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

**01/20/2026**  
Clerk of the Court  
BY: MARIVIC VIRAY  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

9 EMA BELL,

10 Plaintiff,

11 vs.

12 CVS PHARMACY, INC.,

13 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

**CGC-26-632953**

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

16 **BACKGROUND OF THE CASE**

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

23 2. This complaint is a representative action brought by Plaintiff in the public interest  
24 of the citizens of the State of California to enforce the People’s right to be informed of the health  
25 hazards caused by exposure to lead, a toxic chemical found in *Gold Emblem Abound*® strawberry  
26 freeze dried fruit crisps sold and/or distributed by defendant CVS Pharmacy, Inc (“CVS  
27  
28

1 Pharmacy” or “Defendant”) in California and manufactured, sold, and/or distributed by Brothers  
2 International Food Holdings LLC.

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 to be imposed upon defendants in a civil action for violations of Proposition 65.  
17 Health & Safety Code § 25249.7(b). Proposition 65 also allows for any court of competent  
18 jurisdiction to enjoin the actions of a defendant which “violate or threaten to violate” the statute.  
19 Health & Safety Code § 25249.7.

20 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,  
21 without a requisite exposure warning, *Gold Emblem Abound*® strawberry freeze dried fruit crisps  
22 (the “Products”) that expose persons to lead when consumed for their intended purpose.

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

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

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

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

### 6 **PARTIES**

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

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

### 16 **VENUE AND JURISDICTION**

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

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

26 15. This Court has jurisdiction over Defendant because Defendant is either a citizen of  
27 the State of California, has sufficient minimum contacts with the State of California, is registered  
28 with the California Secretary of State as foreign corporations authorized to do business in the State

1 of California, and/or has otherwise purposefully availed itself of the California market. Such  
2 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and  
3 permissible with traditional notions of fair play and substantial justice.

#### 4 STATUTORY BACKGROUND

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

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

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

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

25 19. An exposure to a chemical in a consumer product is one “which results from a  
26 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a  
27 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §  
28 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...

1 shall provide a warning to any person to whom the product is sold or transferred unless the product  
2 is packaged or labeled with a clear and reasonable warning.”

3 20. 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:<sup>1</sup>

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 21. 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.

22 22. Pursuant to Cal. Code Regs. Tit. 27, § 25600.2(e), a retail seller is responsible for  
23 providing the warning required by § 25249.6 of the Act for a consumer product exposure when  
24 one or more of the following circumstances exist: (a) the retailer seller is selling the product under  
25

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26  
27 <sup>1</sup> 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 brand or trademark that is owned or licensed by the retail seller or an affiliated entity; (b) the  
2 retailer seller has knowingly introduced a listed chemical into the product, or knowingly caused  
3 the listed chemical to be created in the product; (c) the retail seller has covered, obscured or altered  
4 a warning label that has been affixed to the product pursuant to § 25600.2(b); (d) the retail seller  
5 has received a notice and warning materials for the exposure pursuant to § 25600.2(b)-(c) and the  
6 retail seller has sold the product without conspicuously posting or displaying the warning; or (e)  
7 the retailer seller has actual knowledge of the potential consumer product exposure requiring the  
8 warning, and there is no manufacturer, producer, packager, importer, supplier, or distributor of the  
9 product who: (i) is a “person in the course of doing business under § 25249.11(b) of the Act, and  
10 (ii) has designated an agent for service of process in California, or has a place of business in  
11 California.

#### 12 FACTUAL BACKGROUND

13 23. Lead is a harmful chemical known to the State of California to cause cancer and  
14 birth defects or other reproductive harm. On October 1, 1992, the state of California listed lead as  
15 a chemical known to cause cancer and it has come under the purview of Proposition 65 regulations  
16 since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
17 25249.10(b). On February 27, 1987, the State of California listed lead as a chemical known to  
18 cause birth defects or other reproductive harm.

19 24. On November 19, 2024, Plaintiff purchased the Product from Defendant. At the  
20 time of the purchase, Defendant did not provide a clear and reasonable exposure warning pursuant  
21 to Cal. Code Regs. Tit. 27, § 25602.

22 25. On January 17, 2025, Plaintiff served notice of alleged violation of Health and  
23 Safety Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California citizens  
24 to lead from consumption of the Products without proper warning, subject to a private action to  
25 Defendant and to the California Attorney General’s office and the offices of the County District  
26 attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein  
27 the herein violations allegedly occurred. The exposures that are the subject of the Notice result  
28 from the purchase, acquisition, handling and recommended consumption of the Product. The

1 primary route of exposure to lead is through ingestion. When foods contaminated with lead are  
2 consumed, ingestion of lead will occur which will increase blood lead levels. No clear and  
3 reasonable warning is provided with the Products regarding the health hazards of exposure.

4 26. On January 30, 2025, Plaintiff provided Defendant and Brothers International Food  
5 Holdings LLC with further notice concerning the exposure of California citizens to lead from  
6 consumption of the Products without proper warning, subject to a private action to Defendant and  
7 to the California Attorney General's office and the offices of the County District attorneys and  
8 City Attorneys for each city with a population greater than 750,000 persons wherein the herein  
9 violations allegedly occurred.

