will occur at levels that require Proposition 65  
13 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California  
14 Code of Regulations.

15 30. On March 9, 2023, Plaintiff received from the analytical chemist an exposure  
16 assessment report which concluded that persons in California who use the Mekhala organic curry  
17 pastes and the King Arthur Baking Company gluten fudge brownie mixes will be exposed to levels  
18 of lead that require a Proposition 65 exposure warning. On July 14, 2023, Plaintiff received from  
19 the analytical chemist an exposure assessment report which concluded that persons in California  
20 who use the Shaman Raman organic ramens and the *Solely*® organic mango halves will be exposed  
21 to levels of lead that require a Proposition 65 exposure warning.

22 31. On March 9, 2023 (Mekhala organic curry pastes and the King Arthur Baking  
23 Company gluten fudge brownie mixes) and July 14, 2023 (Shaman Raman organic ramens and the  
24 *Solely*® organic mango halves), Plaintiff gave notice of alleged violation of Health and Safety  
25 Code § 25249.6 (collectively, the "Notices" and each a "Notice") to Defendant concerning the  
26 exposure of California citizens to lead contained in the Products without proper warning, subject  
27 to a private action to Defendant and to the California Attorney General's office and the offices of  
28 the County District attorneys and City Attorneys for each city with a population greater than

1 750,000 persons wherein the herein violations allegedly occurred. See attached at Exhibits “A” –  
2 “D” a true and correct copy of each Notice.

3 32. The Notices complied with all procedural requirements of Proposition 65 including  
4 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at  
5 least one person with relevant and appropriate expertise who reviewed relevant data regarding lead  
6 exposure, and that counsel believed there was meritorious and reasonable cause for a private  
7 action.

8 33. After receiving the Notices, and to Plaintiff’s best information and belief, none of  
9 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a  
10 cause of action against Defendant under Proposition 65 to enforce the alleged violations which are  
11 the subject of the Notices.

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

14 **FIRST CAUSE OF ACTION**

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

16 35. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 34 of  
17 this Complaint as though fully set forth herein.

18 36. Defendant has, at all times mentioned herein, acted as distributor, and/or retailer of  
19 the Products.

20 37. Use of the Products will expose users to lead, a hazardous chemical found on the  
21 Proposition 65 list of chemicals known to be hazardous to human health.

22 38. The Products do not comply with the Proposition 65 warning requirements.

23 39. Plaintiff, based on his best information and belief, avers that at all relevant times  
24 herein, and since at least March 9, 2023 with respect to the Mekhala organic curry pastes and the  
25 King Arthur Baking Company gluten fudge brownie mixes; and since at least July 14, 2023 with  
26 respect to the Shaman Raman organic ramens and the *Solely*® organic mango halves, continuing  
27 until the present, that Defendant has continued to knowingly and intentionally expose California  
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1 users and consumers of the Product to lead without providing required warnings under Proposition  
2 65.

3 40. The exposures that are the subject of the Notices result from the purchase,  
4 acquisition, and recommended use of the Products. The primary route of exposure to lead is  
5 through ingestion. When foods contaminated with lead are consumed, ingestion of lead will occur  
6 which will increase blood lead levels. No clear and reasonable warning is provided with the  
7 Products regarding the health hazards of exposure.

8 41. Plaintiff, based on his best information and belief, avers that such exposures will  
9 continue every day until clear and reasonable warnings are provided to purchasers and users or  
10 until this known toxic chemical is removed from the Products.

11 42. Defendant has knowledge that the normal and reasonably foreseeable use of the  
12 Products exposes individuals to lead, and Defendant intends that exposures to lead will occur by  
13 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the  
14 Products to consumers in California

15 43. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
16 Complaint.

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

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

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against Defendant and requests the following  
3 relief:

4 A. That the court assess civil penalties against Defendant in the amount of \$2,500 per  
5 day for each violation for up to 365 days (up to a maximum civil penalty amount per  
6 violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);

7 B. That the court preliminarily and permanently enjoin Defendant mandating  
8 Proposition 65 compliant warnings on the Products;

9 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the  
10 amount of \$50,000.00.

