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FILED

FEB 20 2015

**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 NORMARK CORPORATION and DOES 1-
18 150, inclusive,

19 Defendants.

Case No. CIV 15 00 639

**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 fishing tools sold by
6 defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
8 warn California citizens about the risks of exposures to DEHP present in and on the vinyl/PVC
9 grips of fishing tools manufactured, distributed, and offered for sale or use to consumers
10 throughout the State of California.

11 3. Detectable levels of DEHP are commonly found in and on the vinyl/PVC grips of
12 fishing tools that defendants manufacture, distribute, and offer for sale to consumers throughout
13 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, fishing tools with vinyl/PVC grips containing DEHP, including, but not
26 limited to, the *Rapala Fishing Clipper, RFCW, UPC #0 22677 20468 0*. All such vinyl/PVC
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1 fishing tool grips containing DEHP are referred to collectively hereinafter as "PRODUCTS."
2 DEHP is referred to hereinafter as the "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 those individuals exposed to the
10 LISTED CHEMICAL from the PRODUCTS with the health hazard warning required by
11 Proposition 65. 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, Normark Corporation ("NORMARK") is a person in the course of
20 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

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

25 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a
26 person in the course of doing business within the meaning of Health and Safety Codes sections
27 25249.6 and 25249.11.

1 conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS
2 conducted, and continue to conduct, business in Marin County with respect to the PRODUCTS.

3 22. The California Superior Court has jurisdiction over this action pursuant to
4 California Constitution Article VI, section 10, which grants the Superior Court “original
5 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
6 which this action is 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 defendant is a person, firm, corporation or
9 association that is a citizen of the State of California, has sufficient minimum contacts in the
10 State of California, and/or otherwise purposefully avails itself of the California market.
11 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
12 California 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,
16 Paragraphs 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
19 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
20 harm.”

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

25 27. On November 25, 2014 plaintiff’s sixty-day notice of violation, together with the
26 requisite certificate of merit, was provided to NORMARK and certain public enforcement
27 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the
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1 LISTED CHEMICAL, consumers and other individuals in the State of California were being
2 exposed to the LISTED CHEMICAL resulting from their reasonably foreseeable use of the
3 PRODUCTS, without the individual purchasers and users first having been provided with a
4 “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

5 28. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
6 and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section
7 25249.6, and DEFENDANTS’ violations have continued to occur beyond their receipt of
8 plaintiff’s sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing and
9 continuous in nature, and will continue to occur in the future.

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

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

16 31. DEFENDANTS knew or should have known that the PRODUCTS they
17 manufacture, import, distribute, sell, and offer for sale or use in California contain the LISTED
18 CHEMICAL.

19 32. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
20 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during
21 reasonably foreseeable use.

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

25 34. DEFENDANTS have knowledge that the normal and reasonably foreseeable use
26 of the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact
27 and/or ingestion.

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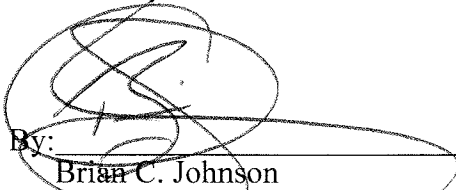
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reasonable warning” as defined by title 27 of the California Code of Regulations, section 25601
et seq., as to the harms associated with exposures to the LISTED CHEMICAL;

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

Dated: February 19, 2015

Respectfully Submitted,
THE CHANLER GROUP


By: _____
Brian C. Johnson
Attorneys for Plaintiff
ANTHONY E. HELD, Ph.D., P.E.