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8 *Attorneys for Plaintiff*

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

07/01/2024
Clerk of the Court

BY: AUSTIN LAM
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 **CGC-24-616024**

12 EMA BELL,

13 Plaintiff,

14 vs.

15 COST PLUS WORLD MARKET, LLC,
16 WORLD MARKET MANAGEMENT
17 SERVICES, LLC, KINGSWOOD
18 CAPITAL MANAGEMENT, L.P.,
19 KINGSWOOD CAPITAL
20 MANAGEMENT, LLC,

21 Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

22 Plaintiff Ema Bell (“Plaintiff”), by and through her attorneys, alleges the following cause
23 of action in the public interest of the citizens of the State of California.

24 **BACKGROUND OF THE CASE**

25 1. Plaintiff brings this representative action on behalf of all California citizens to
26 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
27 the Health and Safety Code § 25249.5 et seq (“Proposition 65”), which reads, in relevant part,
28 “[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
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 (a) *Bay Harbor*® New England

1 clam chowders, UPC # 070718000760, (b) *Nutty & Fruity*TM non-crystallized ginger chunks, UPC
2 # 819496021068, (c) *Nutty & Fruity*TM tart apricots, UPC # 819496025806, and (d) RugenFisch
3 fried herrings in spicy marinade, UPC # 639138877088 sold and/or distributed by defendants Cost
4 Plus World Market, LLC, World Market Management Services, LLC, Kingswood Capital
5 Management, L.P., and Kingswood Capital Management, LLC (collectively, “World Market” or
6 “Defendants” and each a “Defendant”) in California.

7 3. Lead is a harmful chemical known to the State of California to cause cancer and
8 birth defects or other reproductive harm. On October 1, 1992, the state of California listed lead as
9 a chemical known to cause cancer and it has come under the purview of Proposition 65 regulations
10 since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
11 25249.10(b). On February 27, 1987, the State of California listed lead as a chemical known to
12 cause birth defects or other reproductive harm.

13 4. Proposition 65 requires all businesses with ten (10) or more employees that operate
14 within California or sell products therein to comply with Proposition 65 regulations. Included in
15 such regulations is the requirement that businesses must label any product containing a Proposition
16 65-listed chemical that will create an exposure above safe harbor levels with a “clear and
17 reasonable” warning before “knowingly and intentionally” exposing any person to any such listed
18 chemical.

19 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
20 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
21 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
22 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
23 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
24 25249.7.

25 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,
26 without a requisite exposure warning, (a) *Bay Harbor*[®] New England clam chowders, UPC #
27 070718000760, (b) *Nutty & Fruity*TM non-crystallized ginger chunks, UPC # 819496021068, (c)
28 *Nutty & Fruity*TM tart apricots, UPC # 819496025806, and (d) RugenFisch fried herrings in spicy

1 marinade, UPC # 639138877088 (collectively, the “Products” and each a “Product”) that expose
2 persons to lead when used for their intended purpose.

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

7 8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition
8 65 in accordance with Health and Safety Code § 25249.7(b).

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

13 10. Plaintiff further seeks a reasonable award of attorney’s fees and costs.

14 **PARTIES**

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

19 12. Defendant Cost Plus World Market, LLC, through its business, effectively imports,
20 distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies
21 by its conduct that it imports, distributes, sells, and/or offers the Products for sale or use in the
22 State of California. Plaintiff alleges that defendant Cost Plus World Market, LLC is a “person” in
23 the course of doing business within the meaning of Health & Safety Code sections 25249.6 and
24 25249.11.

25 13. Defendant World Market Management Services, LLC, through its business,
26 effectively imports, distributes, sells, and/or offers the Products for sale or use in the State of
27 California, or it implies by its conduct that it imports, distributes, sells, and/or offers the Products
28 for sale or use in the State of California. Plaintiff alleges that defendant World Market Management

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

3 14. Defendant Kingswood Capital Management, L.P., 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, L.P. is
7 a “person” in the course of doing business within the meaning of Health & Safety Code sections
8 25249.6 and 25249.11.

