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ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco  
**04/12/2024**  
Clerk of the Court  
BY: DAEJA ROGERS  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO - UNLIMITED CIVIL JURISDICTION

**CGC-24-613907**

KEEP AMERICA SAFE AND BEAUTIFUL,  
  
Plaintiff,  
  
v.  
  
DIVERSITECH CORPORATION;  
DISCOUNT WAREHOUSE TOOLS, INC.;  
and DOES 1-30, inclusive,  
  
Defendants.

Case No.  
  
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**  
  
Violations of Health & Safety Code  
§ 25249.5, *et seq.* (Proposition 65)

1 Plaintiff KEEP AMERICA SAFE AND BEAUTIFUL (“KASB” or “Plaintiff”), acting in the  
2 public interest, alleges a cause of action against defendants DIVERSITECH CORPORATION,  
3 DISCOUNT WAREHOUSE TOOLS, INC., and DOES 1-30 (“Defendants”) for their alleged  
4 violations of Health & Safety Code § 25249.6, et seq., as follows:

5 **INTRODUCTION AND NATURE OF THE ACTION**

6 1. KASB brings this representative action in the public interest on behalf of the citizens of  
7 the State of California. By this action, KASB seeks to enforce the People’s right to be informed of the  
8 health hazards caused by exposures to Lead, a heavy metal found in and on Injectors with Brass  
9 Components manufactured, imported, distributed, sold and offered for sale by Defendants in the State  
10 of California.

11 2. By this Complaint, plaintiff seeks to remedy Defendants’ failure to warn individuals not  
12 covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.* (“consumers”)  
13 exposed to substances known to cause birth defects or other reproductive harm through exposures to  
14 Lead when they purchase, use and handle Defendants’ Injectors with Brass Components.

15 3. Detectable levels of Lead are found in and on the Injectors with Brass Components  
16 Defendants manufacture, import, sell and distribute for sale in California.

17 4. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
18 Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”), it is unlawful for a person in the course  
19 of doing business to knowingly and intentionally expose consumers and end-users in California to  
20 chemicals known to the State to cause cancer, birth defects or other reproductive harm, without first  
21 providing a “clear and reasonable warning” regarding the presence of these chemicals in Defendants’  
22 products and the harms associated with exposures to such chemicals.

23 5. Defendants manufacture, distribute, import, sell, and offer for sale, in and into  
24 California Injectors with Brass Components (“PRODUCTS”) containing Lead, without providing a  
25 warning regarding the presence of and the harms associated with exposures to Lead in Defendants’  
26 PRODUCTS. Such PRODUCTS include, without limitation, the *Cliplight Dye Injector with Low*  
27 *Side Coup, No. 703 INJ-VB (134A)*. Defendants’ violations subject them to civil penalties,  
28

1 enjoyment, preliminary and permanent injunctive relief. Health & Safety Code § 25249.7(a) and  
2 (b).

3 **PARTIES**

4 6. KASB is a non-profit corporation organized under the laws of California and acting in  
5 the public interest to reduce the presence of toxic chemicals found in consumer products and to  
6 enforce California citizens' right to be informed about the presence of toxic chemicals in the products  
7 they purchase and use and the harms associated with exposures to such chemicals. KASB is a  
8 "person" within the meaning of Health & Safety Code § 25249.11(a). It brings this action in the  
9 public interest, pursuant to Health and Safety Code § 25249.7(d).

10 7. At all relevant times, defendant DIVERSITECH CORPORATION ("DIVERSITECH")  
11 operates as a "person in the course of doing business" with ten (10) or more employees within the  
12 meaning of and as defined by Health and Safety Code §§ 25249.6 and 25249.11.

13 8. DIVERSITECH manufactures, imports, distributes, sells, and offers the PRODUCTS for  
14 sale or use in California, or implies by its conduct that it manufactures, imports, distributes, sells,  
15 and/or offers the PRODUCTS for sale or use to consumers and other individuals in California.

16 9. Defendant DISCOUNT WAREHOUSE TOOLS, INC. ("DISCOUNT WAREHOUSE")  
17 operates as a "person in the course of doing business" within the meaning of and as defined by Health  
18 and Safety Code §§ 25249.6 and 25249.11.

19 10. DISCOUNT WAREHOUSE imports, distributes, sells, and offers the PRODUCTS for  
20 sale or use in California, or implies by its conduct that it imports, distributes, sells, and offers the  
21 PRODUCTS for sale or use in California.

22 11. Doe Defendants 1-10 ("MANUFACTURER DEFENDANTS") are each a "person in the  
23 course of doing business" within the meaning of and as defined by Health and Safety Code  
24 §§ 25249.6 and 25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble,  
25 fabricate, and manufacture, or they each imply by their conduct they do so for one or more of the  
26 PRODUCTS sold and/or offered for sale or use to consumers and other individuals in California.

27 12. Doe Defendants 11-20 ("DISTRIBUTOR DEFENDANTS") are each a person in the  
28 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.

1 DISTRIBUTOR DEFENDANTS, and each of them, distribute, transfer, and transport the  
2 PRODUCTS sold and offered for sale to consumers and other individuals in California, or they each  
3 imply by their conduct they distribute, transfer, and transport one or more of the PRODUCTS to  
4 individuals, businesses, and retailers for sale or use in California.

5 13. Doe Defendants 21-30 (“RETAILER DEFENDANTS”) are each a person in the course  
6 of doing business within the meaning of and as defined by Health and Safety Code §§ 25249.6 and  
7 25249.11. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to  
8 consumers and other individuals in California.

