

FILED

DEC 07 2015

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: T. Fraguero, Deputy

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

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF MARIN
11 UNLIMITED CIVIL JURISDICTION

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

13 Plaintiff,

14 v.

15 NORMARK CORPORATION; *et al.*,

16 Defendants.

Case No. CIV1500639

**[PROPOSED] JUDGMENT
PURSUANT TO TERMS OF
PROPOSITION 65 SETTLEMENT
AND CONSENT JUDGMENT**

Date: October 7, 2015
Time: 9:00 a.m.
Dept.: B
Judge: Hon. Roy O. Chernus

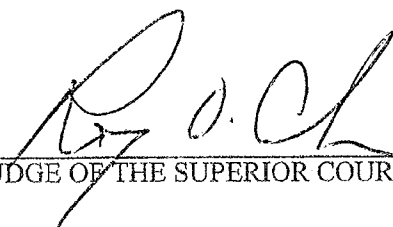
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In the above-entitled action, plaintiff Anthony E. Held, Ph.D., P.E. and defendant Normark Corporation, having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a [Proposed] Consent Judgment (“Consent Judgment”), and following this Court’s issuance of an Order approving this Proposition 65 settlement and Consent Judgment on _____.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to California Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure § 664.6, Judgment is entered in accordance with the terms of the Consent Judgment attached hereto as **Exhibit A**. By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

IT IS SO ORDERED.

Dated: 12/7/15



JUDGE OF THE SUPERIOR COURT

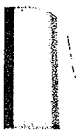


EXHIBIT A

1 Brian C. Johnson, State Bar No. 235965
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
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9 Attorneys for Plaintiff
10 ANTHONY E. HELD, PH.D., P.E.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

12 ANTHONY E. HELD, PH.D., P.E.
13 Plaintiff,
14
15 v.
16 NORMARK CORPORATION and DOES
17 1-150, inclusive,
18 Defendants.

Case No. CIV1500639
[PROPOSED] CONSENT JUDGMENT
(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1 **I. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent Judgment is entered into by and between plaintiff Anthony Held, Ph.D., P.E.
4 (“Held”) and defendant Normark Corporation (“Normark”), with Held and Normark each referred
5 to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Held is a resident of the State of California who seeks to promote awareness of exposures to
8 toxic chemicals, and to improve human health by reducing or eliminating harmful substances
9 contained in consumer and commercial products.

10 **1.3 Defendant**

11 Normark employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
13 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Held alleges that Normark manufactures, imports, sells and/or distributes for sale in
16 California, fishing tools with vinyl/PVC grips that contain di(2-ethylhexyl)phthalate (“DEHP”), and
17 that it did so without providing the health hazard warning that Held alleges is required by
18 Proposition 65.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are fishing tools with vinyl/PVC grips that
21 allegedly contain DEHP, including, but not limited to, the *Rapala Fishing Clipper, RFCW, UPC #0*
22 *22677 20468 0* (collectively, “Products”), which Normark manufactured, imported, distributed,
23 and/or sold in the State of California.

24 **1.6 Notice of Violation**

25 On November 25, 2014, Held served Normark and the requisite public enforcement
26 agencies with a 60-Day Notice of Violation (“Notice”), alleging that Normark violated Proposition
27 65 when it failed to warn its customers and consumers in California that the Products expose users
28

1 to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is
2 diligently prosecuting an action to enforce the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On February 20, 2015, Held commenced the instant action in the public interest, naming
5 Normark as a defendant for the alleged violations of Proposition 65 that are the subject of the
6 Notice.

7 **1.8 No Admission**

8 Normark denies the material, factual, and legal allegations contained in the Notice and
9 Complaint, and maintains that all of the products that it has sold or distributed for sale in California,
10 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
11 Judgment shall be construed as an admission by Normark of any fact, finding, conclusion of law,
12 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
13 construed as an admission by Normark of any fact, finding, conclusion of law, issue of law, or
14 violation of law. This Section shall not, however, diminish or otherwise affect Normark's
15 obligations, responsibilities, and duties under this Consent Judgment.

