

Brian C. Johnson, State Bar No. 235965  
Kimberly Gates, State Bar No. 282639  
THE CHANLER GROUP  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565  
Telephone: (510) 848-8880  
Facsimile: (510) 848-8118  
E-mail: brian@chanler.com  
E-mail: kimberly@chanler.com

Attorneys for Plaintiff  
ANTHONY E. HELD, PH.D., P.E.

FILED

FEB 16 2016

JAMES M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: E. Chais, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

UNLIMITED CIVIL JURISDICTION

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

Plaintiff,

v.

ICON HEALTH & FITNESS, INC.; and  
DOES 1-150, inclusive,

Defendants.

) Case No. C 1 V 16 00 57 4  
)  
) **COMPLAINT FOR CIVIL PENALTIES**  
) **AND INJUNCTIVE RELIEF**  
)  
) (Health & Safety Code § 25249.5 *et seq.*)  
)  
)  
)  
)

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2  
3  
4  
5  
6

7  
8  
9  
10  
11  
12  
13

14  
15  
16

17  
18  
19  
20  
21

22  
23  
24  
25

26  
27  
28

1 limited to, the exercise mat sold in conjunction with the *NordicTrack iFit Sport Performance*  
2 *Kit, #14871, NTTLSPK08 UPC #0 74345 80753 2.*

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

7 8. Defendants manufacture, distribute, import, sell, and offer for sale without health  
8 hazard warnings in California, vinyl/PVC exercise mats containing DEHP, including, but not  
9 limited to, the exercise mat sold in conjunction with the "*NordicTrack iFit Weight Loss Kit,*  
10 *#14870, NTTLWLK08, UPC #0 74345 80159 2.*"

11 9. All vinyl/PVC exercise mats containing DINP and all vinyl/PVC exercise mats  
12 containing DEHP are hereinafter referred to collectively as the "PRODUCTS."

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

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

22 12. Pursuant to Health and Safety Code § 25249.7(b), plaintiff also seeks civil  
23 penalties against defendants for their violations of Proposition 65.

#### 24 PARTIES

25 13. Plaintiff ANTHONY E. HELD, PH.D., P.E. ("Held") is a citizen of the State of  
26 California who is dedicated to protecting the health of California citizens through the  
27  
28

1 elimination or reduction of toxic exposures from consumer products; and he brings this action in  
2 the public interest pursuant to Health and Safety Code § 25249.7(d).

3 14. Defendant ICON HEALTH & FITNESS, INC. ("ICON") is a person in the course  
4 of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

5 15. ICON manufactures, imports, distributes, sells, and/or offers the PRODUCTS for  
6 sale or use in the State of California, or implies by its conduct that it manufactures, imports,  
7 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

8 16. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a  
9 person in the course of doing business within the meaning of Health and Safety Code sections  
10 25249.6 and 25249.11.

11 17. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
12 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,  
13 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
14 California.

15 18. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons  
16 in the course of doing business within the meaning of Health and Safety Code sections 25249.6  
17 and 25249.11.

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

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

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

26 22. At this time, the true names of defendants DOES 1 through 150, inclusive, are  
27 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to  
28

1 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis  
2 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences  
3 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

4 23. ICON, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,  
5 and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to as  
6 "DEFENDANTS."

#### 7 VENUE AND JURISDICTION

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

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

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

#### 24 FIRST CAUSE OF ACTION

##### 25 (Violation of Proposition 65 - Against All Defendants)

26 27. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
27 Paragraphs 1 through 26, inclusive.  
28

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

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

9           30. On April 24, 2015, plaintiff served a sixty-day notice of violation, together with  
10 the accompanying certificate of merit, on ICON, the California Attorney General’s Office, and  
11 the requisite public enforcement agencies alleging that, as a result of DEFENDANTS’ sales of  
12 the PRODUCTS, consumers in the State of California are being exposed to DINP resulting from  
13 their reasonably foreseeable use of the PRODUCTS, without the consumers first receiving a  
14 “clear and reasonable warning” regarding the harms associated with exposures to DINP, as  
15 required by Proposition 65.

