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**FILED**

AUG 06 2020

JAMES M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: J. Segura, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF MARIN

11 Case No.:

*CIV 2002079*

12 ANTHONY FERREIRO,

13 Plaintiff,

14 vs.

15 SELLMARK CORPORATION,  
16 TURNER'S OUTDOORS, INC.,

17 Defendants.

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

18 Plaintiff Anthony Ferreiro ("Plaintiff"), by and through his attorneys, alleges the following  
19 cause of action in the public interest of the citizens of the State of California.

20 **BACKGROUND OF THE CASE**

21 1. Plaintiff brings this representative action on behalf of all California citizens to  
22 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
23 the Health and Safety Code § 25249.5 et seq ("Proposition 65"), which reads, in relevant part,  
24 "[n]o person in the course of doing business shall knowingly and intentionally expose any  
25 individual to a chemical known to the state to cause cancer or reproductive toxicity without first  
26 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

27 2. This complaint is a representative action brought by Plaintiff in the public interest  
28 of the citizens of the State of California to enforce the People's right to be informed of the health  
hazards caused by exposure to Diisononyl phthalate (DINP), a toxic chemical found in 12  
Survivors vinyl gloves sold and/or distributed by defendant Sellmark Corporation ("Sellmark")

1 and defendant Turner’s Outdoors, Inc. (“Turner’s Outdoors”) (collectively, the “Defendants”) in  
2 California.

3 3. DINP is a harmful chemical known to the State of California to cause cancer. On  
4 December 20, 2013, the State of California listed DINP as a chemical known to the State to cause  
5 cancer and it has come under the purview of Proposition 65 regulations since that time. Cal. Code  
6 Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

7 4. Proposition 65 requires all businesses with ten (10) or more employees that operate  
8 within California or sell products therein to comply with Proposition 65 regulations. Included in  
9 such regulations is the requirement that businesses must label any product containing a Proposition  
10 65-listed chemical with a “clear and reasonable” warning before “knowingly and intentionally”  
11 exposing any person to any such listed chemical.

12 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
13 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be  
14 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code  
15 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the  
16 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §  
17 25249.7.

18 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,  
19 without a requisite exposure warning, 12 Survivors vinyl gloves (the “Products”) that expose  
20 persons to DINP.

21 7. Defendants’ failure to warn consumers and other individuals in California of the  
22 health hazards associated with exposure to DINP in conjunction with the sale and/or distribution  
23 of the Products is a violation of Proposition 65 and subjects Defendants to the enjoinder and civil  
24 penalties described herein.

25 8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition  
26 65 in accordance with Health and Safety Code § 25249.7(b).

27 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
28 Defendants to provide purchasers or users of the Products with required warnings related to the

1 dangers and health hazards associated with exposure to DINP pursuant to Health and Safety Code  
2 § 25249.7(a).

3 10. Plaintiff further seeks a reasonable award of attorney's fees and costs.

4 **PARTIES**

5 11. Plaintiff is a citizen of the State of California acting in the interest of the general  
6 public to promote awareness of exposures to toxic chemicals in products sold in California and to  
7 improve human health by reducing hazardous substances contained in such items. He brings this  
8 action in the public interest pursuant to Health and Safety Code § 25249.7(d).

9 12. Defendant Sellmark, through its business, effectively imports, distributes, sells,  
10 and/or offers the Products for sale or use in the State of California, or it implies by its conduct that  
11 it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.  
12 Plaintiff alleges that defendant Sellmark is a "person" in the course of doing business within the  
13 meaning of Health & Safety Code sections 25249.6 and 25249.11.

14 13. Defendant Turner's Outdoors, through its business, effectively imports, distributes,  
15 sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct  
16 that it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.  
17 Plaintiff alleges that defendant Turner's Outdoors is a "person" in the course of doing business  
18 within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

19 **VENUE AND JURISDICTION**

20 14. Venue is proper in the County of Marin because one or more of the instances of  
21 wrongful conduct occurred, and continue to occur in this county and/or because Defendants  
22 conducted, and continue to conduct, business in the County of Marin with respect to the Products.

23 15. This Court has jurisdiction over this action pursuant to California Constitution  
24 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those  
25 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the enforcement  
26 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has  
27 jurisdiction over this lawsuit.

1           16.     This Court has jurisdiction over Defendants because each defendant is either a  
2 citizen of the State of California, has sufficient minimum contacts with the State of California, is  
3 registered with the California Secretary of State as foreign corporations authorized to do business  
4 in the State of California, and/or has otherwise purposefully availed itself of the California market.  
5 Such purposeful availment has rendered the exercise of jurisdiction by California courts consistent  
6 and permissible with traditional notions of fair play and substantial justice.

7  
**STATUTORY BACKGROUND**

8           17.     The people of the State of California declared in Proposition 65 their right “[t]o be  
9 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive  
10 harm.” (Section 1(b) of Initiative Measure, Proposition 65.)

11           18.     To effect this goal, Proposition 65 requires that individuals be provided with a  
12 “clear and reasonable warning” before being exposed to substances listed by the State of California  
13 as causing cancer or reproductive toxicity. H&S Code § 25249.6 states, in pertinent part:

14           No person in the course of doing business shall knowingly and intentionally expose any  
15 individual to a chemical known to the state to cause cancer or reproductive toxicity without  
16 first giving clear and reasonable warning to such individual...

17           19.     An exposure to a chemical in a consumer product is one “which results from a  
18 person’s acquisition, purchase, storage, consumption or other reasonably foreseeable use of a  
19 consumer good, or any exposure that results from receiving a consumer service.” (27 CCR §  
20 25602, para (b).) H&S Code § 25603(c) states that “a person in the course of doing business ...  
21 shall provide a warning to any person to whom the product is sold or transferred unless the product  
22 is packaged or labeled with a clear and reasonable warning.”

