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8 *Attorneys for Plaintiff*

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

07/22/2024
Clerk of the Court
BY: DAEJA ROGERS
Deputy Clerk

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

11 EMA BELL,

12 Plaintiff,

13 vs.

14 NOWHERE PARTNERS, LLC DBA
15 EREWHON,

16 Defendant.

Case No.:

CGC-24-616644

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

17 Plaintiff Ema Bell (“Plaintiff”), by and through her attorneys, alleges the following cause
18 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 (a) *Divine Organics*® sun dried
white mulberries, UPC # 658263084437, and (b) Henry & Lisa’s wild sardines in spring water,

1 UPC # 812410000590 sold and/or distributed by defendant Nowhere Partners, LLC dba Erewhon
2 (“Erewhon” 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) *Divine Organics*® sun dried white mulberries, UPC #
23 658263084437, and (b) Henry & Lisa’s wild sardines in spring water, UPC # 812410000590
24 (collectively, the “Products” and each a “Product”) that expose persons to lead when used for their
25 intended purpose.

26 7. Defendant’s failure to warn consumers and other individuals in California of the
27 health hazards associated with exposure to lead in conjunction with the sale and/or distribution of
28

1 the Products is a violation of Proposition 65 and subjects Defendant to the enjoinder and civil
2 penalties described herein.

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

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

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

10 PARTIES

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

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

21 VENUE AND JURISDICTION

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

26 14. This Court has jurisdiction over this action pursuant to California Constitution
27 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
28 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the enforcement

1 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has
2 jurisdiction over this lawsuit.

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

9 **STATUTORY BACKGROUND**

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

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

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

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

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

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

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

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

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

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

22 **FACTUAL BACKGROUND**

23 21. On October 1, 1992, the state of California listed lead as a chemical known to cause
24 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code
25

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 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On February 27,
2 1987, the State of California listed lead as a chemical known to cause birth defects or other
3 reproductive harm. In summary, lead was listed under Proposition 65 as a chemical known to the
4 State to cause cancer and birth defects or other reproductive harm.

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

10 23. Defendant has processed, marketed, distributed, offered to sell and/or sold the
11 Products in California since at least September 15, 2023 with respect to the *Divine Organics*® sun
12 dried white mulberries; and since at least October 3, 2023 with respect to the Henry & Lisa's wild
13 sardines in spring water. The Products continue to be distributed and sold in California without the
14 requisite warning information.

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

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

24 **SATISFACTION OF NOTICE REQUIREMENTS**

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

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

3 28. The laboratory provided the results of its analysis. Results of these tests determined
4 the Products expose users to lead (collectively, the “Chemical Test Reports” and each a “Chemical
5 Test Report”).

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

11 30. On September 15, 2023, Plaintiff received from the analytical chemist an exposure
12 assessment report which concluded that persons in California who use the *Divine Organics*® sun
13 dried white mulberries will be exposed to levels of lead that require a Proposition 65 exposure
14 warning. On October 3, 2023, Plaintiff received from the analytical chemist an exposure
15 assessment report which concluded that persons in California who use the Henry & Lisa’s wild
16 sardines in spring water will be exposed to levels of lead that require a Proposition 65 exposure
17 warning.

18 31. On September 15, 2023 (*Divine Organics*® sun dried white mulberries) and
19 October 3, 2023 (Henry & Lisa’s wild sardines in spring water), Plaintiff gave notice of alleged
20 violation of Health and Safety Code § 25249.6 (collectively, the “Notices” and each a “Notice”)
21 to Defendant concerning the exposure of California citizens to lead contained in the Products
22 without proper warning, subject to a private action to Defendant and to the California Attorney
23 General’s office and the offices of the County District attorneys and City Attorneys for each city
24 with a population greater than 750,000 persons wherein the herein violations allegedly occurred.
25 See attached at Exhibits “A” – “B” a true and correct copy of each Notice.

26 32. The Notices complied with all procedural requirements of Proposition 65 including
27 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at
28 least one person with relevant and appropriate expertise who reviewed relevant data regarding lead

1 exposure, and that counsel believed there was meritorious and reasonable cause for a private
2 action.

3 33. After receiving the Notices, and to Plaintiff's best information and belief, none of
4 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
5 cause of action against Defendant under Proposition 65 to enforce the alleged violations which are
6 the subject of the Notices.

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

9 **FIRST CAUSE OF ACTION**

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

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

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

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

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

18 39. Plaintiff, based on her best information and belief, avers that at all relevant times
19 herein, and since at least September 15, 2023 with respect to the *Divine Organics*® sun dried white
20 mulberries; and since at least October 3, 2023 with respect to the Henry & Lisa's wild sardines in
21 spring water, continuing until the present, that Defendant has continued to knowingly and
22 intentionally expose California users and consumers of the Product to lead without providing
23 required warnings under Proposition 65.

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

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

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

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

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

12 45. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
13 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: July 22, 2024

BRODSKY SMITH

13 By:  _____

14 Evan J. Smith (SBN242352)

15 Ryan P. Cardona (SBN302113)

16 9465 Wilshire Boulevard, Suite 300

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

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

September 15, 2023

President/CEO Transition Nutrition, Inc. c/o David B. Kaplan 20 Pamaron Way Novato, CA 94949	Houstic Enterprises Business Trust 1698 Marguerite Ave. Corona Del Mar, CA 92625-1115
Member/Manager Nowhere Partners, LLC c/o Mariano Anthony Antoci 2430 E. 11 th Street Los Angeles, CA 90021	Member/Manager Nowhere Partners, LLC dba Erewhon c/o Mariano Anthony Antoci 2430 E. 11 th Street Los Angeles, CA 90021
Member/Manager Nowhere Partners, LLC 7600 Beverly Blvd., Suite A Los Angeles, CA 90036	

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.

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.

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.

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):** Transition Nutrition, Inc.; Houstic Enterprises Business Trust; Nowhere Partners, LLC; Nowhere Partners, LLC dba Erewhon
3. **Time Period of Exposure:** Violations have been occurring since at least September 15, 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
Sun Dried White Mulberries	Divine Organics Sun Dried White Mulberries UPC# 658263084437

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 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.

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.

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

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

October 3, 2023

President/CEO Ecofish, Inc. c/o Henry W. Lovejoy 340 Central Avenue, Suite 305 Dover, NH 03820	Member/Manager Nowhere Partners, LLC 7600 Beverly Blvd., Suite A Los Angeles, CA 90036
Member/Manager Nowhere Partners, LLC c/o Mariano Anthony Antoci 2430 E. 11 th Street Los Angeles, CA 90021	Member/Manager Nowhere Partners, LLC dba Erewhon c/o Mariano Anthony Antoci 2430 E. 11 th Street Los Angeles, CA 90021

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

To Whom It May Concern:

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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.

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.

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):** Ecofish, Inc.; Nowhere Partners, LLC; Nowhere Partners, LLC dba Erewhon
- 3. **Time Period of Exposure:** Violations have been occurring since at least October 3, 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:**

Product²	Non- Exclusive Examples of the Product
Wild Sardines in Spring Water	Henry and Lisa's Wild Sardines in Spring Water UPC# 812410000590

- 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 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.

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.

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