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FILED

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KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF MARIN
13 UNLIMITED CIVIL JURISDICTION

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

15 Plaintiff,

16 v.

17 PACIFIC MERCHANTS TRADING
18 COMPANY; BRISTOL FARMS; TYPHOON
19 HOMEWARES, LLC; RAYWARE LTD.; and
20 DOES 1-150, inclusive,

21 Defendants.

Case No. CIV1500958

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

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

1 **NATURE OF THE ACTION**

2 1. This First Amended Complaint is a representative action brought by plaintiff,
3 ANTHONY E. HELD, Ph.D., P.E. (“Plaintiff”) in the public interest of the citizens of the State
4 of California to enforce the People’s right to be informed about exposures to di(2-
5 ethylhexyl)phthalate (“DEHP”), a toxic chemical that is found in the vinyl/PVC grips of kitchen
6 utensils sold in California.

7 2. By this First Amended Complaint, plaintiff seeks to remedy defendants’
8 continuing failure to warn California citizens about the health hazards associated with exposures
9 to DEHP present in and on the vinyl/PVC grips of kitchen utensils manufactured, distributed,
10 and offered for sale or 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). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

24 6. Defendants manufacture, distribute, import, sell, and offer for sale without
25 warning in California, kitchen utensils with vinyl/PVC grips containing the LISTED
26 CHEMICAL, including, but not limited to, the *Kilner Jam Jar Tongs, Item Code:0025.414,*
27 *#38708, #25414, UPC #5 010853167930, #7 83476 25414 6.* All such vinyl/PVC kitchen
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1 utensil grips containing the LISTED CHEMICAL are referred to collectively hereinafter as
2 “PRODUCTS.”

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 a
20 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 doing
27 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. Defendant Typhoon Homewares, LLC (“TYPHOON”) is a person in the course
6 of doing business within the meaning of Health and Safety Code sections 25249.6 and
7 25249.11.

8 16. TYPHOON manufactures, imports, distributes, sells and/or offers the
9 PRODUCTS for sale or use in the State of California, or it implies by its conduct that it
10 manufactures, imports, distributes, sells and/or offers the PRODUCTS for sale or use in the
11 State of California.

12 17. Defendant, Rayware Ltd. (“RAYWARE”) is a person in the course of doing
13 business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.
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15 18. RAYWARE manufactures, imports, distributes, sells and/or offers the
16 PRODUCTS for sale or use in the State of California, or it implies by its conduct that it
17 manufactures, imports, distributes, sells and/or offers the PRODUCTS for sale or use in the
18 State of California.

19 19. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
20 person in the course of doing business within the meaning of Health and Safety Codes sections
21 25249.6 and 25249.11.

22 20. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
23 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
24 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
25 California.

1 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
2 which this action is brought does not specify any other basis of subject matter jurisdiction.

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

9 **FIRST CAUSE OF ACTION**

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

11 30. Plaintiff re-alleges and incorporates by reference, as if fully set forth herein,
12 Paragraphs 1 through 29, inclusive.

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

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

21 33. On November 25, 2014, plaintiff served his sixty-day notice of violation
22 (“Notice”), together with the requisite certificate of merit on PACIFIC MERCHANTS,
23 BRISTOL FARMS, and the requisite public enforcement agencies stating that, as a result of
24 DEFENDANTS’ sales of the PRODUCTS containing the LISTED CHEMICAL, consumers
25 and other individuals in the State of California were being exposed to the LISTED CHEMICAL
26 resulting from their reasonably foreseeable use of the PRODUCTS, without the individual
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1 purchasers and users first having been provided with a “clear and reasonable warning”
2 regarding such toxic exposures, as required by Proposition 65.

3 34. On April 3, 2015, plaintiff served his supplemental sixty-day notice of violation
4 (“Supplemental Notice), together with the requisite certificate of merit on PACIFIC
5 MERCHANTS, BRISTOL FARMS, TYPHOON, RAYWARE, and the requisite public
6 enforcement agencies alleging that – in addition to the allegations as to PACIFIC
7 MERCHANTS and BRISTOL FARMS made in the Notice and Supplemental Notice – that
8 RAYWARE and TYPHOON also violated Proposition 65 when they each failed to warn the
9 customers and consumers in California who are exposed to the LISTED CHEMICAL as a result
10 of their reasonably foreseeable use of the PRODUCTS sold by DEFENDANTS without a “clear
11 and reasonable warning” regarding such exposures, as required by Proposition 65.

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

17 36. After receiving plaintiff’s Notice and Supplemental Notice, the appropriate public
18 enforcement agencies have failed to commence and diligently prosecute a cause of action
19 against DEFENDANTS under Proposition 65.

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

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

25 39. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
26 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during
27 reasonably foreseeable use.
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1 40. The normal and reasonably foreseeable use of the PRODUCTS has caused and
2 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposures are
3 defined by title 27 of the California Code of Regulations, section 25602(b).

4 41. DEFENDANTS know that the normal and reasonably foreseeable use of the
5 PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact and/or
6 ingestion.

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

11 43. DEFENDANTS failed to provide a “clear and reasonable warning” to those
12 consumers and other individuals in California who have been, or will be, exposed to the
13 LISTED CHEMICAL as a result of their reasonably foreseeable use of the PRODUCTS.

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

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

23 46. As a consequence of the above-described acts, Health and Safety Code
24 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
25 DEFENDANTS.

1 **PRAYER FOR RELIEF**

2 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

3 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess
4 civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for
5 each violation;

6 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
7 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
8 offering the PRODUCTS for sale or use in California without first providing a “clear and
9 reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601
10 *et seq.*, as to the harms associated with exposures to the LISTED CHEMICAL;

11 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

12 4. That the Court grant such other and further relief as may be just and proper.

13 Dated: June 23, 2015

14 Respectfully Submitted,
15 THE CHANLER GROUP

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17 By: 

18 Brian Johnson
19 Attorneys for Plaintiff
20 ANTHONY E. HELD, Ph.D., P.E.
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