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FILED

OCT 11 2013

KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: S. Bond, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF MARIN  
UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, PH.D., P.E.,

Plaintiff,

v.

PILOT AUTOMOTIVE, INC.; PILOT INC.;  
and DOES 1-150, inclusive,

Defendant.

Case No. CIV 1304210

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

BY FAX

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff ANTHONY E.  
3 HELD, PH.D., P.E. in the public interest of the citizens of the State of California to enforce the  
4 People's right to be informed of the health hazards caused by exposures to di(2-  
5 ethylhexyl)phthalate ("DEHP"), a toxic chemical found in vinyl/PVC seat consoles sold by  
6 defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to  
8 warn California citizens and other individuals about the risks of exposure to DEHP present in  
9 and on vinyl/PVC seat consoles manufactured, distributed, and offered for sale or use to  
10 consumers and other individuals throughout the State of California.

11 3. Detectable levels of DEHP are found in and on the vinyl/PVC seat consoles that  
12 defendants manufacture, distribute, and offer for sale to consumers and other individuals  
13 throughout the State of California.

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

19 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed  
20 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became  
21 subject to the "clear and reasonable warning" requirements of the act one year later on October  
22 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
23 25249.10(b).

24 6. Defendants manufacture, distribute, import, sell, and offer for sale without health  
25 hazard warning in California, seat consoles with vinyl/PVC components containing DEHP that  
26 require a warning under Proposition 65 including, but not limited to, the *Pilot Automotive Bench*  
27 *or Rear Seat Universal Console, CN-101 (#7 57558 17901 5)*. All such seat consoles with  
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1 vinyl/PVC components containing DEHP are referred to collectively hereinafter as  
2 "PRODUCTS."

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

8 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and  
9 permanent injunctive relief to compel defendants to provide purchasers or users of the  
10 PRODUCTS with the required warning regarding the health hazards associated with exposures  
11 to DEHP. Health & Safety Code § 25249.7(a).

12 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil  
13 penalties against defendant for their violations of Proposition 65.

14 **PARTIES**

15 10. Plaintiff ANTHONY E. HELD, PH.D., P.E. is a citizen of the State of California  
16 who is dedicated to protecting the health of California citizens through the elimination or  
17 reduction of toxic exposures from consumer products; and he brings this action in the public  
18 interest pursuant to Health and Safety Code section 25249.7(d).

19 11. Defendant PILOT AUTOMOTIVE, INC. ("PILOT AUTO") is a person in the  
20 course of doing business within the meaning of Health and Safety Code sections 25249.6 and  
21 25249.11.

22 12. PILOT AUTO manufactures, imports, distributes, sells, and/or offers the  
23 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
24 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
25 State of California.

26 13. Defendant PILOT INC. ("PILOT") is a person in the course of doing business  
27 within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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1           14. PILOT manufactures, imports, distributes, sells, and/or offers the PRODUCTS for  
2 sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
3 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

4           15. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a  
5 person in the course of doing business within the meaning of Health and Safety Code sections  
6 25249.6 and 25249.11.

7           16. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
8 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,  
9 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
10 California.

11           17. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person  
12 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
13 and 25249.11.

14           18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and  
15 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
16 in the State of California.

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

20           20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
21 State of California.

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

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1           22.   PILOT AUTO, PILOT, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
2 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
3 referred to as "DEFENDANTS."

4                                   **VENUE AND JURISDICTION**

5           23.   Venue is proper in Marin County Superior Court, pursuant to Code of Civil  
6 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
7 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of  
8 wrongful conduct occurred, and continue to occur, in this county, and/or because  
9 DEFENDANTS conducted, and continue to conduct, business in Marin County with respect to  
10 the PRODUCTS.

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

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

21                                   **FIRST CAUSE OF ACTION**

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

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

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

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

7 29. On July 24, 2013, plaintiff’s served a sixty-day notice of violation, together with  
8 the requisite certificate of merit, on PILOT AUTO, PILOT and certain public enforcement  
9 agencies alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS containing  
10 DEHP, purchasers and users in the State of California were being exposed to DEHP resulting  
11 from their reasonably foreseeable use of the PRODUCTS, without the individual purchasers and  
12 users first having been provided with a “clear and reasonable warning” regarding the harms  
13 associated with such exposures, as required by Proposition 65.

14 30. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS  
15 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’  
16 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation.  
17 DEFENDANTS’ violations are ongoing and continuous in nature, and, as such, will continue in  
18 the future.

19 31. After receiving plaintiff’s sixty-day notice of violation, none of the appropriate  
20 public enforcement agencies have commenced and diligently prosecuted a cause of action  
21 against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the  
22 subject of plaintiff’s notice of violation.

23 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
24 offer for sale or use in California cause exposures to DEHP as a result of the reasonably  
25 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by  
26 consumers and other individuals in California are not exempt from the “clear and reasonable”  
27 warning requirements of Proposition 65, yet DEFENDANTS provide no warning.

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1           33.    DEFENDANTS knew or should have known that the PRODUCTS they  
2 manufactured, imported, distributed, sold, and offered for sale or use in California contained  
3 DEHP.

4           34.    DEHP is present in or on the PRODUCTS in such a way as to expose individuals  
5 to DEHP through dermal contact and/or ingestion during reasonably foreseeable use.

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

9           36.    DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
10 the PRODUCTS exposed individuals to DEHP through dermal contact and/or ingestion.

11          37.    DEFENDANTS intended that exposures to DEHP from the reasonably  
12 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation  
13 in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or  
14 use to consumers and other individuals in California.

15          38.    DEFENDANTS failed to provide a "clear and reasonable warning" to those  
16 consumers and other individuals in California who were or who would become exposed to  
17 DEHP through dermal contact and/or ingestion resulting from their use of the PRODUCTS.

18          39.    Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
19 directly by California voters, individuals exposed to DEHP through dermal contact or ingestion  
20 as a result of their use of the PRODUCTS that DEFENDANTS sold without a "clear and  
21 reasonable" health hazard warning, have suffered, and continue to suffer, irreparable harm for  
22 which they have no plain, speedy, or adequate remedy at law.

23          40.    Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the  
24 above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day  
25 for each violation.

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