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MARK MOORBERG
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SANTA CLARA
10 UNLIMITED CIVIL JURISDICTION
11

12 MARK MOORBERG,

13 Plaintiff,

14 v.

15 PROFESSIONAL SECURITY
CORPORATION; PERSONAL SAFETY
16 CORPORATION; and DOES 1 – 150,
inclusive,
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18 Defendants.
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Case No. 15CV288861

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Mark Moorberg
4 (“Moorberg”), and Professional Security Corporation (“Professional Security”) with Moorberg and
5 Professional Security each individually referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Professional Security**

11 Professional Security employs ten or more individuals and are each a “person in the course of
12 doing business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health
13 and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moorberg alleges that Professional Security manufactures, imports, sells, or distributes for
16 sale in California, vinyl/PVC self defense device holsters that contain di(2-ethylhexyl)phthalate
17 (“DEHP”) without first providing the exposure warning required by Proposition 65. DEHP is listed
18 pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects or
19 other reproductive harm.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are vinyl/PVC self defense device holsters
22 containing DEHP that are manufactured, imported, sold, or distributed for sale in California by
23 Professional Security including, but not limited to, *Pepper Defense The Self-Defense Spray Zebra*
24 *Style Holster, Model #PD-2Z, #05160528, UPC #7 34122 00160 6*, hereinafter the “Products”.

25 **1.6 Notice of Violation**

26 On or about July 13, 2015, Moorberg served Professional Security, and certain requisite
27 public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that
28 Professional Security violated Proposition 65 by failing to warn its customers and consumers in

1 California that the Products expose users to DEHP. To the best of the Parties' knowledge, no public
2 enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On December 10, 2015 Moorberg filed the instant action ("Complaint") naming Professional
5 Security as a defendant for the alleged violations of Health and Safety Code section 25249.6 that are
6 the subject of the Notice.

7 **1.8 No Admission**

8 Professional Security denies the material, factual, and legal allegations contained in the
9 Notice and Complaint, and maintains that all of the products it has sold and distributed for sale in
10 California, including the Products, have been, and are, in compliance with all laws. Nothing in this
11 Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of
12 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed
13 as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This
14 Section shall not, however, diminish or otherwise affect Professional Security's obligations,
15 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 Professional Security as to the allegations contained in the Complaint, that venue is
19 proper in the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the
20 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section
21 664.6.

22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
24 the Motion for Approval of the Consent Judgment is granted by the Court.

25 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

26 **2.1 Commitment to Reformulate or Warn**

27 Commencing on the Effective Date, and continuing thereafter, Professional Security agrees to
28 only manufacture, distribute or purchase for sale in California: (a) "Reformulated Products", or (b)

1 Products that bear a clear and reasonable health hazard warning, pursuant to Section 2.2 below. For
2 purposes of this Consent Judgment, “Reformulated Products” are defined as Products with a
3 maximum concentration of 0.1 percent (1,000 parts per million) of DEHP when analyzed pursuant to
4 U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, or other
5 methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a
6 solid substance.

7 **2.2 Reformulation Commitment**

8 All Products manufactured, distributed, sold or offered for sale in the State of California by
9 Professional Security on or after the Effective Date shall either qualify as Reformulated Products or
10 otherwise shall be accompanied by a Proposition 65 warning as set forth in Section 2.3 below.

11 **2.3 Clear and Reasonable Warnings**

12 Professional Security agrees that on or after the Effective Date, all Products it sells and/or
13 distributes in California which do not qualify as Reformulated Products, will bear a clear and
14 reasonable warning pursuant to this Section. Professional Security further agrees that the warning
15 will be prominently placed with such conspicuousness when compared with other words, statements,
16 designs, or devices as to render it likely to be read and understood by an ordinary individual under
17 customary conditions before purchase or use. For purposes of this Consent Judgment, a clear and
18 reasonable warning for the Products shall consist of a warning affixed to the packaging, or, if no
19 packaging exists, directly on, each non reformulated Product sold in California, and shall contain one
20 of the following statements:

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

24 **or**

25 **WARNING:** This product contains a chemical known to
26 the State of California to cause cancer and
27 birth defects and other reproductive harm.

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1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty Payments**

3 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
4 this Consent Judgment, Professional Security shall pay \$ 5,000.00 (Five Thousand Dollars) in civil
5 penalties. The civil penalty payment shall be allocated according to Health and Safety Code section
6 25249.12(c)(1) and (d), with seventy-five percent (75%) of the funds paid to the California Office of
7 Environmental Health Hazard Assessment (“OEHHA”), and twenty-five percent (25%) of the funds
8 remitted to Moorberg.

9 **3.1.1 Civil Penalty**

10 Professional Security shall make a civil penalty payment of \$ 5,000.00 (Five
11 Thousand Dollars) Professional Security shall provide its payment in two checks for the following
12 amounts made payable to: (a) “OEHHA” in the amount of \$ 3,750.00 (Three Thousand Seven
13 Hundred and Fifty Dollars); and (b) “Mark Moorberg, Client Trust Account” in the amount of
14 \$ 1, 250.00 (One Thousand Two Hundred and Fifty Dollars), as set forth in Sections 3.3 and 3.4.

15 **3.2 Reimbursement of Attorney’s Fees and Costs**

16 The parties acknowledge that Moorberg and his counsel offered to resolve this dispute
17 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the
18 issue to be resolved after the material terms of this Consent Judgment had been settled. Shortly after
19 the other settlement terms had been finalized, Professional Security expressed a desire to resolve
20 Moorberg’s fees and costs. The Parties then attempted to (and did) reach an accord on the
21 compensation due to Moorberg and his counsel under general contract principles and the private
22 attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work
23 performed through the mutual execution of this Consent Judgment. On or before the Effective Date,
24 Professional Security shall pay \$ 20,000.00 (Twenty Thousand Dollars) for the fees and costs
25 incurred by Moorberg investigating, bringing this matter to Professional Security’s attention,
26 litigating and negotiating a settlement in the public interest.

