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ELECTRONICALLY
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Superior Court of California,
County of San Francisco

11/20/2024
Clerk of the Court
BY: SAHAR ENAYATI
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 **CGC-24-619943**

12 GABRIEL ESPINOZA,

13 Plaintiff,

14 vs.

15 BUMBLE BEE FOODS, LLC,

16 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

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

19 **BACKGROUND OF THE CASE**

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

26 2. This complaint is a representative action brought by Plaintiff in the public interest
27 of the citizens of the State of California to enforce the People’s right to be informed of the health
28 hazards caused by exposure to lead and cadmium, toxic chemicals found in oysters, including but
not limited to Bumble Bee Hot & Spicy Smoked Oysters (“Products”) manufactured, sold,
packaged, and/or distributed by defendant Bumble Bee Foods, LLC (“Bumble Bee” or
“Defendant”) in California.

1 3. Lead¹ and cadmium² are harmful chemicals known to the State of California to
2 cause cancer and birth defects or other reproductive harm.

3 4. Proposition 65 requires all businesses with ten (10) or more employees that operate
4 within California or sell products therein to comply with Proposition 65 regulations. Included in
5 such regulations is the requirement that businesses must label any product containing a Proposition
6 65-listed chemical that will create an exposure above safe harbor levels with a “clear and
7 reasonable” warning before “knowingly and intentionally” exposing any person to any such listed
8 chemical.

9 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
10 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
11 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
12 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
13 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
14 25249.7.

15 6. Plaintiff alleges that Defendant manufactured, sold, packaged, and/or distributed in
16 California, without a requisite exposure warning, Products that expose persons to lead and
17 cadmium when consumed.

18 7. Defendant’s failure to warn consumers and other individuals in California of the
19 health hazards associated with exposure to lead and cadmium in conjunction with the
20 manufacturing, sale, packaging, and/or distribution of the Products is a violation of Proposition 65
21 and subjects Defendant to the enjoinder and civil penalties described herein.

22 _____
23 ¹ On October 1, 1992, the state of California listed lead as a chemical known to cause cancer and
24 it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs. Tit.
25 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On February 27, 1987, the State
of California listed lead as a chemical known to cause birth defects or other reproductive harm.

26 ² On October 1, 1987, the state of California listed cadmium as a chemical known to cause cancer
27 and it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs.
28 Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On May 1, 1997, the State
of California listed cadmium as a chemical known to cause birth defects or other reproductive
harm.

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

3 23. On October 1, 1987, the state of California listed cadmium as a chemical known to
4 cause cancer and it has come under the purview of Proposition 65 regulations since that time. Cal.
5 Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On May 1,
6 1997, the State of California listed cadmium as a chemical known to cause birth defects or other
7 reproductive harm. In summary, cadmium was listed under Proposition 65 as a chemical known
8 to the State to cause cancer and birth defects or other reproductive harm.

9 24. The exposures that are the subject of the Notice result from the purchase,
10 acquisition, and recommended use of the Products. The primary route of exposure to lead and
11 cadmium is through ingestion. When foods contaminated with lead and cadmium are consumed,
12 ingestion of lead and cadmium will occur. No clear and reasonable warning is provided with the
13 Products regarding the health hazards of exposure.

14 25. Defendant has processed, marketed, manufactured, packaged, distributed, offered
15 to sell and/or sold the Products in California. The Products continue to be distributed, marketed,
16 sold, and offered for sale in California without the requisite warning information.

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

20 27. 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 and cadmium without a
23 clear and reasonable warning on the Products. The individuals subject to the violative exposures
24 include normal and foreseeable users and consumers that use the Products, as well as all others
25 exposed to the Products.

SATISFACTION OF NOTICE REQUIREMENTS

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

29. The Products were sent to a testing laboratory to determine if consumption of a serving size of the Product would expose California consumers to more than 0.5 micrograms of lead per day and more than 4.1 micrograms of cadmium per day.

30. The laboratory provided the results of its analysis. Results of this test determined that consumption of a serving size of the Product will expose California consumers to lead and cadmium amount above established safe harbor levels (the “Chemical Test Report”).

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

32. On September 17, 2024, Plaintiff received from the analytical chemist an exposure assessment report which concluded that persons in California who consume the Products will be exposed to levels of lead and cadmium that require a Proposition 65 exposure warning.

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

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

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

3 35. After receiving the Notice, 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 Notice.

7 36. Plaintiff is commencing this action more than sixty (60) days from the date of the
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 37. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 36 of
12 this Complaint as though fully set forth herein.

13 38. Defendant has, at all times mentioned herein, acted as manufacturer, packager,
14 marketer, distributor, and/or retailer of the Product.

15 39. Consumption of the Products will expose consumers to lead and cadmium,
16 hazardous chemicals found on the Proposition 65 list of chemicals known to be hazardous to
17 human health.

18 40. The Product does not comply with the Proposition 65 warning requirements. The
19 violations of Proposition 65 alleged herein are ongoing and continuous and will continue to occur
20 into the future.

21 41. Plaintiff, based on his best information and belief, avers that at all relevant times
22 herein, and continuing through the present, that Defendant has continued to knowingly and
23 intentionally expose California consumers of the Product to lead and cadmium without providing
24 required warnings under Proposition 65.

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

1 ingestion of lead and cadmium will occur. No clear and reasonable warning is provided with the
2 Products regarding the health hazards of exposure.

3 43. Plaintiff, based on his best information and belief, avers that such exposures will
4 continue every day until clear and reasonable warnings are provided to purchasers and consumers
5 or until these known toxic chemicals are removed from the Products.

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

11 45. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
12 Complaint.

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

15 47. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically
16 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: November 20, 2024

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