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FILED

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KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
Bar: *Pro Chais, Deputy*

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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF MARIN
15 UNLIMITED CIVIL JURISDICTION

16 ANTHONY E. HELD, Ph.D., P.E.

17 Plaintiff,

18 v.

19 PACIFIC MERCHANTS TRADING
20 COMPANY; BRISTOL FARMS; and DOES
21 1-150, inclusive,

22 Defendants.

Case No. CIV 1500958

**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, ANTHONY E.
3 HELD, Ph.D., P.E. ("Plaintiff") in the public interest of the citizens of the State of California to
4 enforce the People's right to be informed about exposures to di(2-ethylhexyl)phthalate
5 ("DEHP"), a toxic chemical that is found in the vinyl/PVC grips of kitchen utensils sold in
6 California.

7 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to
8 warn California citizens about the health hazards associated with exposures to DEHP present in
9 and on the vinyl/PVC grips of kitchen utensils manufactured, distributed, and offered for sale or
10 use to consumers throughout the State of California.

11 3. Detectable levels of DEHP are commonly found in and on the vinyl/PVC grips
12 kitchen utensils that defendants manufacture, distribute, and offer for sale to consumers
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. On October 24, 2003, California listed DEHP pursuant to Proposition 65 as a
20 chemical that is 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
25 warning in California, kitchen utensils with vinyl/PVC grips containing DEHP, including, but
26 not limited to, the *Kilner Jam Jar Tongs, Item Code:0025.414, #38708, #25414, UPC #5*
27 *010853167930, #7 83476 25414 6*. All such vinyl/PVC kitchen utensil grips containing DEHP
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1 are referred to collectively hereinafter as "PRODUCTS." DEHP is referred to hereinafter as the
2 "LISTED CHEMICAL."

3 7. Defendants' failure to warn consumers and other individuals in California of the
4 harms associated with exposures to the LISTED CHEMICAL in conjunction with defendants'
5 sales of the PRODUCTS containing the LISTED CHEMICAL are violations of Proposition 65,
6 and subject defendants to enjoinder of such conduct, as well as civil penalties for each
7 violation. 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 the LISTED CHEMICAL. 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 defendants, and each of them, for each violation 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. He brings this action in the public
18 interest pursuant to Health and Safety Code section 25249.7(d).

19 11. Defendant, Pacific Merchants Trading Company ("PACIFIC MERCHANTS") is
20 a person in the course of doing business within the meaning of Health and Safety Code sections
21 25249.6 and 25249.11.

22 12. PACIFIC MERCHANTS manufactures, imports, distributes, sells, and/or offers
23 the PRODUCTS for sale or use in the State of California, or it 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, Bristol Farms ("BRISTOL FARMS") is a person in the course of
27 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.
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1 14. BRISTOL FARMS manufactures, imports, distributes, sells and/or offers the
2 PRODUCTS for sale or use in the State of California, or it implies by its conduct that it
3 manufactures, imports, distributes, sells and/or offers the PRODUCTS for sale or use in the
4 State of California.

5 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
6 person in the course of doing business within the meaning of Health and Safety Codes sections
7 25249.6 and 25249.11.

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

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

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

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

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

23 21. At this time, the true names of defendants DOES 1 through 150, inclusive, are
24 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
25 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
26 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
27 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.
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1 28. Proposition 65 states, “[n]o person in the course of doing business shall
2 knowingly and intentionally expose any individual to a chemical known to the state to cause
3 cancer or reproductive toxicity without first giving clear and reasonable warning to such
4 individual” Health & Safety Code § 25249.6.

5 29. On November 25, 2014, plaintiff’s sixty-day notice of violation, together with the
6 requisite certificate of merit, was provided to Pacific Merchants Trading Company, Bristol
7 Farms and the requisite public enforcement agencies stating that, as a result of DEFENDANTS’
8 sales of the PRODUCTS containing the LISTED CHEMICAL, consumers and other individuals
9 in the State of California are being exposed to the LISTED CHEMICAL resulting from their
10 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
11 having been provided with a “clear and reasonable warning” regarding the health hazards
12 associated with such exposures, as required by Proposition 65.

13 30. DEFENDANTS engage in the manufacture, importation, distribution, sale, and
14 offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
15 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
16 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and
17 continuous in nature and, unless enjoined, will continue to occur in the future.

18 31. After receiving plaintiff’s sixty-day notice of violation, the appropriate public
19 enforcement agencies have failed to commence and diligently prosecute a cause of action
20 against DEFENDANTS under Proposition 65.

21 32. The PRODUCTS manufactured, imported, distributed, sold, and offered for sale
22 or use in California by DEFENDANTS contain and cause exposures to the LISTED
23 CHEMICAL such that they require a “clear and reasonable” warning under Proposition 65.

24 33. DEFENDANTS know that the PRODUCTS they manufacture, import, distribute,
25 sell, and offer for sale or use in California contain the LISTED CHEMICAL.

1 34. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
2 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during
3 reasonably foreseeable use.

4 35. The normal and reasonably foreseeable use of the PRODUCTS have caused, and
5 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
6 defined by title 27 of the California Code of Regulations, section 25602(b).

7 36. DEFENDANTS know that the normal and reasonably foreseeable use of the
8 PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact and/or
9 ingestion.

10 37. DEFENDANTS intend that such exposures to the LISTED CHEMICAL from the
11 reasonably foreseeable use of the PRODUCTS will occur by their deliberate, non-accidental
12 participation in the manufacture, distribution, sale, and offering of the PRODUCTS for sale or
13 use in the State of California.

14 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
15 consumers and other individuals in California not covered by California’s Occupational Safety
16 Health Act, Labor Code section 6300 et seq. who have been, or will be, exposed to the LISTED
17 CHEMICAL as a result of their reasonably foreseeable uses of the PRODUCTS.

18 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
19 directly by California voters, consumers, and other individuals exposed to the LISTED
20 CHEMICAL through dermal contact and/or ingestion, resulting from their reasonably
21 foreseeable use of the PRODUCTS sold by DEFENDANTS without a “clear and reasonable
22 warning,” have suffered, and continue to suffer, irreparable harm for which they have no plain,
23 speedy, or adequate remedy at law.

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

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