9 15. Defendant Kingswood Capital Management, LLC, through its business, effectively
10 imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it
11 implies by its conduct that it imports, distributes, sells, and/or offers the Products for sale or use
12 in the State of California. Plaintiff alleges that defendant Kingswood Capital Management, LLC
13 is a “person” in the course of doing business within the meaning of Health & Safety Code sections
14 25249.6 and 25249.11.

15 VENUE AND JURISDICTION

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

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

25 18. This Court has jurisdiction over Defendants because each Defendant is either a
26 citizen of the State of California, has sufficient minimum contacts with the State of California, is
27 registered with the California Secretary of State as foreign corporations authorized to do business
28 in the State of California, and/or has otherwise purposefully availed itself of the California market.

1 Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent
2 and permissible with traditional notions of fair play and substantial justice.

3 **STATUTORY BACKGROUND**

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

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

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

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

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

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

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

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

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

12 23. Proposition 65 provides that any “person who violates or threatens to violate” the
13 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
14 “threaten to violate” is defined to mean creating “a condition in which there is a substantial
15 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil
16 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
17 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

18 **FACTUAL BACKGROUND**

19 24. On October 1, 1992, the state of California listed lead as a chemical known to cause
20 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code
21 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On February 27,
22 1987, the State of California listed lead as a chemical known to cause birth defects or other
23 reproductive harm. In summary, lead was listed under Proposition 65 as a chemical known to the
24 State to cause cancer and birth defects or other reproductive harm.

25 25. The exposures that are the subject of the Notices result from the purchase,
26 acquisition, and recommended use of the Products. The primary route of exposure to lead is
27 through ingestion. When foods contaminated with lead are consumed, ingestion of lead will occur
28

1 which will increase blood lead levels. No clear and reasonable warning is provided with the
2 Products regarding the health hazards of exposure.

3 26. Defendants have processed, marketed, distributed, offered to sell and/or sold the
4 Products in California since at least July 28, 2023 with respect to the *Bay Harbor*® New England
5 clam chowders; and since at least August 4, 2023 with respect to the *Nutty & Fruity*™ non-
6 crystallized ginger chunks, the *Nutty & Fruity*™ tart apricots, and the RugenFisch fried herrings
7 in spicy marinade. The Products continue to be distributed and sold in California without the
8 requisite warning information.

9 27. At all times relevant to this action, Defendants have knowingly and intentionally
10 exposed users and/or consumers of the Products to lead without first giving a clear and reasonable
11 exposure warning to such individuals.

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

18 **SATISFACTION OF NOTICE REQUIREMENTS**

19 29. Plaintiff purchased the Products from World Market. At the time of purchase,
20 Defendants did not provide a Proposition 65 exposure warning for lead or any other Proposition
21 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described *supra*.

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

24 31. The laboratory provided the results of its analysis. Results of these tests determined
25 the Products expose consumers to lead (collectively, the “Chemical Test Reports” and each a
26 “Chemical Test Report”).

27 32. Plaintiff provided the Chemical Test Reports and Products to an analytical chemist
28 to determine if, based on the findings of the Chemical Test Reports and the reasonable and

1 foreseeable use of the Products, exposure to lead will occur at levels that require Proposition 65
2 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California
3 Code of Regulations.

4 33. On July 28, 2023, Plaintiff received from the analytical chemist an exposure
5 assessment report which concluded that persons in California who use the *Bay Harbor*® New
6 England clam chowders will be exposed to levels of lead that require a Proposition 65 exposure
7 warning. On August 4, 2023, Plaintiff received from the analytical chemist an exposure assessment
8 report which concluded that persons in California who use the *Nutty & Fruity*™ non-crystallized
9 ginger chunks, the *Nutty & Fruity*™ tart apricots, and the RugenFisch fried herrings in spicy
10 marinade will be exposed to levels of lead that require a Proposition 65 exposure warning.

