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**FILED**  
San Francisco County Superior Court

MAY 09 2018

CLERK OF THE COURT  
BY: Chelene Johnson  
Deputy Clerk

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

12 LAURENCE VINOCUR,  
13 Plaintiff,  
14 v.  
15 ELECTRO TAPE SPECIALTIES, INC.,  
16 Defendant.

Case No. **CGC-18-566420**  
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**  
(Health & Safety Code §25249.5 *et seq.*)

859 HARRISON STREET S.F. CA 94103  
NATIONWIDE LEGAL, LLC  
BY FAX  
415-351-0400

**NATURE OF THE ACTION**

1  
2           1.       This Complaint is a representative action brought by plaintiff Laurence Vinocur in the  
3 public interest of the citizens of the State of California to enforce the People’s right to be informed of  
4 the health hazards caused by exposures to di(2-ethylhexyl)phthalate (“DEHP”), a phthalate chemical  
5 found in vinyl/PVC electrical tape sold by defendant into California.

6           2.       By this Complaint, plaintiff seeks to remedy defendant’s continuing failure to warn  
7 California citizens and other individuals about the risks of exposure to DEHP present in and on  
8 vinyl/PVC electrical tape manufactured, imported, distributed, shipped, sold and/or offered for sale or  
9 use to consumers and other individuals throughout the State of California.

10          3.       Detectable levels of DEHP are found in and on vinyl/PVC electrical tape that  
11 defendant manufactures, imports, distributes, ships, sells and/or offers for sale or use to consumers  
12 and other individuals throughout the State of California.

13          4.       Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
14 Health & Safety Code §25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of doing  
15 business shall knowingly and intentionally expose any individual to a chemical known to the state to  
16 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such  
17 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 reproductive harm). DEHP became subject to  
20 the “clear and reasonable warning” requirements of the act one year later on October 24, 2004. Cal.  
21 Code Regs. tit. 27, §27001(c); Health & Safety Code §§25249.8 & 25249.10(b).

22          6.       Defendant manufactures, imports, distributes, ships, sells and/or offers for sale without  
23 health hazard warnings in or into California, vinyl/PVC electrical tape containing DEHP including,  
24 but not limited to, *Electro 60 Vinyl Electrical Tape, Cat No. 1506, UPC #0 74508 15068 0*. All  
25 vinyl/PVC electrical tape containing DEHP manufactured, imported, distributed, shipped and/or  
26 offered by defendant for sale or use in or into California is referred to hereinafter as “PRODUCTS.”

27          7.       Defendant’s failure to warn consumers and other individuals in the State of California  
28 of the health hazards associated with exposures to DEHP in conjunction with defendant’s sales of the

1 PRODUCTS are violations of Proposition 65, and subject defendant to enjoinder of such conduct as  
2 well as civil penalties for each violation. Health & Safety Code §25249.7(a), (b)(1).

3 8. For defendant's violations of Proposition 65, plaintiff seeks preliminary and  
4 permanent injunctive relief to compel defendant to provide purchasers or users of the PRODUCTS in  
5 California with the required warning regarding the health hazards associated with exposures to  
6 DEHP. Health & Safety Code §25249.7(a).

7 9. Pursuant to Health & Safety Code §25249.7(b), plaintiff also seeks civil penalties  
8 against defendant for its violations of Proposition 65.

9 **PARTIES**

10 10. Plaintiff Laurence Vinocur is a citizen of the State of California who is dedicated to  
11 protecting the health of its citizens through the elimination of toxic exposures from consumer  
12 products; he brings this action in the public interest pursuant to Health & Safety Code §25249.7(d).

13 11. Defendant Electro Tape Specialties, Inc. ("Electro Tape") is a person in the course of  
14 doing business within the meaning of Health & Safety Code §§25249.6 and 25249.11.

15 12. Electro Tape manufactures, imports, distributes, ships, sells and/or offers the  
16 PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures,  
17 imports, distributes, sells and/or offers the PRODUCTS for sale or use in the State of California.

18 13. Electro Tape shall, where appropriate, be referred to herein as "DEFENDANT."

19 **VENUE AND JURISDICTION**

20 14. Venue is proper in the Superior Court for the City and County of San Francisco,  
21 pursuant to Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of  
22 competent jurisdiction, because plaintiff seeks civil penalties against DEFENDANT, because one or  
23 more instances of wrongful conduct occurred, and continue to occur, in this county, and/or because  
24 DEFENDANT conducted, and continue to conduct, business in the City and County of San Francisco  
25 with respect to the PRODUCTS.

