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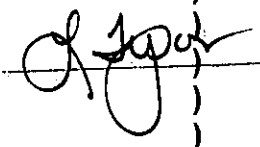
IN THE CIRCUIT COURT FOR DAVIDSON COUNTY, TENNESSEE

2010 SEP -7 PM 2:47

**BERNIE BUBLICK,**

RICHARD W. POONER, CLERK

Plaintiff,



CASE NO. 1003464

v.

JURY DEMAND (12)

**WHOLE FOODS MARKET GROUP,  
INC., UNILEVER, PEPSICO, INC., and  
STARBUCKS CORP.,**

Defendants.

COMPLAINT

The Plaintiff, Bernie Bublick ("Mr. Bublick"), states for his cause of action as follows:

1. Mr. Bublick is a citizen and resident of Davidson County, Tennessee.
2. All of the Defendants do business in Davidson County, Tennessee.
3. This is a personal injury action.
4. Venue and jurisdiction exist with the Circuit Court of Davidson County.
5. The Defendants were properly served with this lawsuit.
6. This action was filed within the applicable statute of limitations.
7. On or around April 4, 2010, Mr. Bublick purchased a bottle of Tazo Giant Peach Tea ("Tazo Tea") at the Whole Foods Market located in the Green Hills section of Nashville, Tennessee ("Whole Foods").
8. On or around April 5, 2010, Mr. Bublick was setting this bottle of Tazo Tea down at his home when the bottle exploded. This occurred without warning. The glass bottle exploding caused a significant injury to Mr. Bublick's right hand and his right hand

immediately began to bleed. Mrs. Bublick was present when the glass bottle of Tazo Tea exploded and injured Mr. Bublick's hand.

9. Mr. Bublick promptly drove to the Emergency Department at St. Thomas Hospital in Nashville, Tennessee for initial medical care and treatment.

10. A few days later, Mr. Bublick had the first of two surgeries on his right hand. One reason the initial surgery was performed was to repair a tendon injury caused by the glass from the bottle of Tazo Tea that broke in Mr. Bublick's home.

11. On or about April 19, 2010, Mr. Bublick was in the Whole Foods. During this shopping trip, Mr. Bublick placed at least one bottle of Tazo Tea in his cart. Before Mr. Bublick reached the register to pay for his items, a bottle of Tazo Tea burst in his cart. At least two employees of Whole Foods were promptly aware of this event, and one employee stated "That's really strange."

12. Before Mr. Bublick left Whole Foods during this visit, an employee of Whole Foods asked a series of questions of Mr. Bublick and recorded some type of information in writing. This information was obtained by an employee of Whole Foods based on a prompt recognition by Whole Foods that something unusual had occurred with regard to the bottle of Tazo Tea exploding in the store. Whole Foods took possession of the pieces of the bottle of Tazo Tea that burst during this visit. Whole Foods has possession of the document prepared by its employee as a result of speaking with Mr. Bublick.

13. At all times relevant to the facts and allegations described herein, Starbucks Corp., PepsiCo, Inc., and Unilever worked together to make, sell, and distribute Tazo products, including Tazo Giant Peach Tea. These companies had a role

in the stream of commerce that led to the two bottles described herein getting to the shelves of Whole Foods in the Green Hills section of Nashville, Tennessee in April 2010.

14. All of the Defendants have a role in the stream of commerce related to getting Tazo Tea to the shelves at the Whole Foods Market in the Green Hills section of Nashville, Tennessee. The stream of commerce referenced herein refers to all of the steps and actions between the bottling of this product and making it available for purchase on the shelves at Whole Foods.

15. The Defendants have a duty to consumers of Tazo Tea, including Mr. Bublick, to make sure that this product, and specifically the glass bottle it is bottled in, is not defective or negligently made, bottled, shipped, transported, and placed on the shelf at Whole Foods. The Defendants breached this duty.

16. The Defendants breached their duty in the stream of commerce of this product to prevent a defective or negligent product from getting into the hands of consumers, including in Mr. Bublick's hands.

17. Mr. Bublick's injury as a result of the first bottle of Tazo Tea exploding is the type of injury that the Defendants have a duty to prevent.

18. It is reasonable for consumers, including Mr. Bublick, to expect that bottles of Tazo Tea will not explode in the absence of outside forces.

19. The fact that two bottles of Tazo Tea available for sale at Whole Foods exploded within an approximately two week period is prima facie evidence of negligence on behalf of the Defendants. The fact that two bottles of Tazo Tea available for sale at Whole Foods exploded within an approximately two week period is prima facie evidence

that the Defendants breached the duty they owed to Mr. Bublick as a consumer of Tazo Tea.

20. The fact that two bottles of Tazo Tea available at Whole Foods exploded within an approximately two week period subjects the Defendants to liability via the legal doctrine referred to as *res ipsa loquitur*. The injuries sustained by Mr. Bublick do not ordinarily occur in the absence of negligence, the bottle that exploded that injured his hand was in the exclusive control of the Defendants in the stream of commerce, and the explosion and injuries were not caused by Mr. Bublick.

21. The Defendants breached the duties they owed to Mr. Bublick and to consumers of Tazo Tea during the "stream of commerce" period of time during which this product was bottled through when it was sold to the end consumer. The Defendants' breach of their duties caused injury to Mr. Bublick for which he is entitled to money damages.

22. The Defendants' breaches include failing to produce, bottle, distribute, transport, ship, shelve, and make available to consumers, including Mr. Bublick, a product that was not defective or that was negligently made, handled, or presented during the stream of commerce, including up through the purchase by consumers, including Mr. Bublick.

23. The Defendants could reasonably foresee in April 2010 that a bottle of Tazo Tea exploding could cause serious injury to an individual. Those foreseeable injuries include the type of injuries that Mr. Bublick suffered.

24. Prior to April 2010, the Defendants would not expect two bottles of Tazo Tea sold in the same store to explode approximately two weeks apart.

25. In April 2010, glass bottles of Tazo Tea sold at Whole Foods should not have exploded.

26. The Defendants are not aware of any non-parties to this action who are responsible for either one, or both, of the Tazo Tea bottles exploding.

27. Mr. Bublick has suffered injuries as a result of the broken glass entering and cutting his right hand when the glass bottle of Tazo Tea exploded. These injuries include, but are not limited to, conscious physical pain and suffering, conscious emotional pain and suffering, medical expenses, loss of sensation in his right hand, loss of movement in his right hand, loss of use of his right hand, loss of income as a jeweler who relies on the proper use of his right hand in his work, and he has experienced two surgeries and numerous physical therapy sessions for his injuries.

28. Besides seeking an award of compensatory damages, Mr. Bublick also seeks an award of punitive damages due to the Defendants' reckless conduct in recklessly allowing dangerous glass beverage containers to enter into the stream of commerce, including the glass bottle that caused his injuries.

29. Mr. Bublick also asks the Court to award him his costs related to this action and any other relief to which he is legally entitled.

30. Mr. Bublick demands a jury to try this cause.

Respectfully submitted,

**GIDEON, COOPER, & ESSARY PLC**



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*Attorney for the Plaintiff*

Dated: September 7, 2010