11 34. On July 28, 2023 (*Bay Harbor*® New England clam chowders) and August 4, 2023
12 (*Nutty & Fruity*™ non-crystallized ginger chunks, the *Nutty & Fruity*™ tart apricots, and the
13 RugenFisch fried herrings in spicy marinade), Plaintiff gave notice of alleged violation of Health
14 and Safety Code § 25249.6 (collectively, the “Notices” and each a “Notice”) to Defendants
15 concerning the exposure of California citizens to lead contained in the Products without proper
16 warning, subject to a private action to Defendants and to the California Attorney General’s office
17 and the offices of the County District attorneys and City Attorneys for each city with a population
18 greater than 750,000 persons wherein the herein violations allegedly occurred. See attached at
19 Exhibits “A” – “C” a true and correct copy of each Notice.

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

25 36. After receiving the Notices, and to Plaintiff’s best information and belief, none of
26 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
27 cause of action against Defendants under Proposition 65 to enforce the alleged violations which
28 are the subject of the Notices.

1 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the
2 Products to consumers in California

3 46. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
4 Complaint.

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

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

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following
12 relief:

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

16 B. That the court preliminarily and permanently enjoin Defendants mandating
17 Proposition 65 compliant warnings on the Products;

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

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

21 Dated: July 1, 2024

BRODSKY SMITH

22 By: 

Evan J. Smith (SBN242352)

Ryan P. Cardona (SBN302113)

9595 Wilshire Boulevard, Suite 900

Beverly Hills, CA 90212

25 Telephone: (877) 534-2590

26 Facsimile: (310) 247-0160

27 *Attorneys for Plaintiff*

EXHIBIT “A”

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 28, 2023

President/CEO Look's Gourmet Food Company, Inc. c/o National Registered Agents, Inc. 1209 Orange Street Wilmington, DE 19801	President/CEO Look's Gourmet Food Company, Inc. c/o Gary D. Vogel PO Box 15215 Portland, ME 04112-5215
President/CEO Look's Gourmet Food Company, Inc. c/o National Registered Agents, Inc. 128 State St #3 Augusta, ME 04330	President/CEO Look's Gourmet Food Holding Company, Inc. c/o National Registered Agents, Inc. 1209 Orange Street Wilmington, DE 19801
President/CEO Look's Gourmet Food Company, Inc. dba Bar Harbor Foods c/o National Registered Agents, Inc. 128 State St #3 Augusta, ME 04330	Member/Manager Cost Plus World Market, LLC c/o Corporation Service Company 251 Little Falls Drive Wilmington, DE 19808
Member/Manager Cost Plus World Market, LLC c/o The Prentice-Hall Corporation System, Inc. 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833	President/CEO Kingswood Capital Management, L.P. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801
Member/Manager Kingswood Capital Management, LLC c/o Corporation Service Company 251 Little Falls Drive Wilmington, DE 19808	Member/Manager Kingswood Capital Management, LLC c/o Capitol Services, Inc. 108 Lakeland Avenue Dover, DE 19901
Member/Manager Kingswood Capital Management, LLC dba World Market c/o CSC-Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833	Member/Manager World Market Management Services, LLC c/o CSC-Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833

60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act¹

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).

¹ 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.

Brodsky Smith represents Ema Bell (“Bell”), 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, Bell 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:** Ema Bell, 222 S. Figueroa St. Apt. 1212, Los Angeles, CA 90012-2581; (Ph) 424-332-3817.
2. **Alleged Violator(s):** Look’s Gourmet Food Company, Inc.; Look’s Gourmet Food Holding Company, Inc.; Look’s Gourmet Food Company, Inc. dba Bar Harbor Foods; Cost Plus World Market, LLC; Kingswood Capital Management, L.P.; Kingswood Capital Management, LLC; Kingswood Capital Management, LLC dba World Market; World Market Management Services, LLC
3. **Time Period of Exposure:** Violations have been occurring since at least July 28, 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 ²	Non- Exclusive Examples of the Product
New England Style Clam Chowder	Bar Harbor New England Style Clam Chowder UPC# 070718000760

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

² 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 Bell’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.

