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ELECTRONICALLY
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Superior Court of California,
County of San Francisco

04/27/2026
Clerk of the Court
BY: AUSTIN LAM
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

9 GABRIEL ESPINOZA,

10 Plaintiff,

11 vs.

12 ACE HARDWARE CORPORATION.,

13 Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**

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

CGC-26-636268

14 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.

16 **BACKGROUND OF THE CASE**

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

23 2. This complaint is a representative action brought by Plaintiff in the public interest
24 of the citizens of the State of California to enforce the People’s right to be informed of the health
25 hazards caused by exposure to lead, a toxic chemical found in ceramic mugs with exterior
26 decorations and/or designs that are distributed by Trouvaille Global Ltd. for sale in California by
27 Ace Hardware Corporation (“Ace” or “Defendant”).
28

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 defendants 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
17 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
18 25249.7.

19 6. Plaintiff alleges that Defendant distributes and/or offers for sale in California,
20 without a requisite exposure warning, ceramic mugs with exterior decorations and/or designs that
21 are distributed by Trouvaille Global Ltd. for sale in California by Ace (the “Products”) 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 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has
2 jurisdiction over this lawsuit.

3 15. This Court has jurisdiction over Defendant because Defendant is either a citizen of
4 the State of California, has sufficient minimum contacts with the State of California, is registered
5 with the California Secretary of State as foreign corporations authorized to do business in the State
6 of California, and/or has otherwise purposefully availed itself of the California market. Such
7 purposeful availment has rendered the exercise of jurisdiction by California courts consistent and
8 permissible with traditional notions of fair play and substantial justice. Public policy further
9 supports this conclusion.

10 STATUTORY BACKGROUND

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

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

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

21 18. An exposure to a chemical in a consumer product is one “which results from a
22 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
23 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §
24 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...
25 shall provide a warning to any person to whom the product is sold or transferred unless the product
26 is packaged or labeled with a clear and reasonable warning.”
27
28

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

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

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

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

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

14 20. Proposition 65 provides that any “person who violates or threatens to violate” the
15 statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
16 “threaten to violate” is defined to mean creating “a condition in which there is a substantial
17 probability that a violation will occur.” (H&S Code § 25249.11(e).) Violators are liable for civil
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).

20 **FACTUAL BACKGROUND**

21 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,
24 1987, the State of California listed lead as a chemical known to cause birth defects or other
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 reproductive harm. In summary, lead was listed under Proposition 65 as a chemical known to the
2 State to cause cancer and birth defects or other reproductive harm.

3 22. The exposures that are the subject of the Notice result from the purchase,
4 acquisition, handling and recommended use of the Product. The primary route of exposure to lead
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 Product with subsequent touching
7 of the user's hand to mouth. No clear and reasonable warning is provided with the Products
8 regarding the health hazards of exposure.

9 23. Defendants have manufactured, processed, marketed, distributed, offered to sell
10 and/or sold the Products in California since at least September 9, 2025. Upon information and
11 belief, the Products are consistently in the stream of commerce and available to consumers for
12 purchase in the City and County of San Francisco and the alleged Proposition 65 violations
13 necessarily occurred here. The Products continue to be distributed, offered for sale and/or sold in
14 California without the requisite warning information.

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

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

24 **SATISFACTION OF NOTICE REQUIREMENTS**

25 26. On September 9, 2025, Plaintiff purchased the Product from Ace. At the time of
26 purchase, Defendant did not provide a Proposition 65 exposure warning for lead or any other
27 Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as described
28 *supra*.

1 27. On October 8, 2025, the Product was sent to a testing laboratory to determine if,
2 and what amount of, lead would migrate and/or leach from the Products.

3 28. On October 10, 2025, the laboratory provided the results of its analysis. Results of
4 this test determined the Product exposes users to lead (the “Chemical Test Report”).

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

10 30. On October 27, 2025, Plaintiff received from the analytical chemist an exposure
11 assessment report which concluded that persons in California who use the Products will be exposed
12 to levels of lead that require a Proposition 65 exposure warning.

13 31. On October 27, 2025, Plaintiff gave notice of alleged violation of Health and Safety
14 Code § 25249.6 (the “Notice”) to Defendants concerning the exposure of California citizens to
15 lead contained in the Products without proper warning, subject to a private action to Defendant
16 and to the California Attorney General’s office and the offices of the County District attorneys and
17 City Attorneys for each city with a population greater than 750,000 persons wherein the herein
18 violations allegedly occurred.

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

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

1 43. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this
2 Complaint.

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

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

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff demands judgment against Defendant and requests the following
9 relief:

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

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

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

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

18 Dated: April 27, 2026

BRODSKY SMITH

19 By:  _____

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