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Normark as to the allegations contained in the Complaint, that venue is proper in
19 the County of Marin, and that the Court has jurisdiction to enter and enforce the provisions of this
20 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that
23 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.

24 **2. INJUNCTIVE SETTLEMENT TERMS**

25 Commencing on February 1, 2016 and continuing thereafter, Normark agrees to only ship
26 for sale, distribute for sale, purchase for sale and/or manufacture for sale in California,
27 Reformulated Products. For purposes of this Consent Judgment, "Reformulated Products" are
28 defined as Products with a maximum DEHP concentration 0.1 percent (1,000 parts per million)

1 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
2 and 8270, or other methodologies utilized by state or federal agencies for the purpose of
3 determining DEHP content in a solid substance.

4 **3. MONETARY SETTLEMENT TERMS**

5 **3.1 Civil Penalty Payments**

6 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
7 claims referred to in this Consent Judgment, Normark shall pay \$13,500 in civil penalties in
8 accordance with this Section. Each penalty payment will be allocated in accordance with California
9 Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California
10 Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the
11 penalty remitted to Held. Held's counsel shall be responsible for remitting Normark's penalty
12 payment(s) under this Consent Judgment to OEHHA.

13 **3.1.1 Initial Civil Penalty.** Normark shall make an initial civil penalty payment of
14 \$4,500. Normark shall provide its payment in a single check made payable to "Anthony E. Held,
15 Client Trust Account" to be delivered to the address provided in Section 3.4, below.

16 **3.1.2 Final Civil Penalty; Waiver.** On January 29, 2016, Normark shall make a
17 final civil penalty payment of \$9,000. Pursuant to title 11 California Code of Regulations, section
18 3203(c), Held agrees that the final civil penalty payment shall be waived in its entirety if, no later
19 than January 15, 2016 an officer of Normark provides Held with a signed declaration certifying that
20 all of the Products it ships for sale or distributes for sale in California as of the date of the
21 declaration are Reformulated Products, and that Normark will continue to offer only Reformulated
22 Products in California in the future. The option to certify early reformulation in lieu of making the
23 final civil penalty payment otherwise required by this Section is a material term, and time is of the
24 essence.

25 **3.2 Reimbursement of Attorneys' Fees and Costs**

26 The Parties negotiated Normark's reimbursement of the compensation due to Held and
27 his counsel under general contract principles and the private attorney general doctrine codified at
28 California Code of Civil Procedure § 1021.5. For all work performed through the mutual

1 execution of this agreement and the Court's approval of the same. Normark shall pay Held and
2 his counsel a total of \$34,000, for fees and costs incurred as a result of investigating, bringing the
3 matter to Normark's attention, negotiating a settlement in the public interest, and in obtaining the
4 Court's approval of this Consent Judgment. Normark's payment shall be delivered to the address
5 in Section 3.4 in the form of a check payable to "The Chanler Group."

6 **3.3 Payment Timing; Payments Held In Trust**

7 Normark shall deliver all payments required by this Consent Judgment to its counsel
8 within fifteen business days of the date that this agreement is fully executed by the Parties.
9 Normark's counsel shall confirm receipt of settlement funds in writing to Held's counsel and,
10 thereafter, hold the amounts paid in trust until such time as the Court grants the motion for
11 approval of the Parties' settlement contemplated by Section 5. Within three days of the Effective
12 Date, Normark's counsel shall deliver all settlement payments it has held in trust to Held's counsel
13 at the address provided in Section 3.4.

