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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA  
UNLIMITED CIVIL JURISDICTION

JOHN MOORE,

Plaintiff,

v.

GIOVANETTI, INC.; and DOES 1-150,  
inclusive,

Defendants.

Case No. **HG13671767**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

ENDORSED  
FILED  
ALAMEDA COUNTY

MAR 18 2013

CLERK OF THE SUPERIOR COURT

by ~~Donnan Blatt~~

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1 *seq.* about their exposure to DEHP and its potential to cause birth defects and other reproductive  
2 harm in conjunction with defendants' distribution, importation, manufacturing, and/or sale of  
3 the PRODUCTS is a violation of Proposition 65 and subjects defendants to enjoinder of such  
4 conduct as well as civil penalties for each such violation.

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

9 9. Plaintiff also seeks civil penalties against defendants for their violations of  
10 Proposition 65, as provided by California Health & Safety Code § 25249.7(b).

### 11 PARTIES

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

16 11. Defendant GIOVANETTI, INC. ("GIOVANETTI") is a person in the course of  
17 doing business within the meaning of California Health & Safety Code § 25249.11.

18 12. Defendant GIOVANETTI manufactures, imports, distributes, and/or offers the  
19 PRODUCTS for sale or use in the State of California, or implies by its conduct that it  
20 manufactures, imports, distributes, and/or offers the PRODUCTS for sale or use in the State of  
21 California.

22 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each  
23 persons in the course of doing business within the meaning of California Health & Safety Code  
24 § 25249.11.

25 14. MANUFACTURER DEFENDANTS engage in the process of researching,  
26 testing, designing, assembling, fabricating, and/or manufacturing, or imply by their conduct that  
27 they engage in the process of researching, testing, designing, assembling, fabricating, and/or  
28 manufacturing, one or more of the PRODUCTS offered for sale or use in the State of California.

1           15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons  
2 in the course of doing business within the meaning of California Health & Safety Code §  
3 25249.11.

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

7           17. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each persons in  
8 the course of doing business within the meaning of California Health & Safety Code §  
9 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 name pursuant to  
14 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that  
15 each of the fictitiously named defendants is responsible for the acts and occurrences alleged  
16 herein. When ascertained, their true names shall be reflected in an amended complaint.

17          20. GIOVANETTI, 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 §§ 394, 395, & 395.5, because this Court is a court of competent jurisdiction, because  
23 one or more instances of wrongful conduct occurred, and continue to occur, in the County of  
24 Alameda, 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, § 10, which grants the Superior Court "original jurisdiction  
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1 in all causes except those given by statute to other trial courts.” The statute under which this  
2 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,  
5 or association that is a citizen of the State of California, has sufficient minimum contacts in the  
6 State of California, 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. The citizens of the State of California have expressly stated in the Safe Drinking  
14 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.6 *et seq.*  
15 that they must be informed “about exposures to chemicals that cause cancer, birth defects and  
16 other reproductive harm.” (Cal. Health & Safety Code, § 25249.6.)

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....” (*Ibid.*)

21 27. On or about November 9, 2012, a sixty-day notice of violation, together with the  
22 requisite certificate of merit, was provided to GIOVANETTI and various public enforcement  
23 agencies stating that, as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers  
24 and users in the State of California were being exposed to DEHP resulting from the reasonably  
25 foreseeable use of the PRODUCTS, without the individual purchasers and users first having  
26 been provided with a “clear and reasonable warning” regarding such toxic exposures.

27 28. DEFENDANTS have engaged in the manufacture, import, distribution, and/or  
28 offering of the PRODUCTS for sale or use in violation of California Health & Safety Code §

1 25249.6, and DEFENDANTS' manufacture, importation, distribution, and/or offering of the  
2 PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 has  
3 continued to occur beyond DEFENDANTS' receipt of plaintiff's sixty-day notice of violation.  
4 Plaintiff further alleges and believes that such violations will continue to occur into the future.

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

8 30. The PRODUCTS manufactured, imported, distributed, and/or offered for sale or  
9 use in California by DEFENDANTS contained DEHP in an amount above the allowable State  
10 limits.

11 31. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
12 imported, distributed, and/or offered for sale or use in California contained DEHP.

13 32. DEHP was present in or on the PRODUCTS in such a way as to expose  
14 individuals to DEHP through dermal contact and/or ingestion during the reasonably foreseeable  
15 use of the PRODUCTS.

16 33. The normal and reasonably foreseeable use of the PRODUCTS has caused, and  
17 continues to cause, consumer and workplace exposures to DEHP, as such exposure is defined  
18 by Title 27 CCR § 25602(b).

19 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
20 the PRODUCTS would expose individuals to DEHP through dermal contact and/or ingestion.

21 35. DEFENDANTS intended that such exposures to DEHP from the reasonably  
22 foreseeable use of the PRODUCTS would occur by their deliberate, non-accidental participation  
23 in the manufacture, import, distribution, and/or offering of the PRODUCTS for sale or use to  
24 individuals in the State of California.

25 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
26 consumers and/or other individuals in the State of California who were, or who could become  
27 exposed to DEHP through dermal contact and/or ingestion during the reasonably foreseeable  
28 use of the PRODUCTS.

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

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

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

## **PRAYER FOR RELIEF**

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

2. That the Court, pursuant to California Health & Safety Code § 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, importing, distributing, and/or offering the PRODUCTS for sale or use in California, without providing “clear and reasonable warnings” as defined by 27 CCR § 25601, as to the harms associated with exposure to DEHP;

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- 3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and
- 4. That the Court grant such other and further relief as may be just and proper.

Dated: March 15, 2013

Respectfully Submitted,  
THE CHANLER GROUP

By:   
Stephen E. Cohen  
Attorneys for Plaintiff  
JOHN MOORE