11 D. That the court grant any further relief as may be just and proper.

12 Dated: March 8, 2024

BRODSKY SMITH

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

14 Evan J. Smith (SBN242352)  
15 Ryan P. Cardona (SBN302113)  
16 9595 Wilshire Boulevard, Suite 900  
17 Beverly Hills, CA 90212  
18 Telephone: (877) 534-2590  
19 Facsimile: (310) 247-0160

20 *Attorneys for Plaintiff*

# EXHIBIT “A”

LAW OFFICES  
**BRODSKY & SMITH, LLC**

9595 WILSHIRE BLVD., STE. 900  
BEVERLY HILLS, CA 90212  
877.534.2590  
www.brodskysmith.com

**NEW JERSEY OFFICE**  
1310 NORTH KINGS HIGHWAY  
CHERRY HILL, NJ 08934  
856.795.7250

**NEW YORK OFFICE**  
240 MINEOLA BOULEVARD  
MINEOLA, NY 11501  
516.741.4977

**PENNSYLVANIA OFFICE**  
TWO BALA PLAZA, STE. 805  
BALA CYNWYD, PA 19004  
610.667.6200

March 9, 2023

President/CEO Mekhala Living Inc. c/o Northwest Registered Agent Service, Inc. 8 The Green, Suite B Dover, DE 19901	President/CEO Mekhala PTE Ltd. 2 Alexandra Road #05-03A Delta House SINGAPORE 159919
President/CEO Gelson's Markets 16400 Ventura Blvd., Suite 240 Encino, CA 91426-1802	President/CEO Mekhala PTE Ltd. 1002 Jalan Bukit Merach, #03-13 SINGAPORE 159456
President/CEO Gelson's Markets c/o Mark Motsenbocker 13833 Freeway Drive Santa Fe Springs, CA 90670	

**60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act<sup>1</sup>**

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky & Smith, LLC ("Brodsky Smith") represents Gabriel Espinoza ("Espinoza"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Espinoza has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

<sup>1</sup> The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

**I. DESCRIPTION OF THE VIOLATION**

1. **Enforcer:** Gabriel Espinoza, 3924 Carlin Ave., Lynwood, CA 90262-5204; (Ph) 310.863.2852.
2. **Alleged Violator(s):** Mekhala Living Inc.; Mekhala PTE Ltd.; Gelson’s Markets
3. **Time Period of Exposure:** Violations have been occurring since at least March 9, 2023 and are continuing to this day.
4. **Listed Chemical:** Lead. Lead is listed under Proposition 65 as a chemical known to the State to cause cancer and reproductive toxicity.
5. **Product:**

Product <sup>2</sup>	Non- Exclusive Examples of the Product
Curry Paste	Mekhala Organic Curry Paste UPC# 8885009961017

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase and recommended use of the Product. The primary route of exposure to the Listed Chemical is through ingestion. When foods contaminated with the Listed Chemical are consumed, ingestion of the Listed Chemical will occur which will increase BLLs. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

**II. PROPOSITION 65 INFORMATION**

For the Violators’ reference, enclosed is a copy of “Proposition 65: A Summary” that has been prepared by the Office of Environmental Health Hazard Assessment (“OEHHA”). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

**III. RESOLUTION OF THE CLAIMS**

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Espinoza against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Espinoza is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

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<sup>2</sup> The specifically identified example of the Product in this Notice is to assist the recipients’ investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Espinoza’s position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators’ custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

Espinoza has retained me as legal counsel in connection with this Notice. Please direct all communications regarding this Notice to my attention at Brodsky & Smith, LLC, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.

Sincerely,



---

Evan J. Smith

**Attachments**

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

# EXHIBIT “B”

LAW OFFICES  
**BRODSKY & SMITH, LLC**

9595 WILSHIRE BLVD., STE. 900  
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CHERRY HILL, NJ 08934  
856.795.7250

