

1 Evan J. Smith, Esquire (SBN 242352)
2 Ryan P. Cardona, Esquire (SBN 302113)
3 BRODSKY SMITH
4 9465 Wilshire Blvd., Ste. 300
5 Beverly Hills, CA 90212
6 Telephone: (877) 534-2590
7 Facsimile: (310) 247-0160

8 *Attorneys for Plaintiff*

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

02/24/2026
Clerk of the Court
BY: ERNALYN BURA
Deputy Clerk

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

CGC-26-634282

11 GABRIEL ESPINOZA,

12 Plaintiff,

13 vs.

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

16 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

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

19 **BACKGROUND OF THE CASE**

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

26 2. This complaint is a representative action brought by Plaintiff in the public interest
27 of the citizens of the State of California to enforce the People's right to be informed of the health
28 hazards caused by exposure to lead, a toxic chemical found in *The Bomb Co.*™ glow-getter aloe
and Irish sea moss bombs, UPC # 856990008683 sold, and/or distributed by defendant Mrs.

1 Gooch's Natural Food Markets, Inc. ("Whole Foods" or "Defendant") in California and
2 manufactured, sold, and/or distributed by Bomb IP, LLC.

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 to be imposed upon defendants in a civil action for violations of Proposition 65.
17 Health & Safety Code § 25249.7(b). Proposition 65 also allows for any court of competent
18 jurisdiction to enjoin the actions of a defendant which "violate or threaten to violate" the statute.
19 Health & Safety Code § 25249.7.

20 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,
21 without a requisite exposure warning, *The Bomb Co.*™ glow-getter aloe and Irish sea moss bomb,
22 UPC # 856990008683 (the "Products") that expose persons to lead when consumed for their
23 intended purpose.

24 7. Defendant's 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 Product is a violation of Proposition 65 and subjects Defendant to the enjoinder and civil
27 penalties described herein.

1 19. An exposure to a chemical in a consumer product is one “which results from a
2 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
3 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
4 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
5 shall provide a warning to any person to whom the product is sold or transferred unless the product
6 is packaged or labeled with a clear and reasonable warning.”

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

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

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

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

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

20 21. Proposition 65 provides that any “person who violates or threatens to violate” the
21 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
22 “threaten to violate” is defined to mean creating “a condition in which there is a substantial
23 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil
24
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 penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
2 365 days.

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

17 **FACTUAL BACKGROUND**

18 23. Lead is a harmful chemical known to the State of California to cause cancer and
19 birth defects or other reproductive harm. On October 1, 1992, the state of California listed lead as
20 a chemical known to cause cancer and it has come under the purview of Proposition 65 regulations
21 since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
22 25249.10(b). On February 27, 1987, the State of California listed lead as a chemical known to
23 cause birth defects or other reproductive harm.

24 24. On April 14, 2025, Plaintiff purchased the Product from Defendant. At the time of
25 the purchase, Defendant did not provide a clear and reasonable exposure warning pursuant to Cal.
26 Code Regs. Tit. 27, § 25602.

27 25. On July 2, 2025, Plaintiff served notice of alleged violation of Health and Safety
28 Code § 25249.6 (the “Notice”) to Defendant concerning the exposure of California citizens to lead

1 from consumption of the Products without proper warning, subject to a private action to Defendant
2 and to the California Attorney General's office and the offices of the County District attorneys and
3 City Attorneys for each city with a population greater than 750,000 persons wherein the herein
4 violations allegedly occurred. The exposures that are the subject of the Notice result from the
5 purchase, acquisition, handling and recommended consumption of the Product. The primary route
6 of exposure to lead is through ingestion. When foods contaminated with lead are consumed,
7 ingestion of lead will occur which will increase blood lead levels. No clear and reasonable warning
8 is provided with the Products regarding the health hazards of exposure.

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

12 27. Defendant has sold the Product under a brand or trademark that is owned or licensed
13 by Defendant or an affiliated entity; and/or Defendant has knowingly introduced lead into the
14 Product, or knowingly caused lead to be created in the Product; and/or Defendant has covered,
15 obscured or altered a warning label that has been affixed to the Product pursuant to § 25600.2(b);
16 and/or Defendant has received a notice and warning materials for the exposure pursuant to §
17 25600.2(b)-(c) and Defendant has sold the product without conspicuously posting or displaying
18 the warning; and/or Defendant has actual knowledge of the potential consumer product exposure
19 requiring the warning, and there is no manufacturer, producer, packager, importer, supplier, or
20 distributor of the Product who: (i) is a "person in the course of doing business under § 25249.11(b)
21 of the Act, and (ii) has designated an agent for service of process in California, or has a place of
22 business in California.

23 28. At all times relevant to this action, Defendant has knowingly and intentionally
24 exposed consumers of the Products to lead without first giving a clear and reasonable exposure
25 warning to such individuals. More than five business days after receipt of the Notice of Violation,
26 Defendant continued to distribute, sell, and/or offer to and sell in California without the requisite
27 warning information.

1 43. The Notice gives Defendant actual knowledge of the potential consumer product
2 exposure requiring the warning pursuant to Cal. Code Regs, Tit. 27, § 25600.2. Consumption of
3 the Products will expose users and consumers thereof to lead, a hazardous chemical found on the
4 Proposition 65 list of chemicals known to be hazardous to human health.

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

6 45. Plaintiff, based on his best information and belief, avers that at all relevant times
7 herein, and at least since July 2, 2025, continuing until the present, that Defendant has continued
8 to knowingly and intentionally expose California users and consumers of the Products to lead
9 without providing required warnings under Proposition 65.

10 46. Defendant continues to sell the Product under a brand or trademark that is owned
11 or licensed by Defendant or an affiliated entity; and/or Defendant has knowingly introduced lead
12 into the Product, or knowingly caused lead to be created in the Product; and/or Defendant has
13 covered, obscured or altered a warning label that has been affixed to the Product pursuant to §
14 25600.2(b); and/or Defendant has received a notice and warning materials for the exposure
15 pursuant to § 25600.2(b)-(c) and Defendant has sold the product without conspicuously posting or
16 displaying the warning; and/or Defendant has actual knowledge of the potential consumer product
17 exposure requiring the warning, and there is no manufacturer, producer, packager, importer,
18 supplier, or distributor of the Product who: (i) is a “person in the course of doing business under §
19 25249.11(b) of the Act, and (ii) has designated an agent for service of process in California, or has
20 a place of business in California

21 47. On August 18, 2025, more than five business days after Defendant received the
22 Notice, Plaintiff purchased the Product from Defendant. At the time of purchase, Defendant did
23 not provide a Proposition 65 compliant exposure warning.

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

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

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

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

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

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

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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 in accordance with Health and Safety Code §
6 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 24, 2026

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

Attorneys for Plaintiff