

1 Evan J. Smith, Esquire (SBN 242352)
2 Ryan P. Cardona, Esquire (SBN 302113)
3 BRODSKY SMITH
4 9465 Wilshire Blvd., Ste. 300
5 Beverly Hills, CA 90212
6 Telephone: (877) 534-2590
7 Facsimile: (310) 247-0160

8 *Attorneys for Plaintiff*

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County of San Francisco

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

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 vs.

14 BUMBLE BEE FOODS, LLC,

15 Defendant.

Case No.: CGC-24-619943

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

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

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

18 **BACKGROUND OF THE CASE**

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

25 2. This first amended complaint is a representative action brought by Plaintiff in the
26 public interest of the citizens of the State of California to enforce the People’s right to be informed
27 of the health hazards caused by exposure to lead and lead compounds and cadmium, toxic
28 chemicals found in oysters, including but not limited to Bumble Bee Hot & Spicy Smoked Oysters
and Bumble Bee Hardwood Smoked Oysters (collectively, the “Products” and each a “Product”)

1 manufactured, sold, packaged, and/or distributed by defendant Bumble Bee Foods, LLC (“Bumble
2 Bee” or “Defendant”) in California.

3 3. Lead and lead compounds¹ and cadmium² are harmful chemicals known to the State
4 of California to cause cancer and birth defects or other reproductive harm.

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

11 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
12 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be
13 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
14 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
15 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
16 25249.7.

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

22 _____
23 ¹ On October 1, 1992, the state of California listed lead and lead compounds as a chemical known
24 to cause cancer and it has come under the purview of Proposition 65 regulations since that time.
25 Cal. Code Regs. Tit. 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 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:³

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).

24
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26
27 ³ 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 and lead compounds as a
3 chemical known to cause cancer and it has come under the purview of Proposition 65 regulations
4 since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
5 25249.10(b). On February 27, 1987, the State of California listed lead as a chemical known to
6 cause birth defects or other reproductive harm. In summary, lead was listed under Proposition 65
7 as a chemical known to the State to cause cancer and birth defects or other reproductive harm.

8 23. On October 1, 1987, the state of California listed cadmium as a chemical known to
9 cause cancer and it has come under the purview of Proposition 65 regulations since that time. Cal.
10 Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On May 1,
11 1997, the State of California listed cadmium as a chemical known to cause birth defects or other
12 reproductive harm. In summary, cadmium was listed under Proposition 65 as a chemical known
13 to the State to cause cancer and birth defects or other reproductive harm.

14 24. The exposures that are the subject of the Notices result from the purchase,
15 acquisition, and recommended use of the Products. The primary route of exposure to lead and lead
16 compounds and cadmium is through ingestion. When foods contaminated with lead and lead
17 compounds and cadmium are consumed, ingestion of lead and lead compounds and cadmium will
18 occur. No clear and reasonable warning is provided with the Products regarding the health hazards
19 of exposure.

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

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

26 27. As a proximate result of acts by Defendant, as a person in the course of doing
27 business within the meaning of H&S Code § 25249.11, individuals throughout the State of
28 California, including in San Francisco County, have been exposed to lead and lead compounds

1 and cadmium without a clear and reasonable warning on the Products. The individuals subject to
2 the violative exposures include normal and foreseeable users and consumers that use the Products,
3 as well as all others exposed to the Products.

4 **SATISFACTION OF NOTICE REQUIREMENTS**

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

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

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

16 31. Plaintiff provided the Chemical Test Report and Products to an analytical chemist
17 to determine if, based on the findings of the Chemical Test Report and the reasonable and
18 foreseeable use of the Products, exposure to lead and lead compounds and cadmium will occur at
19 levels that require Proposition 65 warnings under the Clear and Reasonable Warnings section
20 25601 of Title 27 of the California Code of Regulations.

21 32. On September 17, 2024 (Bumble Bee Hot & Spicy Smoked Oysters), September
22 25, 2024 (Bumble Bee Hardwood Smoked Oysters), and September 27, 2024 (Bumble Bee Hot &
23 Spicy Smoked Oysters), Plaintiff received from the analytical chemist an exposure assessment
24 report which concluded that persons in California who consume the Products will be exposed to
25 levels of lead and lead compounds and cadmium that require a Proposition 65 exposure warning.

26 33. On September 17, 2024 (Bumble Bee Hot & Spicy Smoked Oysters), September
27 25, 2024 (Bumble Bee Hardwood Smoked Oysters), and September 27, 2024 (Bumble Bee Hot &
28 Spicy Smoked Oysters), Plaintiff gave notice of alleged violation of Health and Safety Code §

1 25249.6 (collectively, the “Notices” and each a “Notice”) to Defendant concerning the exposure
2 of California citizens to lead and lead compounds and cadmium contained in the Products without
3 proper warning, subject to a private action to Defendant and to the California Attorney General’s
4 office and the offices of the County District attorneys and City Attorneys for each city with a
5 population greater than 750,000 persons wherein the herein violations allegedly occurred.

6 34. The Notices complied with all procedural requirements of Proposition 65 including
7 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at
8 least one person with relevant and appropriate expertise who reviewed relevant data regarding lead
9 and lead compounds and cadmium exposure, and that counsel believed there was meritorious and
10 reasonable cause for a private action.

11 35. After receiving the Notices, and to Plaintiff’s best information and belief, none of
12 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
13 cause of action against Defendant under Proposition 65 to enforce the alleged violations which are
14 the subject of the Notice.

15 36. Plaintiff is commencing this action more than sixty (60) days from the date of the
16 Notices to Defendant, as required by law.

17 **FIRST CAUSE OF ACTION**

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

19 37. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 36 of
20 this First Amended Complaint as though fully set forth herein.

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

23 39. Consumption of the Products will expose consumers to lead and lead compounds
24 and cadmium, hazardous chemicals found on the Proposition 65 list of chemicals known to be
25 hazardous to human health.

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

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

5 42. 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 and lead
7 compounds and cadmium is through ingestion. When foods contaminated with lead and lead
8 compounds and cadmium are consumed, ingestion of lead and lead compounds cadmium will
9 occur. No clear and reasonable warning is provided with the Products regarding the health hazards
10 of exposure.

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

14 44. Defendant has knowledge that the normal and reasonably foreseeable consumption
15 of the Products exposes individuals to lead and lead compounds and cadmium, and Defendant
16 intends that exposures to lead and lead compounds and cadmium will occur by its deliberate, non-
17 accidental participation in the importation, manufacturing, packaging, marketing, distribution, sale
18 and offering of the Products to consumers in California

19 45. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
20 First Amended Complaint.

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

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


PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant and requests the following relief:

- A. That the court assess civil penalties against Defendant in the amount of \$2,500 per day for each violation for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);
- B. That the court preliminarily and permanently enjoin Defendant mandating Proposition 65 compliant warnings on the Products;
- C. That the court grant Plaintiff reasonable attorney’s fees and costs of suit, in the amount of \$50,000.00.
- D. That the court grant any further relief as may be just and proper.

Dated: December 23, 2024

BRODSKY SMITH

By: 
Evan J. Smith (SBN242352)
Ryan P. Cardona (SBN302113)
9465 Wilshire Boulevard, Suite 300
Beverly Hills, CA 90212
Telephone: (877) 534-2590
Facsimile: (310) 247-0160

Attorneys for Plaintiff