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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

PRECILA BALABBO,

Plaintiff,

vs.

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

Defendant.

Case No.: **CGC-26-640771**

COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

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

Plaintiff Precila Balabbo ("Plaintiff"), by and through her attorneys, alleges the following cause of action in the public interest of the citizens of the State of California.

BACKGROUND OF THE CASE

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

2. This complaint is a representative action brought by Plaintiff in the public interest of the citizens of the State of California to enforce the People's right to be informed of the health hazards caused by exposure to lead, a toxic chemical found in Umaro applewood bacon made from plants sold, and/or distributed by defendant Mrs. Gooch's Natural Food Markets, Inc. ("Whole

Foods" or "Defendant") in California and manufactured, sold, and/or distributed by Umaro Foods, Inc.

3. Lead is a harmful chemical known to the State of California to cause cancer and birth defects or other reproductive harm. On October 1, 1992, the state of California listed lead as a chemical known to cause cancer and it has come under the purview of Proposition 65 regulations since that time. 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.

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

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

6. Plaintiff alleges that Defendant distributes and/or offers for sale in California, without a requisite exposure warning, Umaro applewood bacon made from plants (the "Products") that expose persons to lead when consumed for their intended purpose.

7. Defendant's failure to warn consumers and other individuals in California of the health hazards associated with exposure to lead in conjunction with the sale and/or distribution of the Product is a violation of Proposition 65 and subjects Defendant to the enjoinment and civil penalties described herein.

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

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

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

PARTIES

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

12. Defendant Mrs. Gooch's Natural Food Markets, Inc., through its business, effectively imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct that it imports, distributes, sells, and/or offers the Products for sale or use in the State of California. Plaintiff alleges that defendant Mrs. Gooch's Natural Food Markets, Inc. is a "person" in the course of doing business within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

VENUE AND JURISDICTION

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

14. This Court has jurisdiction over this action pursuant to California Constitution Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the enforcement

of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has jurisdiction over this lawsuit.

15. This Court has jurisdiction over Defendant because Defendant is either a citizen of the State of California, has sufficient minimum contacts with the State of California, is registered with the California Secretary of State as foreign corporations authorized to do business in the State of California, and/or has otherwise purposefully availed itself of the California market. Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent and permissible with traditional notions of fair play and substantial justice. Public policy further supports this conclusion.

STATUTORY BACKGROUND

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

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

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

18. In this case, exposures are caused by consumer products. A "Consumer Product" is defined as "any article, or component part thereof, including food, that is produced, distributed, or sold for the personal use, consumption or enjoyment of a consumer." (Cal. Code Regs., tit. 27, § 25600.1, subd. (d).) Food includes "dietary supplements" as defined in California Code of Regulations, title 17, section 10200. (*Id.* at subd. (g).) An exposure to a chemical in a Consumer Product is one "which results from a person's acquisition, purchase, storage, consumption or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service." (27 CCR § 25602, para (b).) H&S Code § 25603(c) states that "a person in the

course of doing business … shall provide a warning to any person to whom the product is sold or transferred unless the product is packaged or labeled with a clear and reasonable warning."

19. An exposure to a chemical in a consumer product is one "which results from a person's acquisition, purchase, storage, consumption or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service." (27 CCR § 25602, para (b).) H&S Code § 25603(c) states that "a person in the course of doing business … shall provide a warning to any person to whom the product is sold or transferred unless the product is packaged or labeled with a clear and reasonable warning."

20. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or more of the following methods individually or in combination:[1]

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

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

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

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

21. Proposition 65 provides that any "person who violates or threatens to violate" the statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase "threaten to violate" is defined to mean creating "a condition in which there is a substantial

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[1] Alternatively, a person in the course of doing business may elect to comply with the warning 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.

probability that a violation will occur." (H&S Code § 25249.11(e).) Violators are liable for civil penalties of up to $2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to 365 days.

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

FACTUAL BACKGROUND

23. Lead is a harmful chemical known to the State of California to cause cancer and birth defects or other reproductive harm. On October 1, 1992, the state of California listed lead as a chemical known to cause cancer and it has come under the purview of Proposition 65 regulations since that time. 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.

24. On July 7, 2025, the Product was purchased from Defendant in California. At the time of the purchase, Defendant did not provide a clear and reasonable exposure warning pursuant to Cal. Code Regs. Tit. 27, § 25602.

25. On September 12, 2025, Plaintiff served notice of alleged violation of Health and Safety Code § 25249.6 (the "Notice") to 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. The exposures that are the subject of the Notice result from the purchase, acquisition, handling and recommended consumption of the Product. The primary route of exposure to lead is through ingestion. When foods contaminated with lead are consumed, ingestion of lead will occur which will increase blood lead levels. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure.

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

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

28. At all times relevant to this action, Defendant has knowingly and intentionally exposed consumers of the Products to lead without first giving a clear and reasonable exposure warning to such individuals. More than five business days after receipt of the Notice of Violation,

Defendant continued to distribute, sell, and/or offer to and sell in California without the requisite warning information.

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

SATISFACTION OF NOTICE REQUIREMNTS

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

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

32. The laboratory provided the results of its analysis. Results of this test determined the Product exposes consumers to lead (the "Chemical Test Report").

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

34. On September 12, 2025, Plaintiff received from the analytical chemist an exposure assessment report which concluded that persons in California who consume the Products will be exposed to levels of lead that require a Proposition 65 exposure warning.

35. On September 12, 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.

36. 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.

37. 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.

38. 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)

39. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 38 of this Complaint as though fully set forth herein.

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

41. On September 12, 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.

42. 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.

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

44. Plaintiff, based on her best information and belief, avers that at all relevant times herein, and at least since September 12, 2025, continuing until the present, that Defendant has continued to knowingly and intentionally expose California users and consumers of the Products to lead without providing required warnings under Proposition 65.

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

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

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

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

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

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

51. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically 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 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: September 11, 2026

BRODSKY SMITH

By: _____

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