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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

06/26/2026
Clerk of the Court
BY: ODIANA CIOFALO
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

CGC-26-638541

11 PRECILA BALABBO,

12 Plaintiff,

13 vs.

14 GELSON'S MARKETS,

15 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

16 Plaintiff Precila Balabbo ("Plaintiff"), by and through her attorneys, alleges the following
17 cause 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 *Breton*® zesty ranch veggie crisps
27 sold and/or distributed by defendant Gelson's Markets ("Gelson's" or "Defendant") in California
28 and manufactured, sold, and/or distributed by Dare Foods Limited.

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, *Breton*® zesty ranch veggie 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 Gelson's Markets, through its business, effectively imports, distributes,
10 sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct
11 that it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.
12 Plaintiff alleges that defendant Gelson's Markets is a "person" in the course of doing business
13 within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

14 **VENUE AND JURISDICTION**

15 13. Venue is proper in the County of San Francisco because one or more of the
16 instances of wrongful conduct occurred and continue to occur in this county and/or because
17 Defendant conducted, and continues to conduct, business in the County of San Francisco with
18 respect to the Products. The Products are distributed, marketed, and sold to consumers throughout
19 San Francisco County, the alleged Proposition 65 violations necessarily occurred here. Upon
20 information and belief, the Products are consistently in the stream of commerce and available to
21 consumers for purchase in the City and County of San Francisco.

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

27 15. This Court has jurisdiction over Defendant because Defendant is either a citizen of
28 the State of California, has sufficient minimum contacts with the State of California, is registered

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. Public policy further
5 supports this conclusion.

6 **STATUTORY BACKGROUND**

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

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

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

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

27 19. An exposure to a chemical in a consumer product is one “which results from a
28 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a

1 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
2 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
3 shall provide a warning to any person to whom the product is sold or transferred unless the product
4 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:¹

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.

24
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 attorneys and City Attorneys for each city with a population greater than 750,000 persons wherein
2 the herein violations allegedly occurred. The exposures that are the subject of the Notice result
3 from the purchase, acquisition, handling and recommended consumption of the Product. The
4 primary route of exposure to lead is through ingestion. When foods contaminated with lead are
5 consumed, ingestion of lead will occur which will increase blood lead levels. No clear and
6 reasonable warning is provided with the Products regarding the health hazards of exposure.

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

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

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

26 29. On February 15, 2026, Plaintiff purchased the Product a second time from
27 Defendant. At the time of the purchase, Defendant did not provide a clear and reasonable exposure
28 warning pursuant to Cal. Code Regs. Tit. 27, § 25602.

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

7 **SATISFACTION OF NOTICE REQUIREMENTS**

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

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

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

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

21 35. On September 5, 2025, Plaintiff received from the analytical chemist an exposure
22 assessment report which concluded that persons in California who consume the Products will be
23 exposed to levels of lead that require a Proposition 65 exposure warning.

24 36. On September 5, 2025, Plaintiff served the Notice on Defendant concerning the
25 exposure of California citizens to lead from consumption of the Products without proper warning,
26 subject to a private action to Defendant and to the California Attorney General’s office and the
27 offices of the County District attorneys and City Attorneys for each city with a population greater
28 than 750,000 persons wherein the herein violations allegedly occurred.

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

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

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

FIRST CAUSE OF ACTION

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

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

41. Defendant has manufactured, processed, marketed, distributed, offered to sell and/or sold the Products in California since at least July 7, 2025.

42. On September 5, 2025, Plaintiff served the Notice on Defendant concerning the exposure of California citizens to lead from consumption of 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.

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

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

1 45. Plaintiff, based on her best information and belief, avers that at all relevant times
2 herein, and at least since September 5, 2025, continuing until the present, that Defendant has
3 continued to knowingly and intentionally expose California users and consumers of the Products
4 to lead without providing required warnings under Proposition 65.

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

16 47. On February 15, 2026, more than five business days after Defendant received the
17 Notice, Plaintiff purchased the Product from Defendant. At the time of purchase, Defendant did
18 not provide a Proposition 65 compliant exposure warning.

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

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

27 50. Defendant has knowledge that the normal and reasonably foreseeable consumption
28 of the Products exposes individuals to lead, and Defendant intends that exposures to lead will occur

1 by their deliberate, non-accidental participation in the importation, distribution, sale and offering
2 of the Products to consumers in California.

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

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

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

9 **PRAYER FOR RELIEF**

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

12 A. That the court assess civil penalties against Defendant in the amount of \$2,500 per
13 day for each violation for up to 365 days in accordance with Health and Safety Code §
14 25249.7(b);

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

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

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

20 Dated: June 26, 2026

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