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

**01/14/2025**  
Clerk of the Court  
BY: SAHAR ENAYATI  
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 vs.

14 GOLDEN RABBIT HOME, LLC, THE  
15 HOME DEPOT, INC., NEW HOME  
16 DEPOT PRODUCT AUTHORITY, LLC,  
17 HOME DEPOT PRODUCT  
18 AUTHORITY, LLC,

19 Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

**CGC-25-621423**

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

20 Plaintiff Gabriel Espinoza (“Plaintiff”), by and through his attorneys, alleges the following  
21 cause of action in the public interest of the citizens of the State of California.

22 **BACKGROUND OF THE CASE**

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

29 2. This complaint is a representative action brought by Plaintiff in the public interest  
30 of the citizens of the State of California to enforce the People’s right to be informed of the health  
31 hazards caused by exposure to lead, a toxic chemical found in Golden Rabbit stars & stripes mugs  
32 sold and/or distributed by defendants Golden Rabbit Home, LLC, The Home Depot, Inc., New

1 Home Depot Product Authority, LLC, and Home Depot Product Authority, LLC (collectively,  
2 “Defendants” and each a “Defendant”) in California.

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 (up to a maximum civil penalty amount per violation of \$912,000.00) to be  
17 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code  
18 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the  
19 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §  
20 25249.7.

21 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,  
22 without a requisite exposure warning, Golden Rabbit stars & stripes mugs (the “Products”) that  
23 expose persons to lead when used for their intended purpose.

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

1 8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition  
2 65 in accordance with Health and Safety Code § 25249.7(b).

3 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
4 Defendants to provide purchasers or users of the Products with required warnings related to the  
5 dangers and health hazards associated with exposure to lead pursuant to Health and Safety Code §  
6 25249.7(a).

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

8 **PARTIES**

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

13 12. Defendant Golden Rabbit Home, LLC, through its business, effectively imports,  
14 distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies  
15 by its conduct that it imports, distributes, sells, and/or offers the Products for sale or use in the  
16 State of California. Plaintiff alleges that defendant Golden Rabbit Home, LLC is a “person” in the  
17 course of doing business within the meaning of Health & Safety Code sections 25249.6 and  
18 25249.11.

19 13. Defendant The Home Depot, Inc., through its business, effectively imports,  
20 distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies  
21 by its conduct that it imports, distributes, sells, and/or offers the Products for sale or use in the  
22 State of California. Plaintiff alleges that defendant The Home Depot, Inc. is a “person” in the  
23 course of doing business within the meaning of Health & Safety Code sections 25249.6 and  
24 25249.11.

25 14. Defendant New Home Depot Product Authority, LLC, through its business,  
26 effectively imports, distributes, sells, and/or offers the Products for sale or use in the State of  
27 California, or it implies by its conduct that it imports, distributes, sells, and/or offers the Products  
28 for sale or use in the State of California. Plaintiff alleges that defendant New Home Depot Product

1 Authority, LLC is a “person” in the course of doing business within the meaning of Health &  
2 Safety Code sections 25249.6 and 25249.11.

3 15. Defendant Home Depot Product Authority, LLC, through its business, effectively  
4 imports, distributes, sells, and/or offers the Products for sale or use in the State of California, or it  
5 implies by its conduct that it imports, distributes, sells, and/or offers the Products for sale or use  
6 in the State of California. Plaintiff alleges that defendant Home Depot Product Authority, LLC is  
7 a “person” in the course of doing business within the meaning of Health & Safety Code sections  
8 25249.6 and 25249.11.

### 9 VENUE AND JURISDICTION

10 16. Venue is proper in the County of San Francisco because one or more of the  
11 instances of wrongful conduct occurred, and continue to occur in this county and/or because  
12 Defendants conducted, and continue to conduct, business in the County of San Francisco with  
13 respect to the Products.

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

19 18. This Court has jurisdiction over Defendants because each Defendant is either a  
20 citizen of the State of California, has sufficient minimum contacts with the State of California, is  
21 registered with the California Secretary of State as foreign corporations authorized to do business  
22 in the State of California, and/or has otherwise purposefully availed itself of the California market.  
23 Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent  
24 and permissible with traditional notions of fair play and substantial justice.

### 25 STATUTORY BACKGROUND

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

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

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

8           21.     An exposure to a chemical in a consumer product is one “which results from a  
9 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a  
10 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §  
11 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...  
12 shall provide a warning to any person to whom the product is sold or transferred unless the product  
13 is packaged or labeled with a clear and reasonable warning.”

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

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

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

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

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

3 23. Proposition 65 provides that any “person who violates or threatens to violate” the  
4 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase  
5 “threaten to violate” is defined to mean creating “a condition in which there is a substantial  
6 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil  
7 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to  
8 365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

9 **FACTUAL BACKGROUND**

10 24. On October 1, 1992, the state of California listed lead as a chemical known to cause  
11 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code  
12 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). On February 27,  
13 1987, the State of California listed lead as a chemical known to cause birth defects or other  
14 reproductive harm. In summary, lead was listed under Proposition 65 as a chemical known to the  
15 State to cause cancer and birth defects or other reproductive harm.

16 25. The exposures that are the subject of the Notice result from the purchase,  
17 acquisition, handling and recommended use of the Product. The primary route of exposure to the  
18 is through dermal absorption directly through the skin when consumers use, touch, or handle the  
19 Products. Exposure through ingestion will occur by touching the Product with subsequent touching  
20 of the user’s hand to mouth. No clear and reasonable warning is provided with the Products  
21 regarding the health hazards of exposure.

22 26. Defendants have processed, marketed, distributed, offered to sell and/or sold the  
23 Products in California since at least July 23, 2024. The Products continue to be distributed and  
24 sold in California without the requisite warning information.

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



1 City Attorneys for each city with a population greater than 750,000 persons wherein the herein  
2 violations allegedly occurred.

3 35. The Notice complied with all procedural requirements of Proposition 65 including  
4 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at  
5 least one person with relevant and appropriate expertise who reviewed relevant data regarding lead  
6 exposure, and that counsel believed there was meritorious and reasonable cause for a private  
7 action.

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

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

14 **FIRST CAUSE OF ACTION**

15 **(By Plaintiff against Defendants for the Violation of Proposition 65)**

16 38. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 37 of  
17 this Complaint as though fully set forth herein.

18 39. Defendants have, at all times mentioned herein, acted as distributor, and/or retailer  
19 of the Product.

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

22 41. The Product does not comply with the Proposition 65 warning requirements.

23 42. Plaintiff, based on his best information and belief, avers that at all relevant times  
24 herein, and at least since July 23, 2024, continuing until the present, that Defendants have  
25 continued to knowingly and intentionally expose California users and consumers of the Product to  
26 lead without providing required warnings under Proposition 65.

27 43. The exposures that are the subject of the Notice result from the purchase,  
28 acquisition, handling and recommended use of the Product. The primary route of exposure to the



1 is through dermal absorption directly through the skin when consumers use, touch, or handle the  
2 Products. Exposure through ingestion will occur by touching the Product with subsequent touching  
3 of the user's hand to mouth. No clear and reasonable warning is provided with the Products  
4 regarding the health hazards of exposure.

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

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

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

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

17 48. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically  
18 authorized to grant injunctive relief in favor of Plaintiff and against Defendants.

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1 **PRAYER FOR RELIEF**

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

- 4 A. That the court assess civil penalties against each Defendant in the amount of \$2,500  
5 per 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 Defendants 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: January 14, 2025

BRODSKY SMITH

13 By: 

14 \_\_\_\_\_  
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