14 **3.4 Payment Address**

15 All payments required by this Consent Judgment shall be delivered to the following
16 address:

17 The Chanler Group
18 Attn: Proposition 65 Controller
19 2560 Ninth Street
20 Parker Plaza, Suite 214
Berkeley, CA 94710

21 **4. CLAIMS COVERED AND RELEASED**

22 **4.1 Held's Public Release of Proposition 65 Claims**

23 Held, acting on his own behalf and in the public interest, releases Normark, its suppliers,
24 and their respective parents, subsidiaries, affiliated entities under common ownership, directors,
25 officers, employees, and attorneys ("Releasees") and each entity to whom Normark directly or
26 indirectly distributes or sells the Products including, but not limited to, its downstream distributors,
27 wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees
28 ("Downstream Releasees") for any violations arising under Proposition 65 for unwarned exposures

1 to DEHP from Products sold or distributed for sale by Normark prior to the Effective Date, as set
2 forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance
3 with Proposition 65 by Normark with respect to the alleged or actual failure to warn about
4 exposures to DEHP from Products manufactured, sold or distributed for sale by Normark after the
5 Effective Date.

6 **4.2 Held's Individual Release of Claims**

7 Held, in his individual capacity only and *not* in his representative capacity, also provides a
8 release to Defendants, Releasees, and Downstream Releasees which shall be effective as a full and
9 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
10 attorneys' fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
11 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
12 exposures to DEHP in Products manufactured, imported, distributed or sold by Normark before the
13 Effective Date.

14 **4.3 Normark's Release of Held**

15 Normark, on its own behalf and on behalf of its past and current agents, representatives,
16 attorneys, successors and/or assignees, hereby waives any and all claims against Held and his
17 attorneys and other representatives, for any and all actions taken or statements made by Held and
18 his attorneys and other representatives in the course of investigating claims, seeking to enforce
19 Proposition 65 against it in this matter, or with respect to the Products.

20 **5. COURT APPROVAL**

21 This Consent Judgment is not effective until it is approved and entered by the Court and
22 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
23 after it has been fully executed by all Parties. Held and Normark agree to support the entry of this
24 Consent Judgment, and to obtain the Court's approval in a timely manner. The Parties
25 acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a noticed
26 motion is required for judicial approval of this Consent Judgment, which motion Held shall draft
27 and file. If any third-party objection to the motion is filed, Held and Normark agree to work
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1 together to file a reply and appear at any hearing. This provision is a material component of the
2 Consent Judgment and shall be treated as such in the event of a breach.

3 **6. SEVERABILITY**

4 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment,
5 any provision of this Consent Judgment is held by a court to be unenforceable, the validity of the
6 remaining provisions shall not be adversely affected.

7 **7. GOVERNING LAW**

8 The terms of this Consent Judgment shall be governed by the laws of the State of California
9 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
10 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Normark
11 may provide Held with written notice of any asserted change in the law, and shall have no further
12 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products
13 are so affected.

14 **8. NOTICE**

15 Unless specified herein, all correspondence and notice required by this Consent Judgment
16 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,
17 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the
18 following addresses:

19 To Normark:

20 Tom Mackin, President
21 Normark Corporation
22 10395 Yellow Circle Drive
Hopkins, MN 55343

23 with a copy to Normark's counsel:

24 Raymond H. Hua, Esq.
25 Yukevich Cavanaugh
26 355 South Grand Avenue, 15th Floor
Los Angeles, CA 90071

To Held:

Attn: Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

27 Any Party may, from time to time, specify in writing to the other Party a change of address
28 to which all notices and other communications shall be sent.

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9. **COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

This Consent Judgment may be executed in counterparts and by facsimile or portable document format (pdf) signature, each of which shall be deemed an original and, all of which, when taken together, shall constitute one and the same document.

10. **COMPLIANCE WITH REPORTING REQUIREMENTS**

Held and his counsel agree to comply with the reporting form requirements referenced in California Health and Safety Code section 25249.7(f).

11. **MODIFICATION**

This Consent Judgment may be modified only by: (i) a written agreement of the Parties and the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of any party and the entry of a modified Consent Judgment by the Court thereon.

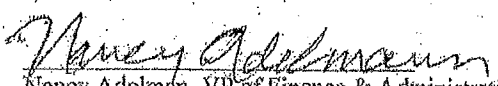
12. **AUTHORIZATION**

The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:


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


Nancy Adelman, VP of Finance & Administration
NORMARK CORPORATION

Dated: 7/10/15

Dated: 7-9-15