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5
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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION

11
12 MARK MOORBERG,)

13 Plaintiff,)

14 v.)

15 LIBERTY GLOVE, INC.; and DOES 1-150,)
inclusive,)

16 Defendants.)
17 _____)

Case No.: CIV1504130

[PROPOSED] CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Mark Moorberg and Liberty Glove, Inc.**

3 This Consent Judgment is entered into by and between Mark Moorberg (“Moorberg” or
4 “Plaintiff”), and Liberty Glove, Inc. (“Liberty Glove” or “Defendant”), with Plaintiff and Defendant
5 collectively referred to as the “Parties.”

6 **1.2 Mark Moorberg**

7 Moorberg is an individual residing in the State of California who seeks to promote
8 awareness of exposure to toxic chemicals and to improve human health by reducing or eliminating
9 hazardous substances contained in consumer and commercial products.

10 **1.3 Liberty Glove, Inc.**

11 Moorberg alleges that Liberty Glove employs ten or more persons and is a person in the
12 course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of
13 1986, California Health & Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moorberg alleges that Liberty Glove has manufactured, imported, distributed and/or sold
16 vinyl/PVC gloves containing Diisononyl phthalate (“DINP”) without the requisite Proposition 65
17 warnings. DINP is listed under Proposition 65 as a chemical known to cause cancer.

18 **1.5 Product Description**

19 The products that are covered by this Consent Judgment are vinyl/PVC gloves containing
20 DINP including, but not limited to, *Duraskin Powder-Free Vinyl Disposable Gloves, UPC #7*
21 *44897 01055 0* that are manufactured, imported, sold and/or distributed for sale in California by
22 Liberty Glove (hereinafter the “Products”).

23 **1.6 Notice of Violation**

24 On December 22, 2014, Moorberg served Liberty Glove and various public enforcement
25 agencies, with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided the
26 recipients with notice of alleged violations of Proposition 65 based on Liberty Glove’s alleged
27 failure to warn consumers that the Products exposed users in California to DINP. To the best of the
28 Parties’ knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.

1 **1.7 Complaint**

2 On November 12, 2015, Moorberg filed a complaint in the Superior Court in and for the
3 County of Marin against Liberty Glove and Does 1 through 150, *Moorberg v. Liberty Glove, Inc., et*
4 *al.*, Case No. CIV1504130 (“Complaint” or “Action”), alleging violations of Proposition 65,
5 based on the alleged exposures to DINP contained in certain vinyl/PVC gloves sold by Liberty
6 Glove.

7 **1.8 No Admission**

8 Liberty Glove denies the material, factual and legal allegations contained in Moorberg’s
9 Notice and Complaint and maintains that all products that it has sold, manufactured, imported
10 and/or distributed in California, including the Products, have been and are in compliance with all
11 laws. Nothing in this Consent Judgment shall be construed as an admission by Liberty Glove of
12 any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment
13 constitute or be construed as an admission by Liberty Glove of any fact, finding, conclusion, issue
14 of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive, or impair any
15 right, remedy, argument or defense the Parties may have in other legal proceedings. This Consent
16 Judgment is the product of negotiation and compromise and is accepted by the Parties for the
17 purpose of settling, compromising and resolving disputed issues.

18 **1.9 Consent to Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
20 jurisdiction over the Parties as to the allegations contained in the Complaint, that venue is proper in
21 the County of Marin and that this Court has jurisdiction to enter and enforce the provisions of this
22 Consent Judgment.

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term “Effective Date” shall the date this Consent
25 Judgment is entered by the Court, including any unopposed Tentative Ruling.

26 **2. INJUNCTIVE RELIEF: REFORMULATION/WARNINGS**

27 **2.1 Reformulated Products**

28 Commencing on the Effective Date, Liberty Glove shall only sell, offer for sale, or distribute

1 for sale in California, Reformulated Products, or Products that contain a clear and reasonable
2 warning pursuant to Section 2.2. For purposes of this Consent Judgment, “Reformulated Products”
3 are defined as those Products containing DINP in concentrations less than 0.1 percent (1,000 parts
4 per million) in each accessible component when analyzed pursuant to U.S. Environmental
5 Protection Agency testing methodologies 3580A and 8270C, or any other methodology utilized by
6 federal or state agencies for the purpose of determining the DINP content in a solid substance.

