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8 *Attorneys for Plaintiff*

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

05/27/2025
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

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

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 vs.

14 GIBSON OVERSEAS, INC.,

15 Defendant.

Case No.: CGC-25-622552

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

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

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

18 **BACKGROUND OF THE CASE**

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

25 2. This second amended complaint is a representative action brought by Plaintiff in
26 the public interest of the citizens of the State of California to enforce the People’s right to be
27 informed of the health hazards caused by exposure to lead, a toxic chemical found in (a) *The*
28 *Pioneer Woman*® sweet romance blossoms double butter dishes, (b) *The Pioneer Woman*® sweet
rose mugs, and (c) Wanda June Home Game On 18oz. stoneware camper 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, (b) *The Pioneer Woman*® sweet rose mugs, and (c) Wanda June Home Game On
21 18oz. stoneware camper mugs (collectively, the “Products” and each a “Product”) that expose
22 persons to lead when used for their intended purpose.

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

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

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
15 first giving clear and reasonable warning to such individual...

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

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

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

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 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 with respect to *The Pioneer Woman*® sweet
5 romance blossoms double butter dishes and *The Pioneer Woman*® sweet rose mugs; and since at
6 least August 23, 2024 with respect to the Wanda June Home Game On 18oz. stoneware camper
7 mugs. The Products continue to be distributed and sold in California without the requisite warning
8 information.

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

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

18 **SATISFACTION OF NOTICE REQUIREMENTS**

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

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

25 28. The laboratory provided the results of its analysis. Results of this test determined
26 the Products expose users to lead (the “Chemical Test Report”).

27 29. Plaintiff provided the Chemical Test Report and Product to an analytical chemist
28 to determine if, based on the findings of the Chemical Test Report and the reasonable and

1 foreseeable use of the Product, exposure to lead will occur at levels that require Proposition 65
2 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California
3 Code of Regulations.

4 30. On January 30, 2024 (*The Pioneer Woman*® sweet romance blossoms double butter
5 dishes and *The Pioneer Woman*® sweet rose mugs) and August 23, 2024 (Wanda June Home
6 Game On 18oz. stoneware camper mugs), Plaintiff received from the analytical chemist an
7 exposure assessment report which concluded that persons in California who use the Products will
8 be exposed to levels of lead that require a Proposition 65 exposure warning.

9 31. On January 30, 2024 (*The Pioneer Woman*® sweet romance blossoms double butter
10 dishes and *The Pioneer Woman*® sweet rose mugs) and August 23, 2024 (Wanda June Home
11 Game On 18oz. stoneware camper mugs), Plaintiff gave notice of alleged violation of Health and
12 Safety Code § 25249.6 (collectively, the “Notices” and each a “Notice”) to Defendant concerning
13 the exposure of California citizens to lead contained in the Products without proper warning,
14 subject to a private action to Defendant and to the California Attorney General’s office and the
15 offices of the County District attorneys and City Attorneys for each city with a population greater
16 than 750,000 persons wherein the herein violations allegedly occurred. See attached at Exhibits
17 “A” – “B” a true and correct copy of each Notice.

18 32. The Notices complied with all procedural requirements of Proposition 65 including
19 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at
20 least one person with relevant and appropriate expertise who reviewed relevant data regarding lead
21 exposure, and that counsel believed there was meritorious and reasonable cause for a private
22 action.

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

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

1 **FIRST CAUSE OF ACTION**

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

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

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

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

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

10 39. Plaintiff, based on his best information and belief, avers that at all relevant times
11 herein, and since at least January 30, 2024 with respect to *The Pioneer Woman*® sweet romance
12 blossoms double butter dishes and *The Pioneer Woman*® sweet rose mugs; and since at least
13 August 23, 2024 with respect to the Wanda June Home Game On 18oz. stoneware camper mugs,
14 continuing until the present, that Defendant has continued to knowingly and intentionally expose
15 California users and consumers of the Product to lead without providing required warnings under
16 Proposition 65.

