

FILED

OCT 13 2015

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

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3 THE CHANLER GROUP
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9 Attorneys for Plaintiff
10 MARK MOORBERG

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.; *et al.*,

18 Defendants.

Case No. CIV-1402863

~~PROPOSED~~ JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT

Date: 10/13/15

Time: 9A

Dept. A

Judge: Hon. Geoffrey Howard

1 Plaintiff Mark Moorberg and Defendant Liberty Glove, Inc., having agreed through
2 their respective counsel that Judgment be entered pursuant to the terms of their settlement
3 agreement in the form of a consent judgment, and following this Court's issuance of an
4 order approving their Proposition 65 settlement and Consent Judgment,

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to
6 Health and Safety Code section 25249.7(f)(4) and Code of Civil Procedure section 664.6,
7 judgment is hereby entered in accordance with the terms of the Consent Judgment attached
8 hereto as Exhibit 1. By stipulation of the parties, the Court will retain jurisdiction to
9 enforce the terms of the settlement under Code of Civil Procedure section 664.6.

10 **IT IS SO ORDERED.**

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13 Dated: 10-13-15

14 GEOFFREY M. HOWARD
15 JUDGE OF THE SUPERIOR COURT
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EXHIBIT 1

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1. INTRODUCTION

1.1 Mark Moorberg and Liberty Glove, Inc.

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

1.2 Mark Moorberg

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

1.3 Liberty Glove, Inc.

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

1.4 General Allegations

Moorberg alleges that Liberty Glove has manufactured, imported, distributed and/or sold vinyl/PVC aprons containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 warnings. DEHP is listed under Proposition 65 as a chemical known to cause birth defects and other reproductive harm.

1.5 Product Description

The products that are covered by this Consent Judgment are vinyl/PVC aprons containing DEHP including, but not limited to, *Dura Wear Apron, Style No: 1328* that are manufactured, imported, sold and/or distributed for sale in California by Liberty Glove (hereinafter the “Products”).

1.6 Notice of Violation

On April 16, 2014, Moorberg served Liberty Glove and various public enforcement agencies, with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided the recipients with notice of alleged violations of Proposition 65 based on Liberty Glove’s alleged

1 failure to warn consumers that the Products exposed users in California to DEHP. To the best of the
2 Parties' knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On July 25, 2014, Moorberg filed a complaint in the Superior Court in and for the County of
5 Marin against Liberty Glove and Does 1 through 150, *Moorberg v. Liberty Glove, Inc., et al.*, Case
6 No. CIV-1402863 ("Complaint" or "Action"), alleging violations of Proposition 65, based on the
7 alleged exposures to DEHP contained in certain vinyl/PVC aprons sold by Liberty Glove.

8 **1.8 No Admission**

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

19 **1.9 Consent to Jurisdiction**

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

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term "Effective Date" shall mean May 30, 2015.
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1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulated Products**

3 Commencing on the Effective Date, Liberty Glove shall, other than Products in Liberty
4 Glove's inventory as of the Effective Date, only sell, offer for sale, or distribute for sale in
5 California, Reformulated Products, or Products that contain a clear and reasonable warning pursuant
6 to Section 2.2. For purposes of this Consent Judgment, "Reformulated Products" are defined as
7 those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) in
8 each accessible component when analyzed pursuant to U.S. Environmental Protection Agency
9 testing methodologies 3580A and 8270C, or any other methodology utilized by federal or state
10 agencies for the purpose of determining the DEHP content in a solid substance.

11 **2.3 Clear and Reasonable Warnings**

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

23 **WARNING:** This product contains DEHP, a chemical known
24 to the State of California to cause birth defects
25 and other reproductive harm.

26 **(a) Mail Order Catalog and Internet Sales.** In the event that
27 Liberty Glove sells Products via mail order catalog, printed or ordered after the Effective Date,
28 and/or the internet, to customers located in California, after the Effective Date, that are not

1 Reformulated Products, Liberty Glove shall provide warnings for such Products sold via mail order
2 catalog or the internet to California residents. Warnings given in the mail order catalog or on the
3 internet shall identify the *specific* Product to which the warning applies as further specified in
4 Sections 2.3(a)(i) and (ii).

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

9 WARNING: This product contains DEHP, a chemical
10 known to the State of California to cause
11 birth defects and other reproductive harm.

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

17 WARNING: Certain products identified with this symbol ▼
18 and offered for sale in this catalog contain DEHP,
19 a chemical known to the State of California to cause
20 birth defects and other reproductive harm.

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

25 (ii) **Internet Website Warning.** A warning shall be given in conjunction
26 with the sale of the Products via the internet, which warning shall appear either: (a) on the same
27 web page on which a Product is displayed; (b) on the same web page as the order form for a
28 Product; (c) on the same page as the price for any Product; or (d) on one or more web pages
displayed to a purchaser during the checkout process. The following warning statement shall be

1 used and shall appear in any of the above instances adjacent to or immediately following the
2 display, description, or price of the Product for which it is given in the same type size or larger than
3 the Product description text:

4
5 WARNING: This product contains DEHP, a chemical
6 known to the State of California to cause
 birth defects and other reproductive harm.

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

10 WARNING: This product contains DEHP, a chemical
11 known to the State of California to cause
12 birth defects and other reproductive harm.

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

14 In settlement of all the claims referred to in this Consent Judgment, Liberty Glove has been
15 assessed a total of \$7,500 in civil penalties in accordance with this Section. Each penalty payment
16 will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with
17 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment
18 (“OEHHA”) by Moorberg.

