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

**01/23/2026**  
Clerk of the Court  
BY: AUSTIN LAM  
Deputy Clerk

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 COUNTY OF SAN FRANCISCO

8  
9 GABRIEL ESPINOZA,

10 Plaintiff,

11 vs.

12 MRS. GOOCH'S NATURAL FOOD  
MARKETS, INC.,

13 Defendant.  
14

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

**CGC-26-633194**

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

17 **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 *Brooklyn Delhi*® chickpea tikka  
27 masala with potatoes sold and/or distributed by defendant Mrs. Gooch's Natural Food Markets,  
28

1 Inc. (“Whole Foods” or “Defendant”) in California and manufactured, sold, and/or distributed by  
2 Brooklyn Delhi, 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, *Brooklyn Delhi*® chickpea tikka masala with potatoes (the  
22 “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 with the California Secretary of State as foreign corporations authorized to do business in the State  
2 of California, and/or has otherwise purposefully availed itself of the California market. Such  
3 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and  
4 permissible with traditional notions of fair play and substantial justice.

5 **STATUTORY BACKGROUND**

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

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

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

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

26 19. An exposure to a chemical in a consumer product is one “which results from a  
27 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a  
28 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §

1 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...  
2 shall provide a warning to any person to whom the product is sold or transferred unless the product  
3 is packaged or labeled with a clear and reasonable warning.”

4 20. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or  
5 more of the following methods individually or in combination:<sup>1</sup>

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

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

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

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

17 21. Proposition 65 provides that any “person who violates or threatens to violate” the  
18 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase  
19 “threaten to violate” is defined to mean creating “a condition in which there is a substantial  
20 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil  
21 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to  
22 365 days.

23 22. Pursuant to Cal. Code Regs. Tit. 27, § 25600.2(e), a retail seller is responsible for  
24 providing the warning required by § 25249.6 of the Act for a consumer product exposure when  
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 one or more of the following circumstances exist: (a) the retailer seller is selling the product under  
2 a brand or trademark that is owned or licensed by the retail seller or an affiliated entity; (b) the  
3 retailer seller has knowingly introduced a listed chemical into the product, or knowingly caused  
4 the listed chemical to be created in the product; (c) the retail seller has covered, obscured or altered  
5 a warning label that has been affixed to the product pursuant to § 25600.2(b); (d) the retail seller  
6 has received a notice and warning materials for the exposure pursuant to § 25600.2(b)-(c) and the  
7 retail seller has sold the product without conspicuously posting or displaying the warning; or (e)  
8 the retailer seller has actual knowledge of the potential consumer product exposure requiring the  
9 warning, and there is no manufacturer, producer, packager, importer, supplier, or distributor of the  
10 product who: (i) is a “person in the course of doing business under § 25249.11(b) of the Act, and  
11 (ii) has designated an agent for service of process in California, or has a place of business in  
12 California.

### 13 **FACTUAL BACKGROUND**

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

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

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

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

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

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

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

24         29. On November 17, 2025, Plaintiff purchased the Product a second time from  
25 Defendant. At the time of the purchase, Defendant did not provide a clear and reasonable exposure  
26 warning pursuant to Cal. Code Regs. Tit. 27, § 25602.

27         30. As a proximate result of acts by Defendant, as a person in the course of doing  
28 business within the meaning of H&S Code § 25249.11, individuals throughout the State of

1 California, including in San Francisco County, have been exposed to lead without a clear and  
2 reasonable warning on the Products. The individuals subject to the violative exposures include  
3 normal and foreseeable users and consumers that consume the Products, as well as all others  
4 exposed to the Products.

5 **SATISFACTION OF NOTICE REQUIREMENTS**

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

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

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

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

19 35. On August 22, 2025, Plaintiff received from the analytical chemist an exposure  
20 assessment report which concluded that persons in California who consume the Products will be  
21 exposed to levels of lead that require a Proposition 65 exposure warning.

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

27 37. The Notice complied with all procedural requirements of Proposition 65 including  
28 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at

1 least one person with relevant and appropriate expertise who reviewed relevant data regarding lead  
2 exposure, and that counsel believed there was meritorious and reasonable cause for a private  
3 action.

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

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

10 **FIRST CAUSE OF ACTION**

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

12 40. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 39 of  
13 this Complaint as though fully set forth herein.

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

16 42. On August 22, 2025, Plaintiff served the Notice on Defendant concerning the  
17 exposure of California citizens to lead from consumption of the Products without proper warning,  
18 subject to a private action to Defendant and to the California Attorney General's office and the  
19 offices of the County District attorneys and City Attorneys for each city with a population greater  
20 than 750,000 persons wherein the herein violations allegedly occurred.

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

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

26 45. Plaintiff, based on his best information and belief, avers that at all relevant times  
27 herein, and at least since August 22, 2025, continuing until the present, that Defendant has  
28

1 continued to knowingly and intentionally expose California users and consumers of the Products  
2 to lead without providing required warnings under Proposition 65.

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

14 47. On November 17, 2025, more than five business days after Defendant received the  
15 Notice, Plaintiff purchased the Product from Defendant. At the time of purchase, Defendant did  
16 not provide a Proposition 65 compliant exposure warning.

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

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

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

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

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

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

7 **PRAYER FOR RELIEF**

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

10 A. That the court assess civil penalties against Defendant in the amount of \$2,500 per  
11 day for each violation for up to 365 days in accordance with Health and Safety Code §  
12 25249.7(b);

13 B. That the court preliminarily and permanently enjoin Defendant mandating  
14 Proposition 65 compliant warnings on the Products;

15 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the  
16 amount of \$50,000.00.

17 D. That the court grant any further relief as may be just and proper.

18 Dated: January 23, 2026

BRODSKY SMITH

19 By: 

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