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

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

26 42. Defendant has knowledge that the normal and reasonably foreseeable use of the
27 Products exposes individuals to lead, and Defendant intends that exposures to lead will occur by
28

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

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

5 44. 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 45. 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 (up to a maximum civil penalty amount per
14 violation of \$912,000.00) in accordance with Health and Safety Code § 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: May 27, 2025

BRODSKY SMITH

21 By: 

22 Evan J. Smith (SBN242352)
23 Ryan P. Cardona (SBN302113)
24 9465 Wilshire Boulevard, Suite 300
25 Beverly Hills, CA 90212
26 Telephone: (877) 534-2590
27 Facsimile: (310) 247-0160

28 *Attorneys for Plaintiff*

EXHIBIT "A"

LAW OFFICES
BRODSKY SMITH

9595 WILSHIRE BLVD., STE. 900
BEVERLY HILLS, CA 90212
877.534.2590
www.brodskysmith.com

NEW JERSEY OFFICE
1310 NORTH KINGS HIGHWAY
CHERRY HILL, NJ 08934
856.795.7250

NEW YORK OFFICE
240 MINEOLA BOULEVARD
MINEOLA, NY 11501
516.741.4977

PENNSYLVANIA OFFICE
TWO BALA PLAZA, STE. 805
BALA CYNWYD, PA 19004
610.667.6200

January 30, 2024

President/CEO Gibson Overseas, Inc. c/o Soleiman Gabbay 2410 Yates Ave. Commerce, CA 90040	Member/Manager The Pioneer Woman, L.L.C. c/o Ann-Marie Drummond 1530 CR 4300 Pawhuska, OK 74056
President/CEO Walmart, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	President/CEO Walmart, Inc. c/o CT Corporation System 330 N. Brand Blvd., Suite 700 Glendale, CA 91203

60-Day Notice of Violation of California Safe Drinking Water and Toxic Enforcement Act¹

To Whom It May Concern:

This Notice of Violation (the "Notice") is provided to you pursuant to and in compliance with California Health & Safety Code § 25249.7(d).

Brodsky Smith represents Gabriel Espinoza ("Espinoza"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals from use of consumer products sold in California and to improve human health and the environment by reducing hazardous substances.

With respect to the Product herein, Espinoza has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") codified at Cal. Health & Safety Code § 25249.5, et seq. This violation has occurred and continues to occur because the alleged Violator(s) failed to provide a clear and reasonable health hazard warning in connection with the sale or use of the Product in California. Health & Safety Code § 25249.6 provides that "[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 providing a clear and reasonable warning to such individual ..." Without proper warnings regarding the toxic effects of exposures to the Listed Chemical resulting from use of the Product, California citizens lack the information necessary to make informed decisions on whether and/or how to eliminate (or reduce) the risk of exposure to the Listed Chemical from the reasonably foreseeable use of the Product.

¹ The public enforcement agencies that have been served with copies of this Notice are identified in the attached distribution list accompanying the Certificate of Service.

I. DESCRIPTION OF THE VIOLATION

1. **Enforcer:** Gabriel Espinoza, 3924 Carlin Ave., Lynwood, CA 90262-5204; (Ph) 310.863.2852.
2. **Alleged Violator(s):** Gibson Overseas, Inc.; The Pioneer Woman, LLC; Walmart, Inc.
3. **Time Period of Exposure:** Violations have been occurring since at least January 30, 2024 and are continuing to this day.
4. **Listed Chemical:** Lead. Lead is listed under Proposition 65 as a chemical known to the State to cause cancer and birth defects or other reproductive harm.
5. **Products:**

Product ²	Non- Exclusive Examples of the Product
Butter Dish	Pioneer Woman Sweet Romance Blossoms Double Butter Dish UPC# 085081443250
Mug	Pioneer Woman Sweet Rose Mug UPC# 085081056702

6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

II. PROPOSITION 65 INFORMATION

For the Violators' reference, enclosed is a copy of "Proposition 65: A Summary" that has been prepared by the Office of Environmental Health Hazard Assessment ("OEHHA"). For more information concerning the provisions of Proposition 65, contact OEHHA at 916.445.6900.