19 **3.1 Initial Civil Penalty**

20 Within five days of the Effective Date, Liberty Glove shall make an initial civil penalty
21 payment to “Mark Moorberg, Client Trust Account” in the amount of \$2,500. All penalty
22 payments shall be remitted to the address listed in Section 3.4 below.

23 **3.2 Final Civil Penalty**

24 Liberty Glove shall pay a final civil penalty of \$5,000 on or before August 15, 2015 . The
25 final civil penalty shall be waived in its entirety, however, if, no later than August 15, 2015, an
26 officer of Liberty Glove provides Moorberg with written certification that. (i) as of the date of such
27 certification and continuing into the future, Liberty Glove has met, and will continue to meet, the
28 reformulation standard specified in Section 2.1 above, such that all Products it sells, offers for sale,

1 or distributes for sale in California by Liberty Glove, other than those in Liberty Glove's inventory
2 as of the Effective Date, are Reformulated Products and that Liberty Glove will continue to sell,
3 offer for sale, or distribute for sale in California only Reformulated Products, or (ii) that as of
4 August 15, 2015, Liberty Glove has ceased to sell the Products and shall not sell the Products in
5 California in the future unless they qualify as Reformulated Products. Moorberg must receive any
6 such certification on or before August 15, 2015. The certification in lieu of a final civil penalty
7 payment provided by this Section is a material term, and time is of the essence. In the event Liberty
8 Glove has not delivered the above certification in lieu of the final \$5,000 civil penalty, Liberty
9 Glove shall issue a check for its final civil penalty payment to "Mark Moorberg, Client Trust
10 Account" in the amount of \$5,000.

11 **3.3 Reimbursement of Plaintiff's Fees and Costs**

12 The Parties acknowledge that Moorberg and his counsel offered to resolve this dispute
13 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
14 the fee issue to be resolved after the material terms of the agreement had been settled. Liberty
15 Glove then expressed a desire to resolve the fee and cost issue shortly after the other settlement
16 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
17 compensation due to Moorberg and his counsel under general contract principles and the private
18 attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all
19 work performed (and to be performed) in this matter, except fees that may be incurred in
20 connection with a third-party, including the Office of the Attorney General, appeal (if any). Under
21 these legal principles, Liberty Glove shall pay the amount of \$24,500 to reimburse Moorberg's
22 fees and costs incurred investigating, litigating and enforcing this matter, including the fees and
23 costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court's approval of
24 this Consent Judgment in the public interest. Liberty Glove shall make the check payable to "The
25 Chanler Group" and shall deliver payment within five days of the Effective Date, to the address
26 listed in Section 3.4 below.

27 **3.4 Payment Procedures**

28 All payments owed to Moorberg and his counsel, pursuant to Sections 3.1 through 3.3,

1 shall be delivered to the following payment address:

2 The Chanler Group
3 Attn: Proposition 65 Controller
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710

7 **4. CLAIMS COVERED AND RELEASED**

8 **4.1 Moorberg's Release of Proposition 65 Claims**

9 Moorberg acting on his own behalf and in the public interest releases Liberty Glove, its
10 parents, subsidiaries, affiliated entities under common ownership, directors, officers, stockholders,
11 employees, attorneys, and each entity to whom Liberty Glove directly or indirectly distributes or
12 sells Products, including, but not limited, to downstream distributors, wholesalers, customers,
13 retailers, franchisees, cooperative members, licensors and licensees (collectively, the "Defendant
14 Releasees"), from all claims for violations of Proposition 65 based on their failure to warn about
15 alleged exposures to DEHP from the Products that were manufactured, distributed, or sold by
16 Liberty Glove prior to the Effective Date. Compliance with the terms of this Consent Judgment
17 constitutes compliance with Proposition 65 with respect to exposures to DEHP from the Products as
18 set forth in the Notice.

19 **4.2 Moorberg's Individual Release of Claims**

20 Moorberg also, in his individual capacity only and *not* in his representative capacity,
21 provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar
22 to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
23 liabilities and demands of plaintiff of any nature, character or kind, whether known or unknown,
24 suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the
25 Products manufactured, distributed or sold by Defendant Releasees.

26 **4.3 Liberty Glove's Release of Moorberg**

27 Liberty Glove on behalf of itself, its past and current agents, representatives, attorneys,
28 successors, and/or assignees, hereby waives any and all claims against Moorberg, his attorneys and
other representatives, for any and all actions taken or statements made (or those that could have
been taken or made) by Moorberg and his attorneys and other representatives prior to the Effective

1 Date, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65
2 against it in this matter with respect to the Products.

3 **5. COURT APPROVAL**

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

7 **6. SEVERABILITY**

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

11 **7. GOVERNING LAW**

12 The terms of this Consent Judgment shall be governed by the laws of the State of California
13 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
14 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
15 Consent Judgment are rendered inapplicable by preemption or reason of law generally as to the
16 Products, then Liberty Glove shall have no further obligations pursuant to this Consent Judgment
17 with respect to, and to the extent that, the Products are so affected.

18 **8. NOTICES**

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

23 To Liberty Glove:
24 Saul Jaffe, Esq.
25 Claremont Law Group, Inc.
26 618 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

27 Any Party, from time to time, may 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 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 support. 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.

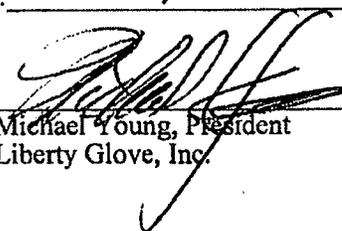
AGREED TO:

AGREED TO:

Date: May 8, 2015

Date: 05-01-15

By: 
Plaintiff, Mark Moorberg

By: 
Michael Young, President
Liberty Glove, Inc.