10 27. Defendant has actual knowledge that sales of the Product in California will result  
11 in an actionable consumer product exposure pursuant to Cal. Health & Safety Code § 25249.5 et  
12 seq.

13 28. Defendant has sold the Product under a brand or trademark that is owned or licensed  
14 by Defendant or an affiliated entity; and/or Defendant has knowingly introduced lead into the  
15 Product, or knowingly caused lead to be created in the Product; and/or Defendant has covered,  
16 obscured or altered a warning label that has been affixed to the Product pursuant to § 25600.2(b);  
17 and/or Defendant has received a notice and warning materials for the exposure pursuant to §  
18 25600.2(b)-(c) and Defendant has sold the product without conspicuously posting or displaying  
19 the warning; and/or Defendant has actual knowledge of the potential consumer product exposure  
20 requiring the warning, and there is no manufacturer, producer, packager, importer, supplier, or  
21 distributor of the Product who: (i) is a "person in the course of doing business under § 25249.11(b)  
22 of the Act, and (ii) has designated an agent for service of process in California, or has a place of  
23 business in California.

24 29. At all times relevant to this action, Defendant has knowingly and intentionally  
25 exposed consumers of the Products to lead without first giving a clear and reasonable exposure  
26 warning to such individuals. More than five business days after receipt of the Notice of Violation,  
27 Defendant continued to distribute, sell, and/or offer to and sell in California without the requisite  
28 warning information.

1 30. On January 28, 2025, Plaintiff purchased the Product a second time from  
2 Defendant. At the time of the purchase, Defendant did not provide a clear and reasonable exposure  
3 warning pursuant to Cal. Code Regs. Tit. 27, § 25602.

4 31. As a proximate result of acts by Defendant, as a person in the course of doing  
5 business within the meaning of H&S Code § 25249.11, individuals throughout the State of  
6 California, including in San Francisco County, have been exposed to lead without a clear and  
7 reasonable warning on the Products. The individuals subject to the violative exposures include  
8 normal and foreseeable users and consumers that consume the Products, as well as all others  
9 exposed to the Products.

10 **SATISFACTION OF NOTICE REQUIREMENTS**

11 32. On November 19, 2024, Plaintiff purchased the Product from Defendant. At the  
12 time of purchase, Defendant did not provide a Proposition 65 exposure warning for lead or any  
13 other Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described  
14 *supra*.

15 33. The Product was sent to a testing laboratory to determine if, and what amount of,  
16 lead a consumer would be exposed to per serving size.

17 34. The laboratory provided the results of its analysis. Results of this test determined  
18 the Product exposes consumers to lead (the “Chemical Test Report”).

19 35. Plaintiff provided the Chemical Test Report and Product to an analytical chemist  
20 to determine if, based on the findings of the Chemical Test Report and the reasonable and  
21 foreseeable consumption of the Product, exposure to lead will occur at levels that require  
22 Proposition 65 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of  
23 the California Code of Regulations.

24 36. On January 17, 2025, Plaintiff received from the analytical chemist an exposure  
25 assessment report which concluded that persons in California who consume the Products will be  
26 exposed to levels of lead that require a Proposition 65 exposure warning.





1           44.     The Notice gives Defendant actual knowledge of the potential consumer product  
2 exposure requiring the warning pursuant to Cal. Code Regs, Tit. 27, § 25600.2. Consumption of  
3 the Products will expose users and consumers thereof to lead, a hazardous chemical found on the  
4 Proposition 65 list of chemicals known to be hazardous to human health.

5           45.     The Products do not comply with the Proposition 65 warning requirements.

6           46.     Plaintiff, based on her best information and belief, avers that at all relevant times  
7 herein, and at least since January 17, 2025, continuing until the present, that Defendant has  
8 continued to knowingly and intentionally expose California users and consumers of the Products  
9 to lead without providing required warnings under Proposition 65.

10          47.     Defendant continues to sell the Product under a brand or trademark that is owned  
11 or licensed by Defendant or an affiliated entity; and/or Defendant has knowingly introduced lead  
12 into the Product, or knowingly caused lead to be created in the Product; and/or Defendant has  
13 covered, obscured or altered a warning label that has been affixed to the Product pursuant to §  
14 25600.2(b); and/or Defendant has received a notice and warning materials for the exposure  
15 pursuant to § 25600.2(b)-(c) and Defendant has sold the product without conspicuously posting or  
16 displaying the warning; and/or Defendant has actual knowledge of the potential consumer product  
17 exposure requiring the warning, and there is no manufacturer, producer, packager, importer,  
18 supplier, or distributor of the Product who: (i) is a “person in the course of doing business under §  
19 25249.11(b) of the Act, and (ii) has designated an agent for service of process in California, or has  
20 a place of business in California

21          48.     On January 28, 2025, more than five business days after Defendant received the  
22 Notice, Plaintiff purchased the Product from Defendant. At the time of purchase, Defendant did  
23 not provide a Proposition 65 compliant exposure warning.

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

1           50. 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 consumers  
3 or until this known toxic chemical is removed from the Products.

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

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

10          53. 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          54. 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 in accordance with Health and Safety Code §  
6 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: January 19, 2026

BRODSKY SMITH

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