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FILED

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

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF MARIN

13 UNLIMITED CIVIL JURISDICTION

14 MARK MOORBERG,

15 Plaintiff,

16 v.

17 LIBERTY GLOVE, INC.;

18 Defendant.

19) Case No. CW 1504130
20)
21) **COMPLAINT FOR CIVIL PENALTIES**
22) **AND INJUNCTIVE RELIEF**
23)
24) (Health & Safety Code § 25249.5 *et seq.*)
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27)
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1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff MARK
3 MOORBERG in the public interest of the citizens of the State of California to enforce the
4 People's right to be informed of the health hazards caused by exposures to Diisononyl phthalate
5 ("DINP"), a toxic chemical found in vinyl/PVC gloves sold by defendant in California.

6 2. By this Complaint, plaintiff seeks to remedy defendant's continuing failure to
7 warn California citizens and other individuals about the risks of exposure to DINP present in
8 and on vinyl/PVC gloves manufactured, distributed, and offered for sale or use to consumers
9 and other individuals throughout the State of California.

10 3. Detectable levels of DINP are found in and on the vinyl/PVC gloves that
11 defendant manufactures, distributes, and offers for sale to consumers and other individuals
12 throughout the State of California.

13 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
14 Health and Safety Code section 25249.6 *et seq.* ("Proposition 65"), "[n]o person in the course of
15 doing business shall knowingly and intentionally expose any individual to a chemical known to
16 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
17 warning to such individual . . ." Health & Safety Code § 25249.6.

18 5. Pursuant to Proposition 65, on December 20, 2013, California identified and listed
19 DINP as a chemical known to cause cancer. DINP became subject to the "clear and reasonable
20 warning" requirements of the act one year later on December 20, 2014. Cal. Code Regs. tit. 27,
21 § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

22 6. Defendant manufactures, distributes, imports, sells, and offers for sale without
23 health hazard warnings in California, vinyl/PVC gloves containing DINP including, but not
24 limited to, the *Duraskin Powder-Free Vinyl Disposable Gloves, UPC #7 44897 01055 0*. All
25 vinyl/PVC gloves containing DINP are referred to collectively hereinafter as "PRODUCTS."

26 7. Defendant's failure to warn consumers and other individuals in the State of
27 California of the health hazards associated with exposures to DINP in conjunction with
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1 defendant's sales of the PRODUCTS are violations of Proposition 65, and subject defendant to
2 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code
3 § 25249.7(a) & (b)(1).

4 8. For defendant's violations of Proposition 65, plaintiff seeks preliminary and
5 permanent injunctive relief to compel defendant to provide purchasers or users of the
6 PRODUCTS with the required warning regarding the health hazards associated with exposures
7 to DINP. Health & Safety Code § 25249.7(a).

8 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
9 penalties against defendant for its violations of Proposition 65.

10 PARTIES

11 10. Plaintiff MARK MOORBERG is a citizen of the State of California who is
12 dedicated to protecting the health of California citizens through the elimination or reduction of
13 toxic exposures from consumer products; and he brings this action in the public interest
14 pursuant to Health and Safety Code section 25249.7(d).

15 11. Defendant LIBERTY GLOVE, INC. ("LIBERTY") is a person in the course of
16 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

17 12. LIBERTY manufactures, imports, distributes, sells, and/or offers the PRODUCTS
18 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,
19 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

20 VENUE AND JURISDICTION

21 13. Venue is proper in Marin County Superior Court, pursuant to Code of Civil
22 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
23 because plaintiff seeks civil penalties against LIBERTY, because one or more instances of
24 wrongful conduct occurred, and continue to occur, in this county, and/or because LIBERTY
25 conducted, and continues to conduct, business in Marin County with respect to the
26 PRODUCTS.

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1 been provided with a "clear and reasonable warning" regarding the harms associated with such
2 exposures, as required by Proposition 65.

3 20. LIBERTY manufactures, imports, distributes, sells, and offers the PRODUCTS
4 for sale or use in violation of Health and Safety Code section 25249.6, and LIBERTY's
5 violations have continued beyond its receipt of plaintiff's sixty-day notice of violation.
6 LIBERTY's violations are ongoing and continuous in nature, and, as such, will continue in the
7 future.

8 21. After receiving plaintiff's sixty-day notice of violation, none of the appropriate
9 public enforcement agencies have commenced and diligently prosecuted a cause of action
10 against LIBERTY under Proposition 65 to enforce the alleged violations that are the subject of
11 plaintiff's notice of violation.

12 22. The PRODUCTS that LIBERTY manufactures, imports, distributes, sells, and
13 offers for sale or use in California cause exposures to DINP as a result of the reasonably
14 foreseeable use of the PRODUCTS. Such exposures caused by LIBERTY and endured by
15 consumers and other individuals in California are not exempt from the "clear and reasonable"
16 warning requirements of Proposition 65, yet LIBERTY provides no warning.

17 23. LIBERTY knew or should have known that the PRODUCTS it manufactured,
18 imported, distributed, sold, and offered for sale or use in California contained DINP.

19 24. DINP is present in or on the PRODUCTS in such a way as to expose individuals
20 to DINP through dermal contact and/or ingestion during reasonably foreseeable use.

21 25. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
22 continues to cause, consumer exposures to DINP, as defined by title 27 of the California Code
23 of Regulations, section 25602(b).

24 26. LIBERTY had knowledge that the normal and reasonably foreseeable use of the
25 PRODUCTS exposed individuals to DINP through dermal contact and/or ingestion.

26 27. LIBERTY intended that exposures to DINP from the reasonably foreseeable use
27 of the PRODUCTS would occur by its deliberate, non-accidental participation in the
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1 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
2 consumers and other individuals in California.

3 28. LIBERTY failed to provide a “clear and reasonable warning” to those consumers
4 and other individuals in California who were or who would become exposed to DINP through
5 dermal contact and/or ingestion resulting from their use of the PRODUCTS.

6 29. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
7 directly by California voters, individuals exposed to DINP through dermal contact and/or
8 ingestion as a result of their use of the PRODUCTS that LIBERTY sold without a “clear and
9 reasonable” health hazard warning, have suffered, and continue to suffer, irreparable harm for
10 which they have no plain, speedy, or adequate remedy at law.

11 30. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
12 above-described acts, LIBERTY is liable for a maximum civil penalty of \$2,500 per day for
13 each violation.

14 31. As a consequence of the above-described acts, Health and Safety Code
15 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
16 LIBERTY.

17 **PRAYER FOR RELIEF**

18 Wherefore, plaintiff prays for judgment against LIBERTY as follows:

19 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess
20 civil penalties against LIBERTY in the amount of \$2,500 per day for each violation;

21 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
22 preliminarily and permanently enjoin LIBERTY from manufacturing, distributing, or offering
23 the PRODUCTS for sale or use in California without first providing a “clear and reasonable
24 warning” in accordance with title 27 of the California Code of Regulations, section 25601 *et*
25 *seq.*, regarding the harms associated with exposures to DINP;

26 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
27 preliminary and permanent injunctions mandating that LIBERTY recall all PRODUCTS
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currently in the chain of commerce in California without a "clear and reasonable warning" as defined by California Code of Regulations title 27, section 25601 et seq.;

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

Dated: November 2, 2015

Respectfully Submitted,
THE CHANLER GROUP

By: 
Troy C. Bailey
Attorneys for Plaintiff
MARK MOORBERG