26 15. The California Superior Court has jurisdiction over this action pursuant to California  
27 Constitution Article VI, section 10, which grants the Superior Court "original jurisdiction in all  
28

1 causes except those given by statute to other trial courts.” The statute under which this action is  
2 brought does not specify any other basis of subject matter jurisdiction.

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

8 **FIRST CAUSE OF ACTION**

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

10 17. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs  
11 1 through 16, inclusive.

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

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

19 20. On January 17, 2018, plaintiff served a 60-day Notice of Violation (the “Notice”),  
20 together with the requisite certificate of merit, on Electro Tape Specialties, Inc. and certain public  
21 enforcement agencies alleging that, as a result of DEFENDANT’s sales of the vinyl/PVC electrical  
22 tape containing DEHP, purchasers and users in the State of California were being exposed to DEHP  
23 resulting from their reasonably foreseeable uses of the PRODUCTS, without the individual  
24 purchasers and users first having been provided with a “clear and reasonable warning” regarding the  
25 harms associated with such exposures, as required by Proposition 65.

26 21. DEFENDANT manufactures, distributes, imports, ships, sells and offers the  
27 PRODUCTS for sale or use in violation of Health & Safety Code §25249.6, and DEFENDANT’s  
28 violations have continued beyond its receipt of plaintiff’s Notice. DEFENDANT’s violations are

1 ongoing and continuous in nature, and, as such, will continue in the future.

2 22. After receiving plaintiff's Notice, none of the appropriate public enforcement agencies  
3 have commenced and diligently prosecuted a cause of action against DEFENDANT under  
4 Proposition 65 to enforce the alleged violations that are the subject of plaintiff's Notice.

5 23. The PRODUCTS that DEFENDANT manufactures, imports, distributes, ships, sells,  
6 and offers for sale or use in California cause exposures to DEHP as a result of the reasonably  
7 foreseeable uses of the PRODUCTS. Such exposures caused by DEFENDANT and endured by  
8 consumers and other individuals in California are not exempt from the "clear and reasonable"  
9 warning requirements of Proposition 65, yet DEFENDANT provides no warning.

10 24. DEFENDANT knew or should have known that the PRODUCTS it manufactured,  
11 imported, distributed, shipped, sold, and offered for sale or use in California contained DEHP.

12 25. DEHP are present in or on the PRODUCTS in such a way as to expose individuals to  
13 DEHP through dermal contact and/or ingestion during reasonably foreseeable uses.

14 26. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and  
15 continue to cause, consumer exposures to DEHP, as defined by title 27 of the California Code of  
16 Regulations, section 25602(b).

17 27. DEFENDANT had knowledge that the normal and reasonably foreseeable uses of the  
18 PRODUCTS exposed individuals to DEHP through dermal contact and/or ingestion.

19 28. DEFENDANT intended that exposures to DEHP from the reasonably foreseeable uses  
20 of the PRODUCTS would occur by its deliberate, non-accidental participation in the manufacture,  
21 importation, distribution, shipment, sale and offering of the PRODUCTS for sale or use to consumers  
22 and other individuals in California.

23 29. DEFENDANT failed to provide a "clear and reasonable warning" to those consumers  
24 and other individuals in California who were or who would become exposed to DEHP through  
25 dermal contact and/or ingestion resulting from their use of the PRODUCTS.

26 30. Contrary to the express policy and statutory prohibition of Proposition 65 enacted  
27 directly by California voters, individuals exposed to DEHP through dermal contact and/or ingestion  
28 as a result of their use of the PRODUCTS that DEFENDANT sold without a "clear and reasonable"

1 health hazard warning, have suffered, and continue to suffer, irreparable harm for which they have no  
2 plain, speedy, or adequate remedy at law.

3 31. Pursuant to Health & Safety Code §25249.7(b), as a consequence of the above-  
4 described acts, DEFENDANT is liable for a maximum civil penalty of \$2,500 per day for each  
5 violation.

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

8 **PRAYER FOR RELIEF**

9 Wherefore, plaintiff prays for judgment against DEFENDANT as follows:

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

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

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


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

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

23 Respectfully Submitted,

24 Dated: April 8, 2018

THE CHANLER GROUP

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27 By:   
Laralei Paras  
Attorneys for Plaintiff  
LAURENCE VINOCUR