

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*

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

03/24/2026
Clerk of the Court
BY: MARIVIC VIRAY
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 EMA BELL,

12 Plaintiff,

13 vs.

14 WHOLE FOODS MARKET
CALIFORNIA, INC.,

15 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

CGC-26-635215

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

BACKGROUND OF THE CASE

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

24 2. This complaint is a representative action brought by Plaintiff in the public interest
25 of the citizens of the State of California to enforce the People’s right to be informed of the health
26 hazards caused by exposure to lead, a toxic chemical found in 34 Degrees original gluten free
27 crisps sold and/or distributed by defendant Whole Foods Market California, Inc. (“Whole Foods”
28 or “Defendant”) in California and manufactured, sold, and/or distributed by 34 Degrees, LLC.

1 3. Lead is a harmful chemical known to the State of California to cause cancer and
2 birth defects or other reproductive harm. On October 1, 1992, the state of California listed lead as
3 a 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.

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

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

18 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,
19 without a requisite exposure warning, 34 Degrees original gluten free crisps (the “Products”) that
20 expose persons to lead when consumed for their intended purpose.

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

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

27 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
28 Defendant to provide purchasers or consumers of the Products with required warnings related to

1 the dangers and health hazards associated with exposure to lead pursuant to Health and Safety
2 Code § 25249.7(a).

3 10. Plaintiff further seeks a reasonable award of attorney’s fees and costs.

4 **PARTIES**

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

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

15 **VENUE AND JURISDICTION**

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

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

25 15. This Court has jurisdiction over Defendant because Defendant is either a citizen of
26 the State of California, has sufficient minimum contacts with the State of California, is registered
27 with the California Secretary of State as foreign corporations authorized to do business in the State
28 of California, and/or has otherwise purposefully availed itself of the California market. Such

1 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and
2 permissible with traditional notions of fair play and substantial justice.

3 STATUTORY BACKGROUND

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

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

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

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

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

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: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 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

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 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 February 14, 2025, Plaintiff purchased the Product from Defendant. At the time
20 of the purchase, Defendant did not provide a clear and reasonable exposure warning pursuant to
21 Cal. Code Regs. Tit. 27, § 25602.

22 25. On March 28, 2025, Plaintiff served 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 from consumption of the Products without proper warning, subject to a private action to Defendant
25 and to the California Attorney General’s office and the offices of the County District attorneys and
26 City Attorneys for each city with a population greater than 750,000 persons wherein the herein
27 violations allegedly occurred. The exposures that are the subject of the Notice result from the
28 purchase, acquisition, handling and recommended consumption of the Product. The primary route

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

4 26. Defendant has actual knowledge that sales of the Product in California will result
5 in an actionable consumer product exposure pursuant to Cal. Health & Safety Code § 25249.5 et
6 seq.

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

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

23 29. On March 17, 2026, Plaintiff purchased the Product a second time from Defendant.
24 At the time of the purchase, Defendant did not provide a clear and reasonable exposure warning
25 pursuant to Cal. Code Regs. Tit. 27, § 25602.

26 30. 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 without a clear and

1 reasonable warning on the Products. The individuals subject to the violative exposures include
2 normal and foreseeable users and consumers that consume the Products, as well as all others
3 exposed to the Products.

4 **SATISFACTION OF NOTICE REQUIREMENTS**

5 31. On February 14, 2025, Plaintiff purchased the Product from Defendant. At the time
6 of purchase, Defendant did not provide a Proposition 65 exposure warning for lead or any other
7 Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described
8 *supra*.

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

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

13 34. Plaintiff provided the Chemical Test Report and Product to an analytical chemist
14 to determine if, based on the findings of the Chemical Test Report and the reasonable and
15 foreseeable consumption of the Product, exposure to lead will occur at levels that require
16 Proposition 65 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of
17 the California Code of Regulations.

18 35. On March 28, 2025, Plaintiff received from the analytical chemist an exposure
19 assessment report which concluded that persons in California who consume the Products will be
20 exposed to levels of lead that require a Proposition 65 exposure warning.

21 36. On March 28, 2025, Plaintiff served the Notice on Defendant concerning the
22 exposure of California citizens to lead from consumption of the Products without proper warning,
23 subject to a private action to Defendant and to the California Attorney General’s office and the
24 offices of the County District attorneys and City Attorneys for each city with a population greater
25 than 750,000 persons wherein the herein violations allegedly occurred.

26 37. The Notice 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 38. 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 39. 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 40. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 39 of
12 this Complaint as though fully set forth herein.

13 41. Defendant has manufactured, processed, marketed, distributed, offered to sell
14 and/or sold the Products in California since at least February 14, 2025.

15 42. On March 28, 2025, Plaintiff served the Notice on Defendant concerning the
16 exposure of California citizens to lead from consumption of the Products without proper warning,
17 subject to a private action to Defendant and to the California Attorney General's office and the
18 offices of the County District attorneys and City Attorneys for each city with a population greater
19 than 750,000 persons wherein the herein violations allegedly occurred.

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

24 44. The Products do not comply with the Proposition 65 warning requirements.

25 45. Plaintiff, based on her best information and belief, avers that at all relevant times
26 herein, and at least since March 28, 2025, continuing until the present, that Defendant has
27 continued to knowingly and intentionally expose California users and consumers of the Products
28 to lead without providing required warnings under Proposition 65.

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

12 47. On March 17, 2026, more than five business days after Defendant received the
13 Notice, Plaintiff purchased the Product from Defendant. At the time of purchase, Defendant did
14 not provide a Proposition 65 compliant exposure warning.

15 48. The exposures that are the subject of the Notice result from the purchase,
16 acquisition, handling and recommended consumption of the Product. The primary route of
17 exposure to lead is through ingestion. When foods contaminated with lead are consumed, ingestion
18 of lead will occur which will increase blood lead levels. No clear and reasonable warning is
19 provided with the Products regarding the health hazards of exposure.

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

23 50. Defendant has knowledge that the normal and reasonably foreseeable consumption
24 of the Products exposes individuals to lead, and Defendant intends that exposures to lead will occur
25 by their deliberate, non-accidental participation in the importation, distribution, sale and offering
26 of the Products to consumers in California.

27 51. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
28 Complaint.