23           20.     Pursuant to H&S Code § 25603.1, the warning may be provided by using one or  
24 more of the following methods individually or in combination:<sup>1</sup>

- 25           a.       A warning that appears on a product’s label or other labeling.

26  
27 <sup>1</sup> Alternatively, a person in the course of doing business may elect to comply with the warning  
28 requirements set out in the amended version of 27 CCR 25601, *et seq.*, as amended on August 30,  
2016, and operative on August 30, 2018.



1 mouthing of the Products does not seem likely, some amount of exposure through ingestion can  
2 occur by touching the user's mouth while wearing the Products or wearing the Products with  
3 subsequent touching of the user's hand to mouth.

4 24. Defendants have supplied, processed, marketed, distributed, offered to sell and/or  
5 sold the Products in California since at least October 8, 2019. The Products continue to be  
6 distributed and sold in California without the requisite warning information.

7 25. At all times relevant to this action, Defendants have knowingly and intentionally  
8 exposed users, consumers and/or patients to the Products and the Listed Chemical without first  
9 giving a clear and reasonable exposure warning to such individuals.

10 26. As a proximate result of acts by each defendant, as a person in the course of doing  
11 business within the meaning of H&S Code § 25249.11, individuals throughout the State of  
12 California, including in Marin County, have been exposed to the Listed Chemical without a clear  
13 and reasonable warning on the Products. The individuals subject to the violative exposures include  
14 normal and foreseeable users, consumers and patients that use the Products, as well as all others  
15 exposed to the Products.

16 **SATISFACTION OF NOTICE REQUIREMENTS**

17 27. On October 8, 2019, Plaintiff gave notice of alleged violation of Health and Safety  
18 Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California citizens to  
19 DINP contained in the Products without proper warning, subject to a private action to Defendants  
20 and to the California Attorney General's office and the offices of the County District attorneys and  
21 City Attorneys for each city with a population greater than 750,000 persons wherein the herein  
22 violations allegedly occurred.

23 28. The Notice complied with all procedural requirements of Proposition 65 including  
24 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at  
25 least one person with relevant and appropriate expertise who reviewed relevant data regarding  
26 DINP exposure, and that counsel believed there was meritorious and reasonable cause for a private  
27 action.

1           29.     After receiving the Notice, and to Plaintiff's best information and belief, none of  
2 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a  
3 cause of action against Defendants under Proposition 65 to enforce the alleged violations which  
4 are the subject of the Notice.

5           30.     Plaintiff is commencing this action more than sixty (60) days from the date of the  
6 Notice to Defendant, as required by law.

7                                       **FIRST CAUSE OF ACTION**

8                                       **(By Plaintiff against Defendants for the Violation of Proposition 65)**

9           31.     Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 30 of  
10 this Complaint as though fully set forth herein.

11           32.     Defendants have, at all times mentioned herein, acted as manufacturer, distributor,  
12 and/or retailer of the Product.

13           33.     The Products contain DINP, a hazardous chemical found on the Proposition 65 list  
14 of chemicals known to be hazardous to human health.

15           34.     The Products do not comply with the Proposition 65 warning requirements.

16           35.     Plaintiff, based on his best information and belief, avers that at all relevant times  
17 herein, and at least since October 8, 2019, continuing until the present, that Defendants have  
18 continued to knowingly and intentionally expose California users and consumers of the Product to  
19 DINP without providing required warnings under Proposition 65.

20           36.     The exposures that are the subject of the Notice result from the purchase,  
21 acquisition, handling and recommended use of the Products. Consequently, the primary route of  
22 exposure to these chemicals is through dermal absorption. Users can be exposed to DINP by  
23 dermal absorption through direct skin contact with the Products when they are worn on the user's  
24 hands. If the Products are removed from the storage bag, and kept in the kit, concentrations of  
25 DINP can be expected to build within the enclosed interior of the kit. DINP from the Products can  
26 absorb to the surface of the interior contents that can be subsequently handled, worn, mouthed, or  
27 ingested by the user. Finally, while direct mouthing of the Products does not seem likely, some  
28

1 amount of exposure through ingestion can occur by touching the user's mouth while wearing the  
2 Products or wearing the Products with subsequent touching of the user's hand to mouth.

3 37. Plaintiff, based on his best information and belief, avers that such exposures will  
4 continue every day until clear and reasonable warnings are provided to Product purchasers and  
5 users or until this known toxic chemical is removed from the Products.

6 38. Defendants have knowledge that the normal and reasonably foreseeable use of the  
7 Product exposes individuals to DINP, and Defendants intend that exposures to DINP will occur  
8 by their deliberate, non-accidental participation in the importation, distribution, sale and offering  
9 of the Products to consumers in California

10 39. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
11 Complaint.

12 40. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above  
13 described acts, Defendants are liable for a maximum civil penalty of \$2,500 per day per violation.

14 41. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically  
15 authorized to grant injunctive relief in favor of Plaintiff and against Defendants.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following  
18 relief:

19 A. That the court assess civil penalties against each defendant in the amount of \$2,500  
20 per day for each violation for up to 365 days (up to a maximum civil penalty amount per  
21 violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);

22 B. That the court preliminarily and permanently enjoin Defendants mandating  
23 Proposition 65 compliant warnings on the Products;

24 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the  
25 amount of \$50,000.00.

26 D. That the court grant any further relief as may be just and proper.

27 Dated: August 24, 2020

BRODSKY & SMITH, LLC

28 By: \_\_\_\_\_



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