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FILED

San Francisco County Superior Court

DEC 21 2017

CLERK OF THE COURT

BY: MEREDITH GRIFFIN
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO
10 UNLIMITED CIVIL JURISDICTION

12 JOHN MOORE,

13 Plaintiff,

14 v.

15 DIVERSITECH CORPORATION, MORRIS
16 PRODUCTS, INC.; and DOES 1 – 150,
17 inclusive,

18 Defendants.

Case No. **CGC-17-563278**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.5 *et seq.*)

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1 limited to, the *Morris Super Mini Digital Multimeter*, #57050, UPC #6 01986 57050 3. All
2 such insulated electrical wires containing DEHP are referred to collectively hereinafter as
3 "PRODUCTS."

4 7. Defendants' failure to warn consumers in the State of California of the health
5 hazards associated with exposures to DEHP in conjunction with Defendants' sales of the
6 PRODUCTS are violations of Proposition 65, and subject Defendants, and each of them, to
7 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code
8 § 25249.7(a) & (b)(1).

9 8. For Defendants' violations of Proposition 65, plaintiff seeks preliminary and
10 permanent injunctive relief to compel Defendants to provide consumers of the PRODUCTS
11 with the required warning regarding the health hazards associated with exposures to DEHP.
12 Health & Safety Code § 25249.7(a).

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

15 **PARTIES**

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

20 11. Defendant DIVERSITECH CORPORATION ("DIVERSITECH") is a person in
21 the course of doing business within the meaning of Health and Safety Code sections 25249.6
22 and 25249.11.

23 12. DIVERSITECH manufactures, imports, distributes, sells, and/or offers the
24 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
25 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
26 State of California.

1 13. Defendant MORRIS PRODUCTS, INC. ("MORRIS") is a person in the course of
2 doing business within the meaning of Health and Safety Code sections 25249.6 and 25249.11.

3 14. MORRIS manufactures, imports, distributes, sells, and/or offers the PRODUCTS
4 for sale or use in the State of California, or implies by its conduct that it manufactures, imports,
5 distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

6 15. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each a
7 person in the course of doing business within the meaning of Health and Safety Code sections
8 25249.6 and 25249.11.

9 16. MANUFACTURER DEFENDANTS, and each of them, research, test, design,
10 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,
11 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for
12 sale or use in California.

13 17. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person
14 in the course of doing business within the meaning of Health and Safety Code sections 25249.6
15 and 25249.11.

16 18. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,
17 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or
18 retailers for sale or use in the State of California, or each implies by its conduct that it
19 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to
20 individuals, businesses, or retailers for sale or use in the State of California.

21 19. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in
22 the course of doing business within the meaning of Health and Safety Code sections 25249.6
23 and 25249.11.

24 20. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
25 individuals in the State of California.

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

4 22. DIVERSITECH, MORRIS, MANUFACTURER DEFENDANTS,
5 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall hereinafter, where
6 appropriate, be referred to collectively as the "DEFENDANTS."

7 **VENUE AND JURISDICTION**

8 23. Venue is proper in the Superior Court for the County of San Francisco pursuant to
9 Code of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of
10 competent jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because
11 one or more instances of wrongful conduct occurred, and continue to occur, in this county,
12 and/or because DEFENDANTS conducted, and continue to conduct, business in San Francisco
13 with respect to the PRODUCTS.

14 24. The California Superior Court has jurisdiction over this action pursuant to
15 California Constitution Article VI, section 10, which grants the Superior Court "original
16 jurisdiction in all causes except those given by statute to other trial courts." The statute under
17 which this action is brought does not specify any other basis of subject matter jurisdiction.

18 25. The California Superior Court has jurisdiction over DEFENDANTS based on
19 plaintiff's information and good faith belief that DEFENDANTS are each a person, firm,
20 corporation or association that is a citizen of the State of California, has sufficient minimum
21 contacts in the State of California, and/or otherwise purposefully avails itself of the California
22 market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
23 California courts consistent with traditional notions of fair play and substantial justice.

1 **FIRST CAUSE OF ACTION**

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

3 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
4 Paragraphs 1 through 25, inclusive.

5 27. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic
6 Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
7 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
8 harm.”

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

13 29. On September 12, 2017, Plaintiff served a sixty-day notice of violation, together
14 with the accompanying certificate of merit, on DIVERSITECH, MORRIS , the California
15 Attorney General’s Office, and the requisite public enforcement agencies alleging that, as a
16 result of DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California are
17 being exposed to DEHP resulting from their reasonably foreseeable use of the PRODUCTS,
18 without the consumers first receiving a “clear and reasonable warning” regarding the harms
19 associated with exposures to DEHP, as required by Proposition 65.

20 30. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
21 for sale or use in violation of Health and Safety Code section 25249.6, and DEFENDANTS’
22 violations have continued beyond their receipt of plaintiff’s sixty-day notice of violation. As
23 such, DEFENDANTS’ violations are ongoing and continuous in nature and, unless enjoined
24 will continue in the future.

25 31. After receiving Plaintiff’s sixty-day notice of violation, no public enforcement
26 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
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1 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff's notice of
2 violation.

3 32. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
4 offer for sale or use in California cause exposures to DEHP as a result of the reasonably
5 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
6 consumers in California are not exempt from the "clear and reasonable" warning requirements
7 of Proposition 65, yet DEFENDANTS provide no warning.

8 33. DEFENDANTS knew or should have known that the PRODUCTS they
9 manufacture, import, distribute, sell, and offer for sale in California contain DEHP.

10 34. DEHP is present in or on the PRODUCTS in such a way as to expose consumers
11 through dermal contact and/or ingestion during reasonably foreseeable use.

12 35. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
13 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code
14 of Regulations, section 25602(b).

15 36. DEFENDANTS know that the normal and reasonably foreseeable use of the
16 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

17 37. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable
18 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the
19 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
20 consumers in California.

21 38. DEFENDANTS failed to provide a "clear and reasonable warning" to those
22 consumers in California who have been, or who will be, exposed to DEHP through dermal
23 contact and/or ingestion resulting from their use of the PRODUCTS.

24 39. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
25 directly by California voters, consumers exposed to DEHP through dermal contact and/or
26 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sold without a "clear
27 and reasonable" health hazard warning, have suffered, and continue to suffer, irreparable harm
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1 for which they have no plain, speedy, or adequate remedy at law.

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

5 41. As a consequence of the above-described acts, Health and Safety Code
6 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
7 DEFENDANTS.

8 **PRAYER FOR RELIEF**

9 Wherefore, Plaintiff prays for judgment against DEFENDANTS as follows:

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

13 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
14 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
15 offering the PRODUCTS for sale or use in California without first providing a "clear and
16 reasonable warning" in accordance with title 27 of the California Code of Regulations, section
17 25601 *et seq.*, regarding the harms associated with exposures to DEHP;

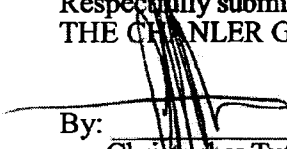
18 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue
19 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS
20 currently in the chain of commerce in California without a "clear and reasonable warning" as
21 defined by California Code of Regulations title 27, section 25601 *et seq.*;

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

23 5. That the Court grant such other and further relief as may be just and proper.

24 Dated: December 19, 2017

Respectfully submitted,
THE CHANLER GROUP

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26 By: 
Christopher Tuttle
Attorneys for Plaintiff
JOHN MOORE
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