

1 Evan J. Smith, Esquire (SBN 242352)
2 Ryan P. Cardona, Esquire (SBN 302113)
3 BRODSKY SMITH
4 9465 Wilshire Blvd., Ste. 300
5 Beverly Hills, CA 90212
6 Telephone: (877) 534-2590
7 Facsimile: (310) 247-0160

8 *Attorneys for Plaintiff*

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Superior Court of California,
County of San Francisco

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BY: SAHAR ENAYATI
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11 GABRIEL ESPINOZA,
12 Plaintiff,

13 vs.

14 KING ARTHUR BAKING COMPANY,
15 INC.,
16 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

CGC-24-620135

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

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

19 **BACKGROUND OF THE CASE**

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

26 2. This complaint is a representative action brought by Plaintiff in the public interest
27 of the citizens of the State of California to enforce the People’s right to be informed of the health
28 hazards caused by exposure to lead, a toxic chemical found in gluten free pancake mixes sold
and/or distributed by defendant King Arthur Baking Company, Inc. (“King Arthur” or
“Defendant”) in California.

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

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

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

19 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,
20 without a requisite exposure warning, gluten free pancake mixes (the “Products”) that expose
21 persons to lead when consumed.

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

26 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition 65
27 in accordance with Health and Safety Code § 25249.7(b).
28

1 with the California Secretary of State as foreign corporations authorized to do business in the State
2 of California, and/or has otherwise purposefully availed itself of the California market. Such
3 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and
4 permissible with traditional notions of fair play and substantial justice.

5 STATUTORY BACKGROUND

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

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

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

16 18. In this case, exposures are caused by consumer products. A “Consumer Product” is
17 defined as “any article, or component part thereof, including food, that is produced, distributed, or
18 sold for the personal use, consumption or enjoyment of a consumer.” (Cal. Code Regs., tit. 27, §
19 25600.1, subd. (d).) Food includes “dietary supplements” as defined in California Code of
20 Regulations, title 17, section 10200. (*Id.* at subd. (g).) An exposure to a chemical in a Consumer
21 Product is one “which results from a person’s acquisition, purchase, storage, consumption or other
22 reasonably foreseeable use of a consumer good, or any exposure that results from receiving a
23 consumer service.” (27 CCR § 25602, para (b).) H&S Code § 25603(c) states that “a person in the
24 course of doing business ... shall provide a warning to any person to whom the product is sold or
25 transferred unless the product is packaged or labeled with a clear and reasonable warning.”
26
27
28

1 reproductive harm. In summary, lead was listed under Proposition 65 as a chemical known to the
2 State to cause cancer and birth defects or other reproductive harm.

3 22. The exposures that are the subject of the Notice 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 23. Defendant has processed, marketed, distributed, offered to sell and/or sold the
9 Products in California since at least March 8, 2023. The Products continue to be distributed and
10 sold in California without the requisite warning information.

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

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

20 **SATISFACTION OF NOTICE REQUIREMENTS**

21 26. On February 6, 2023, Plaintiff purchased the Products from Ralphs. At the time of
22 purchase, Defendant did not provide a Proposition 65 exposure warning for lead or any other
23 Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described
24 *supra*.

25 27. On February 16, 2023, the Products were sent to a testing laboratory to determine
26 if consumption of a serving size of the Product would expose California consumers to more than
27 0.5 micrograms of lead per day.

1 28. On February 22, 2023, the laboratory provided the results of its analysis. Results of
2 this test determined that consumption of a serving size of the Product will expose California
3 consumers to lead amounts above established safe harbor levels (the “Chemical Test Report”).

4 29. Plaintiff provided the Chemical Test Report and Products to an analytical chemist
5 to determine if, based on the findings of the Chemical Test Report and the reasonable and
6 foreseeable use of the Products, exposure to lead will occur at levels that require Proposition 65
7 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California
8 Code of Regulations.

9 30. On March 8, 2023, Plaintiff received from the analytical chemist an exposure
10 assessment report which concluded that persons in California who consume the Products will be
11 exposed to levels of lead that require a Proposition 65 exposure warning.

12 31. On March 8, 2023, Plaintiff gave notice of alleged violation of Health and Safety
13 Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California citizens to lead
14 contained in the Products without proper warning, subject to a private action to Defendant and to
15 the California Attorney General’s office and the offices of the County District attorneys and City
16 Attorneys for each city with a population greater than 750,000 persons wherein the herein
17 violations allegedly occurred.

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

23 33. After receiving the Notice, and to Plaintiff’s best information and belief, none of
24 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
25 cause of action against Defendant under Proposition 65 to enforce the alleged violations which are
26 the subject of the Notice.

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

1 FIRST CAUSE OF ACTION

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

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

5 36. Defendant has, at all times mentioned herein, acted as distributor, and/or retailer of
6 the Product.

7 37. Consumption of the Products will expose consumers to lead, a hazardous chemical
8 found on the Proposition 65 list of chemicals known to be hazardous to human health.

9 38. The Product does not comply with the Proposition 65 warning requirements.

10 39. Plaintiff, based on his best information and belief, avers that at all relevant times
11 herein, and at least since March 8, 2023, continuing until the present, that Defendant has continued
12 to knowingly and intentionally expose California users and consumers of the Product to lead
13 without providing required warnings under Proposition 65.

14 40. The exposures that are the subject of the Notice result from the purchase,
15 acquisition, and recommended use of the Products. The primary route of exposure to lead is
16 through ingestion. When foods contaminated with lead are consumed, ingestion of lead will occur
17 which will increase blood lead levels. No clear and reasonable warning is provided with the
18 Products regarding the health hazards of exposure.

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

22 42. Defendant has knowledge that the normal and reasonably foreseeable consumption
23 of the Products exposes individuals to lead, and Defendant intends that exposures to lead will occur
24 by its deliberate, non-accidental participation in the importation, distribution, sale and offering of
25 the Products to consumers in California

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

