

Evan J. Smith, Esquire (SBN 242352)  
Ryan P. Cardona, Esquire (SBN 302113)  
BRODSKY SMITH  
9465 Wilshire Blvd., Ste. 300  
Beverly Hills, CA 90212  
Telephone: (877) 534-2590  
Facsimile: (310) 247-0160

*Attorneys for Plaintiff*

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

**02/27/2025**  
Clerk of the Court  
BY: JEFFREY FLORES  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO

GABRIEL ESPINOZA,

Plaintiff,

vs.

GIBSON OVERSEAS, INC.,

Defendant.

Case No.: CGC-25-622552

**FIRST AMENDED COMPLAINT FOR CIVIL  
PENALTIES AND INJUNCTIVE RELIEF**

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

Plaintiff Gabriel Espinoza ("Plaintiff"), by and through his 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 first amended 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 (a) *The Pioneer Woman*® sweet romance blossoms double butter dishes, and (b) *The Pioneer Woman*® sweet rose mugs sold and/or distributed by defendant Gibson Overseas, Inc. ("Gibson" or "Defendant") in California.

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 (up to a maximum civil penalty amount per violation of \$912,000.00) to be  
15 imposed upon defendant in a civil action for violations of Proposition 65. Health & Safety Code §  
16 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the actions  
17 of a defendant which “violate or threaten to violate” the statute. 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, (a) *The Pioneer Woman*® sweet romance blossoms double  
20 butter dishes, and (b) *The Pioneer Woman*® sweet rose mugs (collectively, the “Products” and  
21 each a “Product”) that expose persons to lead when used for their intended purpose.

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

26          8.       Plaintiff seeks civil penalties against Defendant for its violations of Proposition 65  
27 in accordance with Health and Safety Code § 25249.7(b).  
28

9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring Defendant 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).

## PARTIES

12. Defendant Gibson Overseas, 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 Gibson Overseas, 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

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

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/or 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  
first giving clear and reasonable warning to such individual...

15 18. An exposure to a chemical in a consumer product is one “which results from a  
16 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a  
17 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §  
18 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...  
19 shall provide a warning to any person to whom the product is sold or transferred unless the product  
20 is packaged or labeled with a clear and reasonable warning.”

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

23 a. A warning that appears on a product’s label or other labeling.  
24  
25

---

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 of the user's hand to mouth. No clear and reasonable warning is provided with the Products  
2 regarding the health hazards of exposure.

3 23. Defendant has processed, marketed, distributed, offered to sell and/or sold the  
4 Products in California since at least January 30, 2024. The Products continue to be distributed and  
5 sold in California without the requisite warning information.

6 24. At all times relevant to this action, Defendant has knowingly and intentionally  
7 exposed users and/or consumers of the Products to lead without first giving a clear and reasonable  
8 exposure warning to such individuals.

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

15 **SATISFACTION OF NOTICE REQUIREMENTS**

16 26. Plaintiff purchased the Products from Walmart Inc. in California. At the time of  
17 purchase, Defendant did not provide a Proposition 65 exposure warning for lead or any other  
18 Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described  
19 *supra*.

20 27. The Products were sent to a testing laboratory to determine if, and what amount of,  
21 lead would migrate and/or leach from the Products.

22 28. The laboratory provided the results of its analysis. Results of this test determined  
23 the Products expose users to lead (the "Chemical Test Report").

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

30. On January 30, 2024, Plaintiff received from the analytical chemist an exposure assessment report which concluded that persons in California who use the Products will be exposed to levels of lead that require a Proposition 65 exposure warning.

31. On January 30, 2024, Plaintiff gave notice of alleged violation of Health and Safety Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California citizens to lead contained in 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.

32. 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.

33. 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.

34. 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)**

35. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 34 of this First Amended Complaint as though fully set forth herein.

36. Defendant have, at all times mentioned herein, acted as distributor, and/or retailer of the Product.

37. Use of the Products will exposed users to lead, a hazardous chemical found on the Proposition 65 list of chemicals known to be hazardous to human health.

1           38.     The Product does not comply with the Proposition 65 warning requirements.

2           39.     Plaintiff, based on his best information and belief, avers that at all relevant times  
3 herein, and at least since January 30, 2024, continuing until the present, that Defendant has  
4 continued to knowingly and intentionally expose California users and consumers of the Product to  
5 lead without providing required warnings under Proposition 65.

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

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

15          42.     Defendant has knowledge that the normal and reasonably foreseeable use of the  
16 Products exposes individuals to lead, and Defendant intends that exposures to lead will occur by  
17 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the  
18 Products to consumers in California

19          43.     Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
20 First Amended Complaint.

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

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



1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against Defendant and requests the following  
3 relief:

4 A. That the court assess civil penalties against Defendant in the amount of \$2,500 per  
5 day for each violation for up to 365 days (up to a maximum civil penalty amount per  
6 violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);

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

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

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

12 Dated: February 27, 2025

BRODSKY SMITH

13 By: 

14 Evan J. Smith (SBN242352)

15 Ryan P. Cardona (SBN302113)

16 9465 Wilshire Boulevard, Suite 300

17 Beverly Hills, CA 90212

18 Telephone: (877) 534-2590

19 Facsimile: (310) 247-0160

20 *Attorneys for Plaintiff*