7 **2.2 Clear and Reasonable Warnings**

8 Commencing on the Effective Date for all Products that are not Reformulated Products,
9 Liberty Glove agrees that it will only offer such Products for sale or shipment in California with a
10 clear and reasonable warning pursuant to this Section. However, the Parties understand and agree
11 that Liberty Glove has implemented a warning program prior to the execution of this Consent
12 Judgment and, as such, any Products that contain a warning under the existing warning program, and
13 any Products that have been ordered under the existing warning program (and therefore will contain
14 Liberty Glove's current warning), shall be exempt from meeting the warning requirements of this
15 section. Liberty Glove further agrees that the warning will be prominently placed with such
16 conspicuousness as compared with other words, statements, designs, or devices as to render it likely
17 to be read and understood by an ordinary individual under customary conditions before purchase or
18 use. Each warning shall be provided in a manner such that the consumer or user understands to which
19 *specific* Product the warning applies, so as to minimize the risk of consumer confusion. For purposes
20 of this Consent Judgment, a clear and reasonable warning shall consist of a warning affixed to the
21 packaging, label, tag, or directly to the Product, or, for internet or mail order catalogue sales, in
22 accordance with Section 2.3(a), and such warnings shall contain the following statement:

23
24 **WARNING:** This product contains DINP, a chemical known
25 to the State of California to cause cancer.

26 Or, if the Product contains a Proposition 65-listed chemical in addition to
27 DINP, that is known to cause birth defects and other reproductive harm:
28

1 WARNING: This product contains chemicals that are
2 known to the State of California to cause
3 cancer and birth defects and other reproductive
4 harm.

5 **(a) Mail Order Catalog and Internet Sales.** In the event that Liberty Glove
6 sells Products via mail order catalog and/or the internet, to customers located in California, printed
7 or ordered after the Effective Date, that are not Reformulated Products, Liberty Glove shall provide
8 warnings for such Products sold via mail order catalog or the internet to California residents.
9 Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to
10 which the warning applies as further specified in Sections 2.2(a)(i) and (ii).

11 **(i) Mail Order Catalog Warning.** Any warning provided in a mail
12 order catalog shall be in the same type size or larger than the Product description text within the
13 catalog. The following warning shall be provided on the same page and in the same location as the
14 display and/or description of the Product:

15 WARNING: This product contains DINP, a chemical
16 known to the State of California to cause
17 cancer.

18 Or, if the Product contains a Proposition 65-listed chemical in addition to
19 DINP, that is known to cause birth defects and other reproductive harm:

20 WARNING: This product contains chemicals that are
21 known to the State of California to cause
22 cancer and birth defects and other reproductive
23 harm.

24 Where Liberty Glove reasonably determines that it is impracticable to provide the warning
25 on the same page and in the same location as the display and/or description of the Product, Liberty
26 Glove may utilize a designated symbol to cross reference the applicable warning and shall define
27 the term “designated symbol” with the following language on the inside of the front cover of the
28 catalog or on the same page as any order form for the Product(s):

 WARNING: Certain products identified with this symbol ▼
 and offered for sale in this catalog contain DINP,
 a chemical known to the State of California to cause
 cancer.

1 Or, if the Product contains a Proposition 65-listed chemical in addition to
2 DINP, that is known to cause birth defects and other reproductive harm:

3 WARNING: This product contains chemicals that are
4 known to the State of California to cause
5 cancer and birth defects and other reproductive
6 harm.

7 The designated symbol must appear on the same page and in close proximity to the display
8 and/or description of the Product. On each page where the designated symbol appears, Liberty
9 Glove must provide a header or footer directing the consumer to the warning language and
10 definition of the designated symbol.

11 **(ii) Internet Website Warning.** A warning shall be given in conjunction
12 with the sale of the Products via the internet, which warning shall appear either: (a) on the same
13 web page on which a Product is displayed; (b) on the same web page as the order form for a
14 Product; (c) on the same page as the price for any Product; or (d) on one or more web pages
15 displayed to a purchaser during the checkout process. The following warning statement shall be
16 used and shall appear in any of the above instances adjacent to or immediately following the
17 display, description, or price of the Product for which it is given in the same type size or larger than
18 the Product description text:

19 WARNING: This product contains DINP, a chemical
20 known to the State of California to cause
21 cancer.

22 Or, if the Product contains a Proposition 65-listed chemical in addition to
23 DINP, that is known to cause birth defects and other reproductive harm:

24 WARNING: This product contains chemicals that are
25 known to the State of California to cause
26 cancer and birth defects and other reproductive
27 harm.