**NEW YORK OFFICE**  
240 MINEOLA BOULEVARD  
MINEOLA, NY 11501  
516.741.4977

**PENNSYLVANIA OFFICE**  
TWO BALA PLAZA, STE. 805  
BALA CYNWYD, PA 19004  
610.667.6200

March 9, 2023

President/CEO King Arthur Baking Company, Inc. c/o Brock Barton 62 Fogg Farm Road White River Junction, VT 05001	President/CEO King Arthur Baking Company, Inc. 135 US-5, #135 Norwich, VT 05055
President/CEO The King Arthur Flour Company, Inc. c/o Brock Barton 62 Fogg Farm Road White River Junction, VT 05001	President/CEO Gelson's Markets c/o Mark Motsenbocker 13833 Freeway Drive Santa Fe Springs, CA 90670
President/CEO Gelson's Markets 16400 Ventura Blvd., Suite 240 Encino, CA 91426-1802	

**60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act<sup>1</sup>**

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With respect to the Product herein, Espinoza has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

<sup>1</sup> The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.



**I. DESCRIPTION OF THE VIOLATION**

1. **Enforcer:** Gabriel Espinoza, 3924 Carlin Ave., Lynwood, CA 90262-5204; (Ph) 310.863.2852.
2. **Alleged Violator(s):** King Arthur Baking Company, Inc.; The King Arthur Flour Company, Inc.; Gelson’s Markets
3. **Time Period of Exposure:** Violations have been occurring since at least March 9, 2023 and are continuing to this day.
4. **Listed Chemical:** Lead. Lead is listed under Proposition 65 as a chemical known to the State to cause cancer and reproductive toxicity.
5. **Product:**

Product <sup>2</sup>	Non- Exclusive Examples of the Product
Gluten Free Brownie Mix	King Arthur Baking Company Gluten Free Fudge Brownie Mix UPC# 071012075089

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase and recommended use of the Product. The primary route of exposure to the Listed Chemical is through ingestion. When foods contaminated with the Listed Chemical are consumed, ingestion of the Listed Chemical will occur which will increase BLLs. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

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Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Espinoza against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Espinoza is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

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<sup>2</sup> The specifically identified example of the Product in this Notice is to assist the recipients’ investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Espinoza’s position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators’ custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

Espinoza has retained me as legal counsel in connection with this Notice. Please direct all communications regarding this Notice to my attention at Brodsky & Smith, LLC, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.

Sincerely,



\_\_\_\_\_  
Evan J. Smith

**Attachments**

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

# EXHIBIT “C”

LAW OFFICES  
**BRODSKY SMITH**

9595 WILSHIRE BLVD., STE. 900  
BEVERLY HILLS, CA 90212  
877.534.2590  
www.brodskysmith.com

**NEW JERSEY OFFICE**  
1310 NORTH KINGS HIGHWAY  
CHERRY HILL, NJ 08934  
856.795.7250

**NEW YORK OFFICE**  
240 MINEOLA BOULEVARD  
MINEOLA, NY 11501  
516.741.4977

**PENNSYLVANIA OFFICE**  
TWO BALA PLAZA, STE. 805  
BALA CYNWYD, PA 19004  
610.667.6200

July 14, 2023

Member/Manager Shaman Foods, LLC c/o Corporation Service Company 251 Little Falls Drive Wilmington, DE 19808	Member/Manager Shaman Foods, LLC c/o CSC-Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833
President/CEO Gelson's Markets c/o Mark Motsenbocker 13833 Freeway Drive Santa Fe Springs, CA 90670	President/CEO Gelson's Markets 16400 Ventura Blvd., Suite 240 Encino, CA 91426-1802

**60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act<sup>1</sup>**

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky Smith represents Gabriel Espinoza ("Espinoza"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Espinoza has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

**I. DESCRIPTION OF THE VIOLATION**

- 1. Enforcer:** Gabriel Espinoza, 3924 Carlin Ave., Lynwood, CA 90262-5204; (Ph) 310.863.2852.

