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ENDORSED
FILED
ALAMEDA COUNTY

FEB 27 2013

CLERK OF THE SUPERIOR COURT
By Angela Yamsuan

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 UNLIMITED CIVIL JURISDICTION

14 JOHN MOORE,

15 Plaintiff,

16 v.

17 MIDWEST QUALITY GLOVES, INC.; and
18 DOES 1-150, inclusive,

19 Defendants.

Case No. _____

RG13669066

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

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BY FAX

1 **NATURE OF THE ACTION**

2 1. This Complaint is a representative action brought by plaintiff JOHN MOORE 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 presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical found in
5 vinyl/PVC rainwear sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
7 warn California citizens about the risk of exposure to DEHP present in and on vinyl/PVC
8 rainwear manufactured, distributed, and offered for sale or use to consumers throughout the
9 state of California.

10 3. High levels of DEHP are commonly found in and on vinyl/PVC rainwear that
11 defendants manufacture, distribute, and offer for sale to consumers throughout the state of
12 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 October 24, 2003, California identified and listed
19 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became
20 subject to the “clear and reasonable warning” requirements of the act one year later on October
21 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &
22 25249.10(b). DEHP is referred to hereinafter as the “LISTED CHEMICAL.”

23 6. Defendants manufacture, distribute, and sell vinyl/PVC rainwear that contains
24 DEHP in levels that require a warning under Proposition 65, including, but not limited to, the
25 *Rain Coat, Style: 3048 (#0 72264 30488 0)*. All such vinyl/PVC rainwear containing DEHP are
26 referred to collectively hereinafter as “PRODUCTS.”
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1 7. Defendants’ failure to warn consumers and other individuals in the state of
2 California about their exposure to the LISTED CHEMICAL in conjunction with defendants’
3 sales of the PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder
4 of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a)
5 & (b)(1).

6 8. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and
7 permanent injunctive relief to compel defendants to provide purchasers or users of the
8 PRODUCTS with the required warning regarding the health hazards of the LISTED
9 CHEMICAL. Health & Safety Code § 25249.7(a).

10 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil
11 penalties against defendants for their violations of Proposition 65.

12 **PARTIES**

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

17 11. Defendant MIDWEST QUALITY GLOVES, INC. (“MIDWEST”) is a person in
18 the course of doing business within the meaning of Health and Safety Code section 25249.11.

19 12. MIDWEST manufactures, distributes, and/or offers the PRODUCTS for sale or
20 use in the state of California, or implies by its conduct that it manufactures, distributes, and/or
21 offers the PRODUCTS for sale or use in the state of California.

22 13. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each
23 persons in the course of doing business within the meaning of Health and Safety Code section
24 25249.11.

25 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
26 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,

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1 and manufacture one or more of the PRODUCTS offered for sale or use in the state of
2 California.

3 15. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
4 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

5 16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
6 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
7 in the state of California.

8 17. Defendants DOES 101-150 (“RETAILER DEFENDANTS”) are each a person in
9 the course of doing business within the meaning of Health and Safety Code section 25249.11.

10 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
11 state of California.

12 19. At this time, the true names of defendants DOES 1 through 150, inclusive, are
13 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
14 Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis
15 alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences
16 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

17 20. MIDWEST, MANUFACTURER DEFENDANTS, DISTRIBUTOR
18 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be
19 referred to as “DEFENDANTS.”

20 **VENUE AND JURISDICTION**

21 21. Venue is proper in the Alameda 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 one or more instances of wrongful conduct occurred, and continue to occur, in Alameda
24 County, and/or because DEFENDANTS conducted, and continue to conduct, business in this
25 county with respect to the PRODUCTS.

26 22. The California Superior Court has jurisdiction over this action pursuant to
27 California Constitution Article VI, section 10, which grants the Superior Court “original
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1 jurisdiction in all causes except those given by statute to other trial courts.” The statute under
2 which this action is brought does not specify any other basis of subject matter jurisdiction.

3 23. The California Superior Court has jurisdiction over DEFENDANTS based on
4 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or
5 association that is a citizen of the state of California, has sufficient minimum contacts in the
6 state of California, and/or otherwise purposefully avails itself of the California market.
7 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by
8 California courts consistent with traditional notions of fair play and substantial justice.

9 **FIRST CAUSE OF ACTION**

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

11 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
12 Paragraphs 1 through 23, inclusive.

13 25. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
14 Enforcement Act of 1986, the People of California expressly declare their right “[t]o be
15 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
16 harm.”

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

21 27. On or about October 26, 2012, plaintiff’s sixty-day notice of violation, together
22 with the requisite certificate of merit, was provided to MIDWEST and certain public
23 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS
24 containing the LISTED CHEMICAL, purchasers and users in the state of California were being
25 exposed to the LISTED CHEMICAL resulting from the reasonably foreseeable uses of the
26 PRODUCTS, without the individual purchasers and users first having been provided with a
27 “clear and reasonable warning” regarding such toxic exposures, as required by Proposition 65.

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1 28. DEFENDANTS have engaged in the manufacture, distribution, and offering of
2 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
3 such violations have continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day
4 notice of violation. As such, DEFENDANTS' violations are ongoing and continuous in nature,
5 and will continue to occur in the future.

6 29. After receiving the claims asserted in the sixty-day notice of violation, the
7 appropriate public enforcement agencies have failed to commence and diligently prosecute a
8 cause of action against DEFENDANTS under Proposition 65.

9 30. The PRODUCTS manufactured, distributed, and offered for sale or use in
10 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the
11 allowable state limits, such that they require a "clear and reasonable" warning under Proposition
12 65.

13 31. DEFENDANTS knew or should have known that the PRODUCTS they
14 manufacture, distribute, and offer for sale or use in California contain the LISTED
15 CHEMICAL.

16 32. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
17 expose individuals through dermal contact and/or ingestion during reasonably foreseeable use.

18 33. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
19 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are
20 defined by California Code of Regulations title 27, section 25602(b).

21 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
22 of the PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact
23 and/or ingestion.

24 35. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
25 the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-
26 accidental participation in the manufacture, distribution, and offering of the PRODUCTS for
27 sale or use to individuals in the state of California.

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1 36. DEFENDANTS failed to provide a “clear and reasonable warning” to those
2 consumers and other individuals in the state of California who were or who would become
3 exposed to the LISTED CHEMICAL through dermal contact and/or ingestion during the
4 reasonably foreseeable uses of the PRODUCTS.

5 37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
6 directly by California voters, individuals exposed to the LISTED CHEMICAL through dermal
7 contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold
8 by DEFENDANTS without a “clear and reasonable warning”, have suffered, and continue to
9 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

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

PRAYER FOR RELIEF

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17 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

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

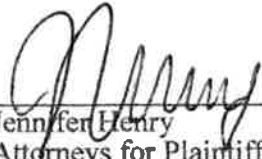
25 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

26 4. That the Court grant such other and further relief as may be just and proper.
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Dated: February 26 2013

Respectfully Submitted,
THE CHANLER GROUP

By:  _____
Jennifer Henry
Attorneys for Plaintiff
JOHN MOORE