28 Alternatively, the designated symbol may appear adjacent to or immediately following the
display, description, or price of the Product for which a warning is being given, provided that the
following warning statement also appears elsewhere on the same web page, as follows:

WARNING: This product contains DINP, a chemical
known to the State of California to cause
cancer.

1 Or, if the Product contains a Proposition 65-listed chemical in addition to
2 DINP, that is known to cause birth defects and other reproductive harm:

3 WARNING: This product contains chemicals that are
4 known to the State of California to cause
5 cancer and birth defects and other reproductive
6 harm.

7 **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

8 In settlement of all the claims referred to in this Consent Judgment, Liberty Glove shall pay
9 a total of \$8,000 in civil penalties in accordance with this Section. The penalty payment will be
10 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of
11 the funds remitted to the California Office of Environmental Health Hazard Assessment
12 (“OEHHA”) by Moorberg.

13 **3.1 Initial Civil Penalty**

14 Within five days of the Effective Date, Liberty Glove shall make an initial civil penalty
15 payment of \$4,000. Liberty Glove shall provide its payment in a single check made payable to
16 “Mark Moorberg, Client Trust Account” to be delivered to the address provided in Section 3.3,
17 below.

18 **3.2 Final Civil Penalty**

19 Liberty Glove shall pay a final civil penalty of \$4,000 on or before December 31, 2016. The
20 final civil penalty shall be waived in its entirety, however, if, no later than December 15, 2016, an
21 officer of Liberty Glove provides Moorberg with written certification that, as of the date of such
22 certification, Liberty Glove has met the reformulation standard specified in Section 2.1 above, such
23 that all Products it sells, offers for sale, or distributes for sale in California by Liberty Glove, other
24 than those in Liberty Glove's inventory and part of Liberty Glove’s current warning program as of
25 the Effective Date, are Reformulated Products and that Liberty Glove will continue to sell, offer for
26 sale, or distribute for sale in California only Reformulated Products, Moorberg must receive any
27 such certification on or before December 15, 2016. The certification in lieu of a final civil penalty
28 payment provided by this Section is a material term, and time is of the essence. In the event that
Liberty Glove has not delivered the above certification in lieu of the final civil penalty, Liberty

1 Glove shall issue a check for its final civil penalty to “Mark Moorberg, Client Trust Account” in the
2 amount of \$4,000.

3 **3.3 Reimbursement of Plaintiff’s Fees and Costs**

4 The Parties acknowledge that Moorberg and his counsel offered to resolve this dispute
5 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
6 the fee issue to be resolved after the material terms of the agreement had been settled. Liberty
7 Glove then expressed a desire to resolve the fee and cost issue shortly after the other settlement
8 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
9 compensation due to Moorberg and his counsel under general contract principles and the private
10 attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all
11 work performed (and to be performed) in this matter, except fees that may be incurred in
12 connection with a third-party, including the Office of the Attorney General, appeal (if any). Under
13 these legal principles, Liberty Glove shall pay the amount of \$25,000 to reimburse Moorberg’s
14 fees and costs incurred investigating, litigating and enforcing this matter, including the fees and
15 costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court’s approval of
16 this Consent Judgment in the public interest. This payment shall be made to “The Chanler Group,”
17 within five (5) business days of the Effective Date.

18 **3.4 Payment Procedures**

19 All payments owed to Moorberg and his counsel, pursuant to Sections 3.1 through 3.3,
20 shall be delivered to the following payment address:

21 The Chanler Group
22 Attn: Proposition 65 Controller
23 2560 Ninth Street
24 Parker Plaza, Suite 214
Berkeley, CA 94710

25 **4. CLAIMS COVERED AND RELEASED**

26 **4.1 Moorberg’s Release of Proposition 65 Claims**

27 Moorberg acting on his own behalf and in the public interest releases Liberty Glove, its
28 parents, subsidiaries, affiliated entities under common ownership, directors, officers, stockholders,
employees, attorneys, and each entity to whom Liberty Glove directly or indirectly distributes or

1 sells Products, including, but not limited, to downstream distributors, wholesalers, customers,
2 retailers, franchisees, cooperative members, licensors, and licensees (collectively the “Defendant
3 Releasees”), from all claims for violations of Proposition 65 based on their failure to warn about
4 alleged exposures to DINP contained in the Products that were manufactured, distributed, or sold by
5 Liberty Glove prior to the Effective Date. Compliance with the terms of this Consent Judgment
6 constitutes compliance with Proposition 65 with respect to exposures to DINP from the Products as
7 set forth in the Notice.