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<sup>1</sup> The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

2. **Alleged Violator(s):** Shaman Foods, LLC.; Gelson's Markets
3. **Time Period of Exposure:** Violations have been occurring since at least July 14, 2023 and are continuing to this day.
4. **Listed Chemical:** Lead. Lead is listed under Proposition 65 as a chemical known to the State to cause cancer and birth defects or other reproductive harm.
5. **Product:**

Product <sup>2</sup>	Non- Exclusive Examples of the Product
Organic Ramen	Shaman Raman Organic Ramen UPC# 860003963500

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase and recommended use of the Product. The primary route of exposure to the Listed Chemical is through ingestion. When foods contaminated with the Listed Chemical are consumed, ingestion of the Listed Chemical will occur which will increase BLLs. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

## **II. PROPOSITION 65 INFORMATION**

For the Violators' reference, enclosed is a copy of "Proposition 65: A Summary" that has been prepared by the Office of Environmental Health Hazard Assessment ("OEHHA"). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

## **III. RESOLUTION OF THE CLAIMS**

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Espinoza against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Espinoza is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

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<sup>2</sup> The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Espinoza's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

Espinoza has retained me as legal counsel in connection with this Notice. Please direct all communications regarding this Notice to my attention at Brodsky Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, [esmith@brodskysmith.com](mailto:esmith@brodskysmith.com).

Sincerely,



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Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

# EXHIBIT “D”

LAW OFFICES  
**BRODSKY SMITH**

9595 WILSHIRE BLVD., STE. 900  
BEVERLY HILLS, CA 90212  
877.534.2590  
www.brodskysmith.com

**NEW JERSEY OFFICE**  
1310 NORTH KINGS HIGHWAY  
CHERRY HILL, NJ 08934  
856.795.7250

**NEW YORK OFFICE**  
240 MINEOLA BOULEVARD  
MINEOLA, NY 11501  
516.741.4977

**PENNSYLVANIA OFFICE**  
TWO BALA PLAZA, STE. 805  
BALA CYNWYD, PA 19004  
610.667.6200

July 14, 2023

President/CEO Solely, Inc. c/o CSC-Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833	President/CEO Solely, Inc. 7596 Eads Ave., Suite 230 La Jolla, CA 92037
President/CEO Solely, Inc. c/o Corporation Service Company 251 Little falls Drive Wilmington, DE 19808	President/CEO Fruitex De Mexico, S.A.P.I. De C.V. Jardin 143 S/N Parque Industrial Lerma MPIO De Lerma MEXICO 52000
President/CEO Gelson's Markets c/o Mark Motsenbocker 13833 Freeway Drive Santa Fe Springs, CA 90670	President/CEO Gelson's Markets 16400 Ventura Blvd., Suite 240 Encino, CA 91426-1802

**60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act<sup>1</sup>**

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky Smith represents Gabriel Espinoza ("Espinoza"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Espinoza has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on

<sup>1</sup> The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.



whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

**I. DESCRIPTION OF THE VIOLATION**

1. **Enforcer:** Gabriel Espinoza, 3924 Carlin Ave., Lynwood, CA 90262-5204; (Ph) 310.863.2852.
2. **Alleged Violator(s):** Solely, Inc.; Fruitex De Mexico, S.A.P.I. De C.V.; Gelson’s Markets
3. **Time Period of Exposure:** Violations have been occurring since at least July 14, 2023 and are continuing to this day.
4. **Listed Chemical:** Lead. Lead is listed under Proposition 65 as a chemical known to the State to cause cancer and reproductive toxicity.
5. **Product:**

Product <sup>2</sup>	Non- Exclusive Examples of the Product
Organic Mango Halves	Solely Organic Mango Halves UPC# 856261006615

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase and recommended use of the Product. The primary route of exposure to the Listed Chemical is through ingestion. When foods contaminated with the Listed Chemical are consumed, ingestion of the Listed Chemical will occur which will increase BLLs. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

**II. PROPOSITION 65 INFORMATION**

For the Violators’ reference, enclosed is a copy of “Proposition 65: A Summary” that has been prepared by the Office of Environmental Health Hazard Assessment (“OEHHA”). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

**III. RESOLUTION OF THE CLAIMS**

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Espinoza against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Espinoza is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

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<sup>2</sup> The specifically identified example of the Product in this Notice is to assist the recipients’ investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Espinoza’s position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators’ custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

Espinoza has retained me as legal counsel in connection with this Notice. **Please direct all communications regarding this Notice to my attention at Brodsky Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.**

Sincerely,

A handwritten signature in black ink, appearing to be 'Evan J. Smith', written over a horizontal line.

Evan J. Smith

**Attachments**

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary