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

02/26/2026
Clerk of the Court
BY: ANNIE PASCUAL
Deputy Clerk

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

11 Case No.: CGC-24-616644

12 EMA BELL,

13 Plaintiff,

14 vs.

15 NOWHERE PARTNERS, LLC DBA
16 EREWHON,

17 Defendant.

**FIRST AMENDED COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE RELIEF**

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

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

20 **BACKGROUND OF THE CASE**

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

27 2. This first amended complaint is a representative action brought by Plaintiff in the
28 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 Henry & Lisa’s wild
sardines in spring water, UPC # 812410000590 sold and/or distributed by defendants Ecofish, Inc.

1 and/or Nowhere Partners, LLC dba Erewhon (collectively, “Defendants” and each a “Defendant”)
2 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, Henry & Lisa’s wild sardines in spring water, UPC #
23 812410000590 (the “Products”) that expose persons to lead when used for their intended purpose.

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

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 20. 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:¹

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 21. 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 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 **FACTUAL BACKGROUND**

2 22. 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 23. 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 24. Defendant has processed, marketed, distributed, offered to sell and/or sold the
14 Products in California since at least October 3, 2023 with respect to the Henry & Lisa's wild
15 sardines in spring water. The Products continue to be distributed and sold in California without the
16 requisite warning information.

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

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

SATISFACTION OF NOTICE REQUIREMENTS

1
2 27. Plaintiff purchased the Products from Erewhon. 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 28. 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 29. 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 30. 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 31. On September 15, 2023, Plaintiff received from the analytical chemist an exposure
16 assessment report which concluded that persons in California who use the *Divine Organics*® sun
17 dried white mulberries will be exposed to levels of lead that require a Proposition 65 exposure
18 warning. On October 3, 2023, Plaintiff received from the analytical chemist an exposure
19 assessment report which concluded that persons in California who use the Henry & Lisa’s wild
20 sardines in spring water will be exposed to levels of lead that require a Proposition 65 exposure
21 warning.

22 32. On October 3, 2023, Plaintiff gave notice of alleged violation of Health and Safety
23 Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California citizens to lead
24 contained in the Products without proper warning, subject to a private action to Defendant and to
25 the California Attorney General’s office and the offices of the County District attorneys and City
26 Attorneys for each city with a population greater than 750,000 persons wherein the herein
27 violations allegedly occurred.

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

6 43. Defendant has knowledge that the normal and reasonably foreseeable use of the
7 Products exposes individuals to lead, and Defendant intends that exposures to lead will occur by
8 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the
9 Products to consumers in California

10 44. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
11 First Amended Complaint.

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

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

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: February 26, 2026

BRODSKY SMITH

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