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1 **3.3 Payments Held in Trust**

2 All payments due under this Consent Judgment shall be held in trust until such time as the
3 Court approves the Parties’ settlement. All payments due under this agreement shall be delivered
4 within five (5) days of the date that this Consent Judgment is fully executed by the Parties, and held
5 in trust by Professional Security’s counsel until the Court grants the motion for approval of this
6 Consent Judgment contemplated by Section 5. Within two business days of the Court’s approval of
7 this Consent Judgment, Professional Security’s counsel shall tender the civil penalty payments and
8 attorneys’ fee and costs reimbursements required by Sections 3.1 and 3.2.

9 **3.4 Payment Address**

10 All payments required by this Consent Judgment shall be delivered to the following
11 address:

12 The Chanler Group
13 Attn: Proposition 65 Controller
14 2560 Ninth Street
15 Parker Plaza, Suite 214
16 Berkeley, CA 94710

17 **4. CLAIMS COVERED AND RELEASED**

18 **4.1 Moorberg’s Public Release of Proposition 65 Claims**

19 Moorberg, acting on his own behalf and in the public interest, releases Professional Security
20 and its parents, subsidiaries, affiliated entities under common ownership (including, but not limited
21 to, Personal Safety Corporation), directors, officers, employees, and attorneys (“Releasees”) and
22 each entity to whom it directly or indirectly distributes or sells the Products including, but not
23 limited to, its downstream distributors, wholesalers, customers, retailers (including, but not limited
24 to, Big 5 Sporting Goods Corporation), franchisers, cooperative members, licensors and licensees
25 (“Downstream Releasees”) for any violations arising under Proposition 65 for unwarned exposures
26 to DEHP from Products sold by Professional Security prior to the Effective Date, as set forth in the
27 Notice. Compliance with the terms of this Consent Judgment constitutes compliance with
28 Proposition 65 with respect to exposures to failures to warn about DEHP from the Products sold by
Professional Security before the Effective Date, as set forth in the Notice.

1 **4.2 Moorberg’s Individual Release of Claims**

2 Moorberg, in his individual capacity only and *not* in his representative capacity, also provides
3 a release to Professional Security, Releasees, and Downstream Releasees which shall be effective as a
4 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
5 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Moorberg of any nature,
6 character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or
7 actual exposures to DEHP in the Products sold or distributed for sale by Professional Security before
8 the Effective Date.

9 **4.3 Professional Security’s Release of Moorberg**

10 Professional Security, on its own behalf, and on behalf of its past and current agents,
11 representatives, attorneys, successors, and assignees, hereby waive any and all claims against
12 Moorberg and his attorneys and other representatives, for any and all actions taken or statements
13 made by Moorberg and his attorneys and other representatives, whether in the course of
14 investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with
15 respect to the Products.

16 **5. COURT APPROVAL**

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

20 **6. SEVERABILITY**

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

24 **7. GOVERNING LAW**

25 The terms of this Consent Judgment shall be governed by the laws of the state of California
26 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
27 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Professional
28 Security may provide written notice to Moorberg of any asserted change in the law, and shall have no

1 further injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent
2 that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
3 Professional Security from any obligation to comply with any pertinent state or federal toxics control
4 laws.

5 **8. NOTICE**

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

9 **Professional Security**

10 Dick Olson, President
11 Professional Security Corporation
12 1655 Progress Drive
Hiawatha, IA 52233

Mitchell J. Green
Nossaman LLP
50 California Street, 34th Floor
San Francisco, CA 94111

13 Dick Olson, President
14 Professional Security Corporation
P.O. Box 128
Hiawatha, IA 52233

15 **Moorberg**

16 Proposition 65 Coordinator
17 The Chanler Group
2560 Ninth Street
18 Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

22 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

26 **10. POST EXECUTION ACTIVITIES**

27 Moorberg agrees to comply with the reporting form requirements referenced in Health and
28 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety

1 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
2 furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, and
3 those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial
4 approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall
5 include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
6 supporting the motion, and appearing at the hearing before the Court.

7 **11. MODIFICATION**

8 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
9 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any
10 Party, and the entry of a modified consent judgment by the Court.

11 **12. AUTHORIZATION**

12 The undersigned are authorized to execute this Consent Judgment and have read, understood,
13 and agree to all of the terms and conditions contained herein

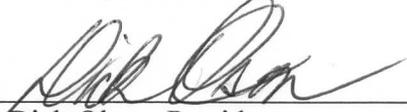
14 **AGREED TO:**

AGREED TO:

15 Date: _____

16 Date: 8/19/16

17 By: _____
18 MARK MOORBERG

17 By: 
18 Dick Olson, President
19 PROFESSIONAL SECURITY
20 CORPORATION

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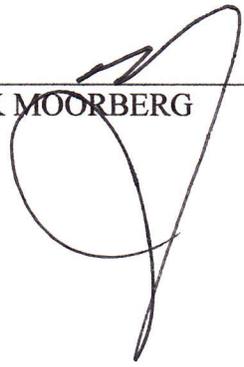
12 The undersigned are authorized to execute this Consent Judgment and have read, understood,
13 and agree to all of the terms and conditions contained herein

14 **AGREED TO:**

AGREED TO:

15
16 Date: 2.22.16

Date: _____

17
18 By: 
19 MARK MOORBERG

By: _____
20 Dick Olson, President
21 PROFESSIONAL SECURITY
22 CORPORATION