III. RESOLUTION OF THE CLAIMS

Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Espinoza against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have

² The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Espinoza's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

these violations of California law quickly rectified, Espinoza is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

Espinoza has retained me as legal counsel in connection with this Notice. Please direct all communications regarding this Notice to my attention at Brodsky Smith, 9595 Wilshire Blvd., Ste. 900, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.

Sincerely,



Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

EXHIBIT “B”

LAW OFFICES
BRODSKY SMITH

9465 WILSHIRE BLVD., STE. 300
BEVERLY HILLS, CA 90212
877.534.2590
www.brodskysmith.com

NEW JERSEY OFFICE
20 BRACE RD., STE. 350
CHERRY HILL, NJ 08034
856.795.7250

NEW YORK OFFICE
240 MINEOLA BOULEVARD
MINEOLA, NY 11501
516.741.4977

PENNSYLVANIA OFFICE
TWO BALA PLAZA, STE. 805
BALA CYNWYD, PA. 19004
610.667.6200

August 23, 2024

President/CEO Walmart, Inc. c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	President/CEO Walmart, Inc. c/o CT Corporation System 330 N. Brand Blvd., Suite 700 Glendale, C 91203
President/CEO Gibson Overscas, Inc. c/o Soleiman Gabbay 2410 Yates Ave., Commerce, CA 90040	

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I. DESCRIPTION OF THE VIOLATION

- 1. **Enforcer:** Gabriel Espinoza, 3924 Carlin Ave., Lynwood, CA 90262-5204; (Ph) 310.863.2852.
- 2. **Alleged Violator(s):** Walmart, Inc.; Gibson Overseas, Inc.
- 3. **Time Period of Exposure:** Violations have been occurring since at least August 23, 2024 and are continuing to this day.
- 4. **Listed Chemical:** Lead. Lead is listed under Proposition 65 as a chemical known to the State to cause cancer and birth defects or other reproductive harm.
- 5. **Product:**

Product ²	Non- Exclusive Examples of the Product
Mug	Wanda June Home Game On 18oz. Stoneware Camper Mug UPC# 000 85081 56208 1

- 6. **Description of Exposure:** The exposures that are the subject of this Notice result from the purchase, acquisition, handling and recommended use of the Product. The primary route of exposure to the Listed Chemical is through dermal absorption directly through the skin when consumers use, touch, or handle the Products. Some amount of exposure through ingestion can occur by touching the Product with subsequent touching of the user's hand to mouth. No clear and reasonable warning is provided with the Products regarding the health hazards of exposure to the Listed Chemical.

II. PROPOSITION 65 INFORMATION

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Based on the allegations set forth in this Notice, Brodsky Smith intends to file a citizen enforcement lawsuit on behalf of Espinoza against the alleged Violator(s) unless such Violator(s) agree in a binding written agreement to: (1) recall Products already sold; (2) provide Proposition 65 compliant exposure warnings for Products sold in the future or reformulate the Products to eliminate exposures to the Listed Chemical; and (3) pay an appropriate civil penalty based on the factors enumerated in Health & Safety Code § 25249.7(b). Consistent with the public interest goals of Proposition 65 and the desire to have these violations of California law quickly rectified, Espinoza is interested in seeking a constructive resolution of the claims in this Notice without engaging in costly and protracted litigation.

² The specifically identified example of the Product in this Notice is to assist the recipients' investigation of, among other things, the magnitude of potential exposures to the Listed Chemical from other items within the definition of Products. This example is not intended to be an exhaustive or comprehensive identification of each specific offending Product. It is Espinoza's position that the alleged Violators are obligated to conduct a good faith investigation into other Products that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violators' custody or control) during the relevant period to ensure that requisite health hazard warnings were and are provided to California citizens prior to purchase and use.

Espinoza has retained me as legal counsel in connection with this Notice. Please direct all communications regarding this Notice to my attention at Brodsky Smith, 9465 Wilshire Blvd., Ste. 300, Beverly Hills, CA 90212, (877) 534-2590, esmith@brodskysmith.com.

Sincerely,

A handwritten signature in black ink, appearing to be 'Evan J. Smith', written over a horizontal line.

Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary