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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

MARK MOORBERG,
Plaintiff,
v.
PROFESSIONAL SECURITY
CORPORATION; PERSONAL SAFETY
CORPORATION; and DOES 1-150, inclusive,
Defendants.

Case No. 15CV288861
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**
(Health & Safety Code § 25249.5 *et seq.*)

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by Plaintiff Mark Moorberg in
3 the public interest of the citizens of the State of California to enforce the People’s right to be
4 informed of the health hazards caused by exposures to di(2-ethylhexyl)phthalate (“DEHP”), a
5 toxic chemical found in and on the vinyl/PVC self defense device holsters sold by defendant in
6 California.

7 2. By this Complaint, Plaintiff seeks to remedy defendant’s continuing failure to
8 warn individuals not covered by California’s Occupational Safety Health Act, Labor Code
9 section 6300 et seq., who purchase, use or handle defendant’s products, about the risks of
10 exposure to DEHP present in and on the vinyl/PVC self defense device holsters manufactured,
11 distributed, and offered for sale or use throughout the State of California. Individuals not
12 covered by California’s Occupational Safety Health Act, Labor Code section 6300 et seq., who
13 purchase, use or handle defendant’s products, are referred to hereinafter as “consumers.”

14 3. Detectable levels of DEHP are found in and on the vinyl/PVC self defense device
15 holsters that defendant manufacture, distribute, and offer for sale to consumers throughout the
16 State of California.

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

22 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
23 DEHP as a chemical known to cause birth defects (and reproductive harm). DEHP became
24 subject to the “clear and reasonable warning” requirements of the act one year later on October
25 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
26 25249.10(b).

1 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
2 State of California.

3 13. Defendant PERSONAL SAFETY CORPORATION (“PERSONAL SAFETY”) is
4 a person in the course of doing business within the meaning of Health and Safety Code sections
5 25249.6 and 25249.11.

6 14. PERSONAL SAFETY manufactures, imports, distributes, sells, and/or offers the
7 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
8 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
9 State of California.

10 15. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
11 person in the course of doing business within the meaning of Health and Safety Code sections
12 25249.6 and 25249.11.

13 16. MANUFACTURER DEFENDANTS, and each of them, research, test, design,
14 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,
15 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for
16 sale or use in California.

17 17. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
18 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
19 and 25249.11.

20 18. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,
21 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or
22 retailers for sale or use in the State of California, or each implies by its conduct that it
23 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to
24 individuals, businesses, or retailers for sale or use in the State of California.

25 19. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
26 the course of doing business within the meaning of Health and Safety Code sections 25249.6
27 and 25249.11.

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1 **FIRST CAUSE OF ACTION**

2 **(Violation of Proposition 65 - Against All Defendants)**

3 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 25, inclusive.

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

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

13 29. On July 13, 2015, Plaintiff served a sixty-day notice of violation, together with
14 the accompanying certificate of merit, on PROFESSIONAL SECURITY, PERSONAL
15 SAFETY, California Attorney General’s Office, and the requisite public enforcement agencies
16 alleging that, as a result of DEFENDANTS’ sales of the PRODUCTS, consumers in the State of
17 California are being exposed to DEHP resulting from their reasonably foreseeable use of the
18 PRODUCTS, without the consumers first receiving a “clear and reasonable warning” regarding
19 the harms associated with exposures to DEHP, as required by Proposition 65.

20 30. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
21 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
22 violations have continued beyond their receipt of Plaintiff’s sixty-day notice of violation. As
23 such, DEFENDANTS’ violations are ongoing and continuous in nature and, unless enjoined
24 will continue in the future.

25 31. After receiving Plaintiff’s sixty-day notice of violation, no public enforcement
26 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
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1 under Proposition 65 to enforce the alleged violations that are the subject of Plaintiff’s notice of
2 violation.

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

8 33. DEFENDANTS knew or should have known that the PRODUCTS they
9 manufacture, import, distribute, sell, and offer for sale in California contain DEHP.

10 34. DEHP is present in or on the PRODUCTS in such a way as to expose consumers
11 through dermal contact and/or ingestion during reasonably foreseeable use.

12 35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
13 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code
14 of Regulations, section 25602(b).

15 36. DEFENDANTS know that the normal and reasonably foreseeable use of the
16 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

17 37. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable
18 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the
19 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
20 consumers in California.

21 38. DEFENDANTS failed to provide a “clear and reasonable warning” to those
22 consumers in California who have been, or who will be, exposed to DEHP through dermal
23 contact and/or ingestion resulting from their use of the PRODUCTS.

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Dated: December 9, 2015

Respectfully submitted,
THE CHANLER GROUP

By: Cliff Chanler
Clifford Chanler
Attorneys for Plaintiff
MARK MOORBERG