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County of Santa Clara  
21CV390632  
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 CITY AND COUNTY OF SANTA CLARA  
10 UNLIMITED CIVIL JURISDICTION

21CV390632

12 DENNIS JOHNSON,  
13 Plaintiff,  
14 v.  
15 TMD HOLDINGS, LLC; and DOES 1-150,  
16 inclusive,  
17 Defendants.

Case No. \_\_\_\_\_  
**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 (“Lead”), a toxic chemical found in  
5 bottle openers with PVC components containing lead 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 bottle openers with PVC components that defendants manufacture, distribute and offer for sale or  
10 use throughout the State of California. Individuals not covered by California’s Occupational Safety  
11 Health Act, Labor Code § 6300 et seq., who purchase, use or handle defendants’ products, are  
12 referred to hereinafter as “consumers.”

13 3. Detectable levels of Lead are found in the bottle openers with PVC components that  
14 defendants manufacture, distribute, and offer for sale to consumers throughout the State of  
15 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, bottle openers with PVC components containing Lead including, but  
27 not limited to, the *Big Lots Stores “Gingerbread Man” Bottle Opener; Big Lots Stores SKU: 145*  
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1 810488396 1 080. All such bottle openers with PVC components containing Lead are referred to  
2 collectively hereinafter as “PRODUCTS.”

3 7. Defendants’ failure to warn consumers in the State of California of the health hazards  
4 associated with exposures to Lead in conjunction with defendants’ sale of the PRODUCTS are  
5 violations of Proposition 65, and subject defendants, and each of them, to enjoinder of such  
6 conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

7 8. For defendants’ violations of Proposition 65, Plaintiff seeks preliminary and  
8 permanent injunctive relief to compel defendants to provide consumers of the PRODUCTS with the  
9 required warning regarding the health hazards associated with exposures to Lead. Health & Safety  
10 Code § 25249.7(a).

11 9. Pursuant to Health and Safety Code § 25249.7(b), Plaintiff also seeks civil penalties  
12 against defendants for their violations of Proposition 65.

13 **PARTIES**

14 10. Plaintiff DENNIS JOHNSON is a citizen of the State of California who is dedicated to  
15 protecting the health of California citizens through the elimination or reduction of toxic exposures  
16 from consumer products; and he brings this action in the public interest pursuant to Health and  
17 Safety Code § 25249.7(d).

18 11. Defendant TMD HOLDINGS, LLC (“TMD HOLDINGS”) is a person in the course of  
19 doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

20 12. TMD HOLDINGS manufactures, imports, distributes, sells, and/or offers the  
21 PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures,  
22 imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

23 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a person in  
24 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and  
25 25249.11.

26 14. MANUFACTURER DEFENDANTS, and each of them, research, test, design,  
27 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests, designs,  
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1 assembles, fabricates, and manufactures one or more of the PRODUCTS offered for sale or use in  
2 California.

3 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person in  
4 the course of doing business within the meaning of Health and Safety Code §§ 25249.6 and  
5 25249.11.

6 16. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange, transfer,  
7 process, and transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale  
8 or use in the State of California, or each implies by its conduct that it distributes, exchanges,  
9 transfers, processes, and transports one or more of the PRODUCTS to individuals, businesses, or  
10 retailers for sale or use in the State of California.

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

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

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

20 20. TMD HOLDINGS, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
21 DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where appropriate, be referred  
22 to collectively as the “DEFENDANTS.”

23 **VENUE AND JURISDICTION**

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

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

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

13 **FIRST CAUSE OF ACTION**

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

15 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs  
16 1 through 23, inclusive.

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

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

24 27. On July 2, 2021, Plaintiff served a sixty-day notice of violation, together with the  
25 accompanying certificate of merit, on TMD HOLDINGS, the California Attorney General, and all  
26 other requisite public enforcers alleging that, as a result of DEFENDANTS’ sales of the  
27 PRODUCTS, consumers in the State of California are being exposed to Lead resulting from their  
28 reasonably foreseeable use of the PRODUCTS, without the consumers first receiving a “clear and

1 reasonable warning” regarding the harms associated with exposures to Lead as required by  
2 Proposition 65.

3 28. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for  
4 sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS’ violations have  
5 continued beyond their receipt of Plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’  
6 violations are ongoing and continuous and, unless enjoined, will continue in the future.

7 29. After receiving Plaintiff’s sixty-day notice of violation, no public enforcement agency  
8 has commenced and diligently prosecuted a cause of action against DEFENDANTS under  
9 Proposition 65 to enforce the alleged violations that are the subject of Plaintiff’s notice of violation.

10 30. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and offer  
11 for sale or use in California cause exposures to Lead as a result of the reasonably foreseeable use of  
12 the PRODUCTS. Such exposures caused by DEFENDANTS and endured by consumers in  
13 California are not exempt from the “clear and reasonable” warning requirements of Proposition 65.

14 31. DEFENDANTS know or should know that the PRODUCTS they manufacture, import,  
15 distribute, sell, and offer for sale in California contain Lead.

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

18 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
19 continues to cause, consumer exposures to Lead, as defined by title 27 of the California Code of  
20 Regulations, section 25602(b).

21 34. DEFENDANTS know that the normal and reasonably foreseeable use of the  
22 PRODUCTS exposes individuals to Lead through dermal contact and/or ingestion.

23 35. DEFENDANTS intend that exposures to Lead from the reasonably foreseeable use of  
24 the PRODUCTS will occur by their deliberate, non-accidental participation in the manufacture,  
25 importation, distribution, sale, and offering of the PRODUCTS for sale or use to consumers in  
26 California.




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- 4. That the Court grant Plaintiff his reasonable attorneys' fees and costs of suit; and
- 5. That the Court grant such other and further relief as may be just and proper.

Dated: November 5, 2021

Respectfully submitted,  
VOORHEES & BAILEY, LLP

By:   
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Troy Bailey  
Attorneys for Plaintiff  
DENNIS JOHNSON