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FILED

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KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF MARIN
12 UNLIMITED CIVIL JURISDICTION

13 JOHN MOORE,

14 Plaintiff,

15 v.

16 GIBSON BRANDS, INC., GIBSON GUITAR
17 CORP., STANTON GROUP dba STANTON
18 MAGNETICS, INC. and DOES 1-150,

19 Defendants.

Case No. Civ 1404142

COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF

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

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 certain vinyl/PVC components of headphones manufactured, distributed and/or otherwise
6 sold by defendants in California.

7 2. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986,
8 California Health & Safety Code Section 25249.6 *et seq.* ("Proposition 65"), "No person in the
9 course of doing business shall knowingly and intentionally expose any individual to a
10 chemical known to the state to cause cancer or reproductive toxicity without first giving clear
11 and reasonable warning to such individual. . . ." (*Cal. Health & Safety Code § 25249.6.*)

12 3. On October 24, 2003, the State listed Di(2-ethylhexyl)phthalate as a chemical
13 known to cause birth defects and other reproductive harm. DEHP became subject to the
14 warning requirement one year later and was therefore subject to the "clear and reasonable
15 warning" requirements of Proposition 65, beginning on October 24, 2004. (*27 CCR § 27001(c);*
16 *Cal. Health & Safety Code § 25249.8.*)

17 4. DEHP shall hereinafter be referred to as the "LISTED CHEMICAL."

18 5. Significant levels of the LISTED CHEMICAL have been discovered in or on
19 vinyl/PVC components of headphones that defendants manufacture, distribute, and/or offer
20 for sale to consumers throughout the State of California including, but not limited to, Stanton
21 DJ Pro 50 S (#0 49292 48420 4). All such headphones comprised of materials containing the
22 LISTED CHEMICAL shall hereinafter be referred to as the "PRODUCTS."

23 6. Defendants' failure to warn consumers and/or other individuals in the State of
24 California about their exposures to the LISTED CHEMICAL in conjunction with defendants'
25 sale of the PRODUCTS is a violation of Proposition 65.

26 7. For defendants' violations of Proposition 65, plaintiff seeks preliminary and
27 permanent injunctive relief to compel defendants to provide purchasers or users of the
28

1 PRODUCTS with the required warning regarding the health hazards of the LISTED
2 CHEMICAL. (*Cal. Health & Safety Code § 25249.7(a).*)

3 8. Plaintiff also seeks civil penalties against defendants for their violations of
4 Proposition 65, as provided for by California Health & Safety Code Section 25249.7(b).

5 **PARTIES**

6 9. Plaintiff JOHN MOORE is a citizen of the State of California who is dedicated to
7 protecting the health of California citizens through the elimination or reduction of toxic
8 exposures from consumer products, and brings this action in the public interest pursuant to
9 California Health & Safety Code Section 25249.7.

10 10. Based upon publicly available information, plaintiff is informed and believes,
11 and thereupon alleges, that each defendant GIBSON BRANDS, INC., GIBSON GUITAR CORP.
12 and STANTON GROUP dba STANTON MAGNETICS, INC. is a person doing business within
13 the meaning of California Health & Safety Code Section 25249.11.

14 11. Based upon publicly available information, plaintiff is informed and believes,
15 and thereupon alleges, that each defendant GIBSON BRANDS, INC., GIBSON GUITAR CORP.
16 and STANTON GROUP dba STANTON MAGNETICS, INC. is legally responsible for the
17 manufacture, distribution, and/or offer of the PRODUCTS for sale or use in the State of
18 California or implies by its conduct that it manufactures, distributes, and/or offers the
19 PRODUCTS for sale or use in the State of California.

20 12. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons
21 doing business within the meaning of California Health & Safety Code Section 25249.11.

22 13. MANUFACTURER DEFENDANTS engage in the process of research, testing,
23 designing, assembling, fabricating and/or manufacturing, or imply by their conduct that they
24 engage in the process of research, testing, designing, assembling, fabricating, and/or
25 manufacturing, one or more of the PRODUCTS for sale or use in the State of California.

26 14. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons
27 doing business within the meaning of California Health & Safety Code Section 25249.11.
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1 25249.6 and DEFENDANTS' manufacture, distribution, and/or offering of the PRODUCTS for
2 sale or use in violation of California Health & Safety Code Section 25249.6 has continued to
3 occur beyond DEFENDANTS' receipt of plaintiff's 60-Day Notice. Plaintiff further alleges and
4 believes that such violations will continue to occur into the future.

5 28. After receipt of the claims asserted in the 60-Day Notice, the appropriate public
6 enforcement agencies have failed to commence and diligently prosecute a cause of action
7 against DEFENDANTS under Proposition 65.

8 29. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
9 California by DEFENDANTS, contain the LISTED CHEMICAL.

10 30. DEFENDANTS knew or should have known that the PRODUCTS contained the
11 LISTED CHEMICAL.

12 31. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
13 expose individuals to the LISTED CHEMICAL, as such exposure is defined by 27 CCR Section
14 25602(b), through dermal contact and/or ingestion during or as a consequence of the
15 reasonably foreseeable use of the PRODUCTS.

16 32. DEFENDANTS knew or should have known that the reasonably foreseeable use
17 of the PRODUCTS exposes individuals to the LISTED CHEMICAL through dermal contact
18 and/or ingestion.

19 33. DEFENDANTS' participation in the manufacture, distribution and/or offer for
20 sale or use of PRODUCTS to individuals in the State of California was deliberate and non-
21 accidental.

22 34. DEFENDANTS failed to provide a "clear and reasonable warning" to those
23 consumers and/or other individuals in the State of California who were or who could become
24 exposed to the LISTED CHEMICAL during the reasonably foreseeable use of the PRODUCTS.

25 35. Contrary to the express policy and statutory prohibition of Proposition 65,
26 individuals exposed to the LISTED CHEMICAL through dermal contact and/or ingestion
27 resulting from the reasonably foreseeable use of the PRODUCTS, sold by DEFENDANTS
28

1 without a "clear and reasonable warning", have suffered, and continue to suffer, irreparable
2 harm, for which harm they have no other plain, speedy or adequate remedy at law.

3 36. As a consequence of the above-described acts, DEFENDANTS are liable for a
4 maximum civil penalty of \$2,500 per day for each violation of Proposition 65 pursuant to
5 California Health & Safety Code Section 25249.7(b).

6 37. As a consequence of the above-described acts, California Health & Safety Code
7 Section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
8 DEFENDANTS.

9 **PRAYER FOR RELIEF**

10 Wherefore, plaintiff prays for judgment against DEFENDANTS, and each of them, as
11 follows:

12 1. That the Court, pursuant to California Health & Safety Code Section 25249.7(b),
13 assess civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation
14 alleged herein;

15 2. That the Court, pursuant to California Health & Safety Code Section 25249.7(a),
16 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
17 offering the PRODUCTS for sale or use in California, without providing "clear and reasonable
18 warnings" as defined by 27 CCR Section 25601, as to the harms associated with exposures to
19 the LISTED CHEMICAL;

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

21 4. That the Court grant such other and further relief as may be just and proper.

22
23 Dated: November 3, 2014

Respectfully submitted,

24 THE CHANLER GROUP

25
26 By: 

27 Gregory M. Sheffer
28 Attorneys for Plaintiff
JOHN MOORE