9 14. At this time, the true names of Defendants DOES 1 through 30, inclusive, are unknown  
10 to KASB, who therefore, sues these Doe Defendants by their fictitious names, pursuant to Code of  
11 Civil Procedure § 474. Each of the fictitiously named Defendants is responsible in some manner for  
12 the acts and occurrences alleged herein and the violations and harms caused thereby. When  
13 ascertained, KASB will identify these Doe Defendants by their true names in an amendment to this  
14 Complaint.

15 15. DIVERSITECH, DISCOUNT WAREHOUSE, MANUFACTURER DEFENDANTS,  
16 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall be referred to collectively  
17 herein as the “DEFENDANTS.”

### 18 **JURISDICTION AND VENUE**

19 16. This Court has jurisdiction pursuant to Health & Safety Code § 25249.7, which allows  
20 enforcement by any court of competent jurisdiction. The Superior Courts of the State of California  
21 have jurisdiction pursuant to California Constitution Article VI, section 10, which grants the Superior  
22 Courts “original jurisdiction in all causes except those given by statute to other trial courts.” The  
23 statute under which this action is brought does not specify any other basis of subject matter  
24 jurisdiction.

25 17. This Court has jurisdiction over DEFENDANTS because DEFENDANTS, and each of  
26 them are a person, firm, corporation or association that is a citizen of the State of California, does  
27 sufficient business in California, has sufficient minimum contacts in California, and/or otherwise  
28 purposefully and intentionally avail themselves of the California market through their manufacture,

1 importation, distribution, promotion, marketing and sale of PRODUCTS in California.

2 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by this Court  
3 consistent with traditional notions of fair play and substantial justice.

4 18. Venue is proper in the Superior Court for the County of San Francisco, pursuant to Code  
5 of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
6 because KASB seeks civil penalties against DEFENDANTS, because one or more instances of  
7 wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS  
8 conducted, and continue to conduct, business in the County of San Francisco with respect to the  
9 PRODUCTS.

10 **REGULATORY BACKGROUND AND LAW**

11 19. Formally known as the Safe Drinking Water and Toxic Enforcement Act of 1986 and  
12 codified at Health & Safety Code § 25249.6 *et seq.*, Proposition 65 states, in relevant part, “[n]o  
13 person in the course of doing business shall knowingly and intentionally expose any individual to a  
14 chemical known to cause cancer or reproductive toxicity without first giving a clear and reasonable  
15 warning to such individual . . .”

16 20. Under the Act, a “person in the course of doing business” is defined as a business with  
17 ten (10) or more employees. Health & Safety Code § 25249.11(b). The Act prohibits businesses from  
18 exposing consumers to hazardous chemicals without first giving a “clear and reasonable warning.”  
19 Health & Safety Code § 25249.6.

20 21. Exposing consumers to hazardous chemicals means to cause consumers to ingest, inhale,  
21 contact via body surfaces or otherwise come into contact with a listed chemical. California Code of  
22 Regulations (“Cal. Code Regs.”) Title 27, § 25102(i). An exposure to a hazardous chemical is  
23 defined as one that “results from a person’s acquisition, purchase, storage, consumption or other  
24 reasonably foreseeable use of a product...” Cal. Code Regs. Tit. 27, § 25600(h).

25 22. Under Proposition 65, persons violating the statute may be enjoined in any court of  
26 competent jurisdiction and may be subject to civil penalties of up to \$2,500 per day, per violation.  
27 Health & Safety Code § 25249.7.

28





1 reasonably foreseeable and intended use of the PRODUCTS. Defendants continue to fail to provide  
2 such warning.

3 39. Contrary to the express policy and statutory prohibition of Proposition 65, consumers  
4 are exposed to Lead through dermal contact and ingestion during their use of PRODUCTS  
5 DEFENDANTS sold, sell and offer for sale without a “clear and reasonable warning.” Such  
6 consumers and other individuals in California suffer irreparable harms for which they have no plain,  
7 speedy, or adequate remedy at law.

8 40. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for sale  
9 or use in violation of Health and Safety Code § 25249.6. DEFENDANTS’ violations continue beyond  
10 their receipt of KASB’s Notices. As such, DEFENDANTS’ violations are ongoing and continuous in  
11 nature and, unless enjoined, will continue in the future.

12 41. Pursuant to Health and Safety Code § 25249.7(b), and as a consequence their acts and  
13 omissions, DEFENDANTS, and each of them, are liable for a maximum civil penalty of \$2,500 per  
14 violation.

15 42. As a consequence of DEFENDANTS’ acts and omissions, Health and Safety Code  
16 § 25249.7(a) specifically authorizes the Court to grant the relief prayed for herein.

17 **PRAYER FOR RELIEF**

18 Wherefore, KASB prays for relief and judgment against DEFENDANTS, and each of them,  
19 as follows:

20 1. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and  
21 permanently enjoin DEFENDANTS from manufacturing, distributing, importing, marketing or  
22 otherwise offering the PRODUCTS for sale or use in California without first providing a “clear and  
23 reasonable warning” to consumers regarding the presence of, and the harms associated with,  
24 exposures to Lead;

25 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary and  
26 permanent injunctions mandating DEFENDANTS recall PRODUCTS intended for sale in or into  
27 California that do not bear a clear and reasonable warning;

28



1           3. That the Court assess civil penalties against DEFENDANTS, and each of them, in the  
2 amount of \$2,500 per violation, according to proof at trial;

3           4. That the Court award plaintiff its reasonable attorneys' fees and costs of suit; and

4           5. That the Court grant such further relief as it deems just and equitable.

5  
6 Dated: April 12, 2024

Respectfully submitted,

7 SEVEN HILLS LLP

8  
9 By: 

Brian C. Johnson

Attorneys for Plaintiff

KEEP AMERICA SAFE AND

BEAUTIFUL