16           31. On September 15, 2015, plaintiff served a supplemental sixty-day notice of  
17 violation, together with the accompanying certificate of merit, on ICON, the California Attorney  
18 General’s Office and the requisite public enforcements agencies, alleging exposures to DEHP  
19 and DINP by consumers and other individuals in the State of California, resulting from their  
20 reasonably foreseeable use of DEFENDANTS’ PRODUCTS., without such consumers and  
21 other individuals having first received a “clear and reasonable” warning regarding the harms  
22 associated with exposures to DEHP and DINP, as required by Proposition 65.

23           32. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS  
24 for sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS’  
25 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation and  
26 supplemental sixty-day notice of violation. As such, DEFENDANTS’ violations are ongoing  
27 and continuous and, unless enjoined, will continue in the future.

1           33. After receiving plaintiff's sixty-day notice of violation and supplemental sixty-  
2 day notice of violation, no public enforcement agency has commenced and diligently prosecuted  
3 a cause of action against DEFENDANTS under Proposition 65 to enforce the alleged violations  
4 that are the subject of plaintiff's notice of violation or supplemental notice of violation.

5           34. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and  
6 offer for sale or use in California cause exposures to DINP and DEHP as a result of the  
7 reasonably foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and  
8 endured by consumers in California are not exempt from the "clear and reasonable" warning  
9 requirements of Proposition 65, yet DEFENDANTS provide no warning.

10           35. DEFENDANTS' violations of Proposition 65, resulting from their failure to  
11 provide warnings to consumers exposed to DEHP from the PRODUCTS have occurred and  
12 continued since as far back as April 24, 2012.

13           36. DEFENDANTS' violations of Proposition 65, resulting from their failure to  
14 provide warnings to consumers exposed to DINP from the PRODUCTS have occurred and  
15 continued since as far back as December 20, 2014.

16           37. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS  
17 for sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS'  
18 violations have continued beyond their receipt of plaintiff's sixty-day notice of violation.  
19 DEFENDANTS' violations are ongoing and continuous in nature, and, unless enjoined, will  
20 continue in the future.

21           38. DEFENDANTS knew or should have known that the PRODUCTS they  
22 manufacture, import, distribute, sell, and offer for sale or use in California contain DEHP and  
23 DINP.

24           39. DINP and DEHP are present in or on the PRODUCTS in such a way as to expose  
25 individuals to DEHP and/or DINP through dermal contact and/or ingestion during reasonably  
26 foreseeable use.

1           40.    The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
2 continues to cause, consumer exposures to DINP and DEHP, as defined by title 27 of the  
3 California Code of Regulations, § 25602(b).

4           41.    DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
5 the PRODUCTS exposes individuals to DINP and DEHP through dermal contact and/or  
6 ingestion.

7           42.    DEFENDANTS intended that exposures to DINP and DEHP from the reasonably  
8 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation  
9 in the manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or  
10 use to consumers and other individuals in California.

11           43.    DEFENDANTS failed to provide a “clear and reasonable warning” to those  
12 consumers and other individuals in California who were or who would become exposed to  
13 DINP and/or DEHP through dermal contact and/or ingestion resulting from their use of the  
14 PRODUCTS.

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

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

23           46.    As a consequence of the above-described acts, Health and Safety Code  
24 §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 § 25249.7(b), assess civil  
4 penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each  
5 violation;

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

11 3. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue  
12 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS  
13 currently in the chain of commerce in California without a "clear and reasonable warning" as  
14 defined by California Code of Regulations title 27, § 25601 *et seq.*;

15 4. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

16 5. That the Court grant such other and further relief as may be just and proper.  
17

18 Dated: February 11, 2016

Respectfully Submitted,  
THE CHANLER GROUP

20  
21 By: K. gates  
22 Kimberly Gates  
23 Attorneys for Plaintiff  
24 ANTHONY E. FIELD, PH.D, P.E.  
25  
26  
27  
28