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10 Attorneys for Plaintiff  
11 DENNIS JOHNSON

12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 CITY AND COUNTY OF SANTA CLARA  
15 UNLIMITED CIVIL JURISDICTION

16 DENNIS JOHNSON,

17 Plaintiff,

18 v.

19 HOME ESSENTIALS & BEYOND, INC.;  
20 KIRKLAND'S, INC.; and DOES 1-150,  
21 inclusive,

22 Defendants.

Case No. 20CV370737

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by Plaintiff DENNIS JOHNSON in  
3 the public interest of the citizens of the State of California to enforce the People’s right to be  
4 informed of the health hazards caused by exposures to lead, a toxic chemical found on ceramic  
5 Spoon Rest with decorations sold by defendants in California.

6 2. By this Complaint, Plaintiff seeks to remedy defendants’ continuing failure to warn  
7 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 et seq.,  
8 who purchase, use or handle defendants’ products, about the risks of exposure to lead present in the  
9 decorations affixed to the surface of ceramic spoon rests that defendants manufacture, distribute and  
10 offer for sale or use throughout the State of California. Individuals not covered by California’s  
11 Occupational Safety Health Act, Labor Code § 6300 et seq., who purchase, use or handle  
12 defendants’ products, are referred to hereinafter as “consumers.”

13 3. Detectable levels of lead are found on the surface of ceramic spoon rests with  
14 decorations that defendants manufacture, distribute, and offer for sale to consumers throughout the  
15 State of California.

16 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
17 Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of doing  
18 business shall knowingly and intentionally expose any individual to a chemical known to the state to  
19 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such  
20 individual... .” Health & Safety Code § 25249.6.

21 5. Pursuant to Proposition 65, on February 27, 1987, California listed lead as a chemical  
22 known to cause birth defects and other reproductive harm. Lead became subject to the “clear and  
23 reasonable warning” requirements of the act one year later, on February 27, 1988. Cal. Code Regs.  
24 tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

25 6. Defendants manufacture, distribute, import, sell, and/or offer for sale without health  
26 hazard warnings in California, ceramic spoon rests with decorations containing lead including, but  
27 not limited to the, “*Molly Hatch Spoon Rest*”, UPC/SKU 26-198733”. All such ceramic spoon rests  
28 with exterior decorations are referred to collectively hereinafter as “PRODUCTS.”



1           15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a person in  
2 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and  
3 25249.11.

4           16. MANUFACTURER DEFENDANTS, and each of them, research, test, design,  
5 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests, designs,  
6 assembles, fabricates, and manufactures one or more of the PRODUCTS offered for sale or use in  
7 California.

8           17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person in  
9 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and  
10 25249.11.

11           18. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange, transfer,  
12 process, and transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale  
13 or use in the State of California, or each implies by its conduct that it distributes, exchanges,  
14 transfers, processes, and transports one or more of the PRODUCTS to individuals, businesses, or  
15 retailers for sale or use in the State of California.

16           19. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in the  
17 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

18           20. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to  
19 individuals in the State of California.

20           21. At this time, the true names of defendants DOES 1 through 150, inclusive, are  
21 unknown to Plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to Code  
22 of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that each of  
23 the fictitiously named defendants is responsible for the acts and occurrences alleged herein. When  
24 ascertained, their true names shall be reflected in an amended complaint.

25           22. HOME ESSENTIALS, KIRKLAND’S, MANUFACTURER DEFENDANTS,  
26 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where  
27 appropriate, be referred to collectively as the “DEFENDANTS.”  
28

1 VENUE AND JURISDICTION

2 23. Venue is proper in the Superior Court for the County of Santa Clara, pursuant to Code  
3 of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
4 because Plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of  
5 wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS  
6 conducted, and continue to conduct, business in Santa Clara county with respect to the PRODUCTS.

7 24. The California Superior Court has jurisdiction over this action pursuant to California  
8 Constitution Article VI, section 10, which grants the Superior Court “original jurisdiction in all  
9 causes except those given by statute to other trial courts.” The statute under which this action is  
10 brought does not specify any other basis of subject matter jurisdiction.

11 25. The California Superior Court has jurisdiction over DEFENDANTS based on  
12 Plaintiff’s information and good faith belief that each of the DEFENDANTS are a person, firm,  
13 corporation or association that is a citizen of the State of California, has sufficient minimum contacts  
14 in the State of California, and/or otherwise purposefully avails itself of the California market.  
15 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by California  
16 courts consistent with traditional notions of fair play and substantial justice.

17 FIRST CAUSE OF ACTION

18 **(Violation of Proposition 65 - Against All Defendants)**

19 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs  
20 1 through 25, inclusive.

21 27. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic  
22 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be informed  
23 about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.”

24 28. Proposition 65 states, “[n]o person in the course of doing business shall knowingly and  
25 intentionally expose any individual to a chemical known to the state to cause cancer or reproductive  
26 toxicity without first giving clear and reasonable warning to such individual....” Health & Safety  
27 Code § 25249.6.

1           29. On February 19, 2020, Plaintiff served a sixty-day notice of violation, together with  
2 the accompanying certificate of merit, on HOME ESSENTIALS, KIRKLAND'S, the California  
3 Attorney General, and all other requisite public enforcers alleging that, as a result of  
4 DEFENDANTS' sales of the PRODUCTS, consumers in the State of California are being exposed  
5 to lead resulting from their reasonably foreseeable use of the PRODUCTS, without the consumers  
6 first receiving a "clear and reasonable warning" regarding the harms associated with exposures to  
7 lead as required by Proposition 65.

8           30. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for  
9 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS' violations have  
10 continued beyond their receipt of Plaintiff's sixty-day notice of violation. As such, DEFENDANTS'  
11 violations are ongoing and continuous and, unless enjoined, will continue in the future.

12           31. After receiving Plaintiff's sixty-day notice of violation, no public enforcement agency  
13 has commenced and diligently prosecuted a cause of action against DEFENDANTS under  
14 Proposition 65 to enforce the alleged violations that are the subject of Plaintiff's notice of violation.

15           32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and offer  
16 for sale or use in California cause exposures to lead as a result of the reasonably foreseeable use of  
17 the PRODUCTS. Such exposures caused by DEFENDANTS and endured by consumers in  
18 California are not exempt from the "clear and reasonable" warning requirements of Proposition 65.

19           33. DEFENDANTS know or should know that the PRODUCTS they manufacture, import,  
20 distribute, sell, and offer for sale in California contain lead.

21           34. Lead is present on the PRODUCTS in such a way as to expose consumers through  
22 dermal contact and/or ingestion during reasonably foreseeable use.

23           35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
24 continues to cause, consumer exposures to lead, as defined by title 27 of the California Code of  
25 Regulations, section 25602(b).

26           36. DEFENDANTS know that the normal and reasonably foreseeable use of the  
27 PRODUCTS expose individuals to lead through dermal contact and/or ingestion.

28



1           3.     That the Court, Pursuant to Health and Safety Code § 25249.7(a), issue preliminary  
2 and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the  
3 chain of commerce in California without a “clear and reasonable warning” as defined by California  
4 Code of Regulations title 27, section 25601 et seq.;

5           4.     That the Court grant Plaintiff his reasonable attorneys’ fees and costs of suit; and

6           5.     That the Court grant such other and further relief as may be just and proper.

7  
8 Dated: September 14, 2020

Respectfully submitted,

VOORHEES & BAILEY, LLP

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11  
12 By: 

Troy Bailey  
Attorneys for Plaintiff  
DENNIS JOHNSON