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ELECTRONICALLY
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Superior Court of California,
County of San Francisco

01/22/2025
Clerk of the Court
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 COST PLUS WORLD MARKET, LLC,
15 WORLD MARKET MANAGEMENT
16 SERVICES, LLC, KINGSWOOD
17 CAPITAL MANAGEMENT, L.P.,
18 KINGSWOOD CAPITAL
19 MANAGEMENT, LLC,

20 Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

CGC-25-621628

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

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

23 **BACKGROUND OF THE CASE**

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

2. This complaint is a representative action brought by Plaintiff in the public interest
of the citizens of the State of California to enforce the People’s right to be informed of the health
hazards caused by exposure to lead, a toxic chemical found in Ortiz El Velero sardines sold and/or

1 distributed by defendants Cost Plus World Market, LLC, World Market Management Services,
2 LLC, Kingswood Capital Management, L.P., and Kingswood Capital Management, LLC
3 (collectively, “Cost Plus” or “Defendants” and each a “Defendant”) in California.

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

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

16 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
17 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
18 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
19 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
20 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
21 25249.7.

22 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,
23 without a requisite exposure warning, Ortiz El Velero sardines (the “Products”) that expose
24 persons to lead when used for their intended purpose.

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

1 a “person” in the course of doing business within the meaning of Health & Safety Code sections
2 25249.6 and 25249.11.

3 15. Defendant Kingswood Capital Management, LLC, through its business, effectively
4 imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it
5 implies by its conduct that it imports, distributes, sells, and/or offers the Products for sale or use
6 in the State of California. Plaintiff alleges that defendant Kingswood Capital Management, LLC
7 is a “person” in the course of doing business within the meaning of Health & Safety Code sections
8 25249.6 and 25249.11.

9 VENUE AND JURISDICTION

10 16. Venue is proper in the County of San Francisco because one or more of the
11 instances of wrongful conduct occurred, and continue to occur in this county and/or because
12 Defendants conducted, and continue to conduct, business in the County of San Francisco with
13 respect to the Products.

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

19 18. This Court has jurisdiction over Defendants because each Defendant is either a
20 citizen of the State of California, has sufficient minimum contacts with the State of California, is
21 registered with the California Secretary of State as foreign corporations authorized to do business
22 in the State of California, and/or has otherwise purposefully availed itself of the California market.
23 Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent
24 and permissible with traditional notions of fair play and substantial justice.

25 STATUTORY BACKGROUND

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

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

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

8 21. In this case, exposures are caused by consumer products. A “Consumer Product” is
9 defined as “any article, or component part thereof, including food, that is produced, distributed, or
10 sold for the personal use, consumption or enjoyment of a consumer.” (Cal. Code Regs., tit. 27, §
11 25600.1, subd. (d).) Food includes “dietary supplements” as defined in California Code of
12 Regulations, title 17, section 10200. (*Id.* at subd. (g).) An exposure to a chemical in a Consumer
13 Product is one “which results from a person’s acquisition, purchase, storage, consumption or other
14 reasonably foreseeable use of a consumer good, or any exposure that results from receiving a
15 consumer service.” (27 CCR § 25602, para (b).) H&S Code § 25603(c) states that “a person in the
16 course of doing business ... shall provide a warning to any person to whom the product is sold or
17 transferred unless the product is packaged or labeled with a clear and reasonable warning.”

18 22. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or
19 more of the following methods individually or in combination:¹

- 20 a. A warning that appears on a product’s label or other labeling.
- 21 b. Identification of the product at the retail outlet in a manner which provides
22 a warning. Identification may be through shelf labeling, signs, menus, or a combination
23 thereof.
- 24 c. The warnings provided pursuant to subparagraphs (a) and (b) shall be
25 prominently placed upon a product’s labels or other labeling or displayed at the retail outlet

26
27 ¹ 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 with such conspicuousness, as compared with other words, statements, designs, or devices
2 in the label, labeling or display as to render it likely to be read and understood by an
3 ordinary individual under customary conditions of purchase or use.

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

6 23. Proposition 65 provides that any “person who violates or threatens to violate” the
7 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
8 “threaten to violate” is defined to mean creating “a condition in which there is a substantial
9 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil
10 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
11 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

12 **FACTUAL BACKGROUND**

13 24. On October 1, 1992, the state of California listed lead as a chemical known to cause
14 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code
15 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On February 27,
16 1987, the State of California listed lead as a chemical known to cause birth defects or other
17 reproductive harm. In summary, lead was listed under Proposition 65 as a chemical known to the
18 State to cause cancer and birth defects or other reproductive harm.

19 25. The exposures that are the subject of the Notice result from the purchase,
20 acquisition, and recommended use of the Products. The primary route of exposure to lead is
21 through ingestion. When foods contaminated with lead are consumed, ingestion of lead will occur
22 which will increase blood lead levels. No clear and reasonable warning is provided with the
23 Products regarding the health hazards of exposure.

24 26. Defendants have processed, marketed, distributed, offered to sell and/or sold the
25 Products in California since at least May 17, 2023. The Products continue to be distributed and
26 sold in California without the requisite warning information.

1 Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described
2 *supra*.

3 31. On June 17, 2024, the Products were sent to a testing laboratory to determine if,
4 and what amount of, lead a consumer would be exposed to per serving size.

5 32. On June 20, 2024, the laboratory provided the results of its analysis. Results of this
6 test determined the Product exposes users to lead (the “Chemical Test Report”).

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

12 34. On July 24, 2024, Plaintiff received from the analytical chemist an exposure
13 assessment report which concluded that persons in California who use the Products will be exposed
14 to levels of lead that require a Proposition 65 exposure warning.

15 35. On July 24, 2024, Plaintiff gave notice of alleged violation of Health and Safety
16 Code § 25249.6 (the “Notice”) to Defendants concerning the exposure of California citizens to
17 lead contained in the Products without proper warning, subject to a private action to Defendants
18 and to the California Attorney General’s office and the offices of the County District attorneys and
19 City Attorneys for each city with a population greater than 750,000 persons wherein the herein
20 violations allegedly occurred.

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

26 37. Thereafter, on January 16, 2025, Plaintiff confirmed Cost Plus continues to sell or
27 offer for sale the Products in California without an exposure warning.

1 47. Defendants have knowledge that the normal and reasonably foreseeable use of the
2 Products exposes individuals to lead, and Defendants intend that exposures to lead will occur by
3 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the
4 Products to consumers in California

5 48. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
6 Complaint.

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

10 50. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
11 authorized to grant injunctive relief in favor of Plaintiff and against Defendants.

1 **PRAYER FOR RELIEF**

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

4 A. That the court assess civil penalties against each Defendant in the amount of \$2,500
5 per 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 Defendants 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: January 22, 2025

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