1 2	Evan J. Smith, Esquire (SBN 242352) Ryan P. Cardona, Esquire (SBN 302113) BRODSKY SMITH 9595 Wilshire Blvd., Ste. 900		ELECTRONICALLY FILED Superior Court of California, County of San Francisco	
3 4	Beverly Hills, CA 90212 Telephone: (877) 534-2590 Facsimile: (310) 247-0160		08/14/2023 Clerk of the Court BY: AUSTIN LAM	
5	Attorneys for Plaintiff		Deputy Clerk	
6	SUPERIOR COURT OF THE STATE OF CALIFORNIA			
7	COUNTY OF SAN FRANCISCO			
8	CADDIEL ESDINOZA	Case No.:	CGC-23-608347	
9 10	GABRIEL ESPINOZA, Plaintiff,	COMPLAINT FOR CIVIL INJUNCTIVE RELIEF	PENALTIES AND	
11	vs.	(Violation of Health & Safet	y Code § 25249.5 et	
12	CBC GROUP, INC., NORDSTROM, INC.,	seq.)		
13	Defendants.			
14 15	Plaintiff Gabriel Espinoza ("Plaintiff"), by and through his attorneys, alleges the following			
15	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 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 			
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26		hazards caused by exposure to lead, a toxic chemical found in <i>Slant Collections</i> ® ceramic mugs,		
27	UPC # 886083860164, sold and/or distributed by defendants CBC Group, Inc. ("CBC") and/or			
28	Nordstrom, Inc. ("Nordstrom") (collectively, "Defendants") in California.			
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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.

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 (up to a maximum civil penalty amount per violation of \$912,000.00) 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.

Plaintiff alleges that Defendants distribute and/or offer for sale in California,
 without a requisite exposure warning, *Slant Collections*® ceramic mugs, UPC # 886083860164,
 (the "Products") that expose persons to lead when used for their intended purpose.

7. Defendants' 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 Products is a violation of Proposition 65 and subjects Defendants to the enjoinment and civil
penalties described herein.

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

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9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
 Defendants to provide purchasers or users 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).

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

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. He brings this
10 action in the public interest pursuant to Health and Safety Code § 25249.7(d).

11 12. Defendant CBC, 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 CBC is a "person" in the course of doing business within the
meaning of Health & Safety Code sections 25249.6 and 25249.11.

16 13. Defendant Nordstrom, 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 Nordstrom is a "person" in the course of doing business within the
meaning of Health & Safety Code sections 25249.6 and 25249.11.

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VENUE AND JURISDICTION

14. 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
Defendants conducted, and continue to conduct, business in the County of San Francisco with
respect to the Products.

15. 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

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

16. This Court has jurisdiction over Defendants because each 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.

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STATUTORY BACKGROUND

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

13 18. To effect this goal, Proposition 65 requires that individuals be provided with a
14 "clear and reasonable warning" before being exposed to substances listed by the State of California
15 as causing cancer and birth defects or other reproductive harm. H&S Code § 25249.6 states, in
16 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...

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19. An exposure to a chemical in a consumer product is one "which results from a
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25602, para (b).) H&S Code § 25603(c) states that "a person in the course of doing business ...
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COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF – VIOLATION OF HEALTH & SAFETY CODE §25249.5

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.

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

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

The warnings provided pursuant to subparagraphs (a) and (b) shall be c. 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.

Proposition 65 provides that any "person who violates or threatens to violate" the 14 21. 15 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 16 probability that a violation will occur." (H&S Code § 25249.11(e).) Violators are liable for civil 17 18 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to 19 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

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FACTUAL BACKGROUND

22. 21 On October 1, 1992, the state of California listed lead as a chemical known to cause 22 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code 23 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 24 25

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¹ Alternatively, a person in the course of doing business may elect to comply with the warning 27 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. 28

reproductive harm. In summary, lead was listed under Proposition 65 as a chemical known to the
 State to cause cancer and birth defects or other reproductive harm.

3 23. The exposures that are the subject of the Notice result from the purchase, 4 acquisition, handling and recommended use of the Products. The primary route of exposure to the 5 is through dermal absorption directly through the skin when consumers use, touch, or handle the 6 Products. Exposure through ingestion will occur by touching the Products with subsequent 7 touching of the user's hand to mouth. No clear and reasonable warning is provided with the 8 Products regarding the health hazards of exposure.