8 **4.2 Moorberg’s Individual Release of Claims**

9 Moorberg also, in his individual capacity only and *not* in his representative capacity,
10 provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar
11 to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
12 liabilities and demands of plaintiff of any nature, character or kind, whether known or unknown,
13 suspected or unsuspected, limited to and arising out of alleged or actual exposures to Proposition 65
14 Listed Chemicals in the Products manufactured, distributed or sold by Defendant Releasees.

15 **4.3 Liberty Glove’s Release of Moorberg**

16 Liberty Glove on behalf of itself, its past and current agents, representatives, attorneys,
17 successors, and/or assignees, hereby waives any and all claims against Moorberg, his attorneys and
18 other representatives, for any and all actions taken or statements made (or those that could have
19 been taken or made) by Moorberg and his attorneys and other representatives prior to the Effective
20 Date, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65
21 against it in this matter with respect to the Products.

22 **5. COURT APPROVAL**

23 This Consent Judgment is not effective until it is approved and entered by the Court and
24 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
25 after it has been fully executed by all Parties.
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1 **6. SEVERABILITY**

2 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
3 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
4 remaining shall not be adversely affected.

5 **7. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of California
7 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
8 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
9 Consent Judgment are rendered inapplicable by preemption or reason of law generally as to the
10 Products, or, in the event that a court of competent jurisdiction or an agency of the State of
11 California determines that products that contain DINP do not require Proposition 65 warnings, then
12 all of Liberty Glove's obligations set forth in this Consent Judgment to either reformulate the
13 Products or provide warnings on the Products shall terminate and Liberty Glove shall have no
14 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
15 Products are so affected.

16 **8. NOTICES**

17 Unless specified herein, all correspondence and notices required to be provided pursuant to
18 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
19 (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by the
20 other Party at the following addresses:

21 To Liberty Glove:
22 Saul Jaffe, Esq.
23 Claremont Law Group, Inc.
24 618 W Baseline Road
 Claremont, CA 91711

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

25 Any Party, from time to time, may specify in writing to the other Party a change of address
26 to which all notices and other communications shall be sent.
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9. COUNTERPARTS; FACSIMILE SIGNATURES

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

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Moorberg and his attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

11. ADDITIONAL POST EXECUTION ACTIVITIES

Moorberg and Liberty Glove agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which Moorberg shall draft and file, and Liberty Glove shall not oppose. If any third party objection to the noticed motion is filed, Moorberg and Liberty Glove shall work together to file a joint reply and appear at any hearing before the Court. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach.

12. MODIFICATION

This Consent Judgment may be modified only: (1) by written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any Party and entry of a modified Consent Judgment by the Court.

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13. AUTHORIZATION

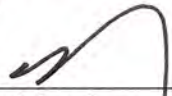
The undersigned are authorized to execute this Consent Judgment on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

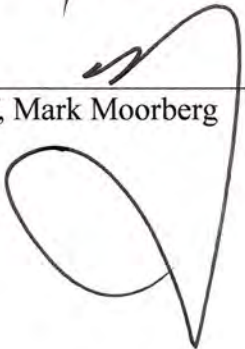
AGREED TO:

Date: May 26, 2016

Date: _____

By: 
Plaintiff, Mark Moorberg

By: _____
Michael Young, President
Liberty Glove, Inc.



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13. **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.

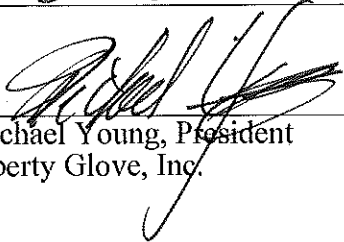
AGREED TO:

AGREED TO:

Date: _____

Date: 5-25-16

By: _____
Plaintiff, Mark Moorberg

By: 
Michael Young, President
Liberty Glove, Inc.