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 Bell 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, Bell is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

Bell 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,



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

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

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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

August 4, 2023

President/CEO Food Castle, Inc. c/o Eliyahu Levy 2099 East 27 th Street Vernon, CA 90058	Member/Manager World Market, LLC c/o The Prentice-Hall Corporation Systems, Inc. 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833
Member/Manager World Market Management Services, LLC c/o CSC-Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833	Member/Manager Cost Plus World Market, LLC c/o Corporation Service Company 251 Little Falls Drive Wilmington, DE 19808
Member/Manager Cost Plus World Market, LLC c/o The Prentice-Hall Corporation System, Inc. 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833	President/CEO Kingswood Capital Management, L.P. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801
Member/Manager Kingswood Capital Management, LLC c/o Corporation Service Company 251 Little Falls Drive Wilmington, DE 19808	Member/Manager Kingswood Capital Management, LLC c/o Capitol Services, Inc. 108 Lakeland Avenue Dover, DE 19901
Member/Manager Kingswood Capital Management, LLC dba World Market c/o CSC-Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833	

60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act¹

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 Erna Bell ("Bell"), 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.

¹ 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.

With respect to the Product herein, Bell 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:** Ema Bell, 222 S. Figueroa St. Apt. 1212, Los Angeles, CA 90012-2581; (Ph) 424-332-3817.
2. **Alleged Violator(s):** Food Castle, Inc.; World Market Management Services, LLC; Cost Plus World Market, LLC; Kingswood Capital Management, L.P.; Kingswood Capital Management, LLC; Kingswood Capital Management, LLC dba World Market; World Market, LLC
3. **Time Period of Exposure:** Violations have been occurring since at least August 4, 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 ²	Non- Exclusive Examples of the Product
Ginger Chunks	Nutty & Fruity Non-Crystallized Ginger Chunks UPC# 819496021068
Tart Apricot	Nutty & Fruity Tart Apricot UPC# 819496025806

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.

² 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 Bell’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.

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 Bell 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, Bell is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

Bell 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,



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

August 4, 2023

President/CEO Gourmet International, Ltd. c/o Michael Nitzsche 5253 Patterson Ave. SE Grand Rapids, MI 49512	President/CEO Rugen Fisch AG StraBe der Jugend 10 18546 Sassnitz GERMANY
Member/Manager World Market Management Services, LLC c/o CSC-Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833	Member/Manager Cost Plus World Market, LLC c/o Corporation Service Company 251 Little Falls Drive Wilmington, DE 19808
Member/Manager Cost Plus World Market, LLC c/o The Prentice-Hall Corporation System, Inc. 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833	President/CEO Kingswood Capital Management, L.P. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801
Member/Manager Kingswood Capital Management, LLC c/o Corporation Service Company 251 Little Falls Drive Wilmington, DE 19808	Member/Manager Kingswood Capital Management, LLC c/o Capitol Services, Inc. 108 Lakeland Avenue Dover, DE 19901
Member/Manager Kingswood Capital Management, LLC dba World Market c/o CSC-Lawyers Incorporating Service 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833	Member/Manager World Market, LLC c/o The Prentice-Hall Corporation System, Inc. 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833

60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act¹

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 Ema Bell ("Bell"), 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.

¹ 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.

With respect to the Product herein, Bell 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:** Ema Bell, 222 S. Figueroa St. Apt. 1212, Los Angeles, CA 90012-2581; (Ph) 424-332-3817.
2. **Alleged Violator(s):** Gourmet International, Ltd.; Rugen Fisch AG; World Market Management Services, LLC; Cost Plus World Market, LLC; Kingswood Capital Management, L.P.; Kingswood Capital Management, LLC; Kingswood Capital Management, LLC dba World Market; World Market, LLC
3. **Time Period of Exposure:** Violations have been occurring since at least August 4, 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 ²	Non- Exclusive Examples of the Product
Fried Herring in Spicy Marinade	RugenFisch Fried Herring in Spicy Marinade UPC# 639138877088

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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Sincerely,



Evan J. Smith

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