9 24. Defendants have processed, marketed, distributed, offered to sell and/or sold the
10 Products in California since at least August 19, 2022. The Products continue to be distributed and
11 sold in California without the requisite warning information.

12 25. At all times relevant to this action, Defendants have knowingly and intentionally
13 exposed users and/or consumers of the Products to lead without first giving a clear and reasonable
14 exposure warning to such individuals.

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

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SATISFACTION OF NOTICE REQUIREMNTS

22 27. Plaintiff purchased the Product from Nordstrom. At the time of purchase,
23 Nordstrom and CBC did not provide a Proposition 65 exposure warning for lead or any other
24 Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described
25 *supra*.

28. The Product was sent to a testing laboratory to determine the concentration of lead
present on the surface of the Product.

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

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

8 31. On August 19, 2022, Plaintiff received from the analytical chemist an exposure
9 assessment report which concluded that persons in California who use the Products will be exposed
10 to levels of lead that require a Proposition 65 exposure warning.

32. On August 19, 2022, Plaintiff gave notice of alleged violation of Health and Safety
Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California citizens to
lead contained in the Products without proper warning, subject to a private action to Defendants
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.

33. 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.

34. 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 Defendants under Proposition 65 to enforce the alleged violations which
are the subject of the Notice.

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

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1 **FIRST CAUSE OF ACTION** 2 (By Plaintiff against Defendants for the Violation of Proposition 65) 3 36. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 35 of 4 this Complaint as though fully set forth herein. 5 37. Defendants have, at all times mentioned herein, acted as distributer, and/or retailer 6 of the Product. 7 38. Use of the Products will expose users to lead, a hazardous chemical found on the 8 Proposition 65 list of chemicals known to be hazardous to human health. 9 39. The Product does not comply with the Proposition 65 warning requirements. 40. 10Plaintiff, based on his best information and belief, avers that at all relevant times 11 herein, and at least since August 19, 2022, continuing until the present, that Defendants have 12 continued to knowingly and intentionally expose California users and consumers of the Product to 13 lead without providing required warnings under Proposition 65. 14 41. The exposures that are the subject of the Notice result from the purchase, 15 acquisition, handling and recommended use of the Products. The primary route of exposure to the 16 is through dermal absorption directly through the skin when consumers use, touch, or handle the 17 Products. Exposure through ingestion will occur by touching the Products with subsequent 18 touching of the user's hand to mouth. No clear and reasonable warning is provided with the 19 Products regarding the health hazards of exposure.

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

43. Defendants have knowledge that the normal and reasonably foreseeable use of the
Products exposes individuals to lead, and Defendants intend that exposures to lead will occur by
its deliberate, non-accidental participation in the importation, distribution, sale and offering of the
Products to consumers in California.

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

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1	45. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above		
2	described acts, Defendants are liable for a maximum civil penalty of \$2,500 per day per violation.		
3	46. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically		
4	authorized to grant injunctive relief in favor of Plaintiff and against Defendants.		
5	PRAYER FOR RELIEF		
6	WHEREFORE, Plaintiff demands judgment against Defendants and requests the following		
7	relief:		
8	A. That the court assess civil penalties against each Defendant in the amount of \$2,500		
9	per day for each violation for up to 365 days (up to a maximum civil penalty amount per		
10	violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);		
11	B. That the court preliminarily and permanently enjoin Defendants mandating		
12	Proposition 65 compliant warnings on the Products;		
13	C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the		
14	amount of \$50,000.00.		
15	D. That the court grant any further relief as may be just and proper.		
16	Dated: August 14, 2023 BRODSKY SMITH		
17	By:		
18	Evan J. Smith (SBN242352) Ryan P. Cardona (SBN302113)		
19	9595 Wilshire Boulevard, Suite 900 Beverly Hills, CA 90212		
20	Telephone: (877) 534-2590 Facsimile: (310) 247-0160		
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22	Attorneys for Plaintiff		
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	- 9 - COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF – VIOLATION OF HEALTH & SAFETY CODE §25249.5		