

1 Clifford Chanler, State Bar No. 135534
2 Christopher Tuttle, State Bar No. 264545
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118
9 clifford@chanler.com
10 ctuttle@chanler.com

11 Attorneys for Plaintiff
12 JOHN MOORE

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

JOHN MOORE,

Plaintiff,

v.

DIVERSITECH CORPORATION, *et al.*,

Defendants.

Case No. CGC-17-563278

**[PROPOSED] CONSENT JUDGMENT
AS TO DEFENDANT MORRIS
PRODUCTS, INC.**

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff John Moore (“Moore”), and
4 Morris Products, Inc. (“Defendant”), with Moore and Defendant each individually referred to as a
5 “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Moore is an individual residing in California who seeks to promote awareness of exposures to
8 toxic chemicals and to improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 Defendant employs ten or more individuals and is a “person in the course of doing business”
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
13 Code section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Moore alleges that Defendant imports, sells, or distributes for sale in California, products with
16 insulated electrical wires that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the
17 exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a
18 chemical known to the State of California to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are products with insulated electrical wires
21 containing DEHP, including, but not limited to, the *Morris Super Mini Digital Multimeter, #57050*,
22 *UPC #6 01986 57050 3* that are manufactured, imported, distributed, sold, or offered for sale in
23 California by Defendant (“Products”).

24 **1.6 Notice of Violation**

25 On September 12, 2017, Moore served Defendant, and the requisite public enforcement
26 agencies with a 60-Day Notice of Violation (“Notice”) alleging that Defendant violated Proposition
27 65 by failing to warn its customers and consumers in California of the health hazards associated with
28

1 exposures to DEHP from the Products. No public enforcer has commenced and is diligently
2 prosecuting an action to enforce the violations alleged in the Notice.

3 **1.7 Complaint**

4 On December 21, 2017, Moore filed the instant action (“Complaint”), naming Diversitech
5 Corporation and Morris Products, Inc. as defendants for the alleged violations of Health and Safety
6 Code section 25249.6 that are the subject of the Notice.

7 **1.8 No Admission**

8 Defendant denies the material, factual, and legal allegations contained in the Notice and
9 Complaint, and maintains that all of the products it has sold or distributed for sale in California,
10 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
11 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
12 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
13 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
14 not, however, diminish or otherwise affect Defendant’s obligations, responsibilities, and duties under
15 this Consent Judgment.

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in the County
19 of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions of this
20 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
23 Plaintiff provides written notification of the Court’s approval of this Consent Judgment as
24 contemplated by Section 5.

25 **2. INJUNCTIVE RELIEF: PRODUCT REFORMULATION**

26 **2.1 Commitment to Reformulate or Provide Warnings**

27 Commencing on the Effective Date and continuing thereafter, Defendant agrees to only
28 manufacture, import, distribute, or purchase, for sale in or into California, Products that are either (a)


1 “Reformulated Products” as defined by Section 2.2 below, or (b) contain a clear and reasonable
2 warning pursuant to Section 2.3 below.

3 2.2 Reformulation Standard

4 For the purposes of this Consent Judgment, “Reformulated Products” are defined as Products
5 that contain DEHP in concentrations that do not exceed 1,000 parts per million (0.1%) in any
6 accessible component (*i.e.*, any component that may be touched during a reasonably foreseeable use),
7 when analyzed pursuant to U.S. Environmental Protection Agency (“EPA”) testing methodologies
8 3580A and 8270C or equivalent methodologies utilized by state or federal agencies for the purpose of
9 determining DEHP content in a solid substance.

10 2.3 Clear and Reasonable Warnings

11 Defendant agrees that as of the Effective Date, all Products it manufactures, imports, or
12 purchases, for sale in or into California, which do not qualify as Reformulated Products (as defined in
13 Section 2.2 above), will bear a clear and reasonable warning in accordance with this Section 2.3, or
14 Title 27 California Code of Regulations sections 25601 *et seq.* Defendant further agrees that any
15 warning used will be prominently placed in relation to the Products with such conspicuousness when
16 compared with other words, statements, designs, or devices as to render it likely to be read and
17 understood by an ordinary individual under customary conditions of purchase or use. For purposes of
18 this Consent Judgment, a warning for the Products displayed or transmitted according to the above
19 criteria that contains warning content permitted by Section 25603, including, but not limited to, the
20 following statement, and is affixed directly to a Product or its accompanying labeling or packaging,
21 shall be deemed clear and reasonable:

22  **WARNING:** This product can expose you to chemicals, including
23 DEHP, which is known to the State of California to
24 cause birth defects or other reproductive harm. For
more information go to www.P65Warnings.ca.gov.

25 If Defendant sells non-reformulated Products via an internet website to customers in
26 California, the warning requirements of this section shall be satisfied if the foregoing warning
27 appears either: (a) on the same web page on which a Product is displayed or described; (b) on the
28 same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser

1 during the checkout process. Alternatively, a symbol consisting of a black exclamation point in a
2 yellow or white equilateral triangle may appear adjacent to or immediately following the display,
3 description, price, or checkout listing of the Product, provided that the warning statement also
4 appears elsewhere on the same web page in a manner that clearly associates it with all product(s) to
5 which the warning applies.

6 **3. MONETARY SETTLEMENT TERMS**

7 **3.1 Civil Penalty Payment**

8 Pursuant to Health and Safety Code section 25249.7(b), and in settlement of all the claims
9 referred to in the Notice, the Complaint, and this Consent Judgment, Defendant shall pay \$2,500 in
10 civil penalties. The civil penalty payment shall be allocated according to Health and Safety Code
11 section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California
12 Office of Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five
13 percent (25%) of the penalty retained by Moore. Moore’s counsel shall be responsible for delivering
14 OEHHA’s portion of any penalty payment(s) made under this Consent Judgment. Defendant shall
15 provide its payment in a check made payable to “John Moore, Client Trust Account” in the amount of
16 \$625 and a check made payable to “OEHHA” in the amount of \$1,875 to be delivered to the address
17 provided in Section 3.3, below.

18 **3.2 Reimbursement of Attorney’s Fees and Costs**

19 The parties acknowledge that Moore and his counsel offered to resolve this dispute without
20 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
21 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
22 other settlement terms had been finalized, the Parties negotiated the compensation due to Moore and
23 his counsel under general contract principles and the private attorney general doctrine codified at
24 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
25 execution of this Consent Judgment, and court approval of the same. Under these legal principles,
26 Defendant shall pay \$27,000 for all fees and costs incurred by Moore investigating, bringing this
27 matter to Defendant’s attention, litigating and negotiating a settlement in the public interest.
28

1 Defendant's payment shall be delivered to the address in Section 3.4 in a check payable to "The
2 Chanler Group."

3 **3.3 Payment Timing; Penalty for Late Payment**

4 All payments due under this Consent Judgment shall be delivered to Moore's counsel within
5 five (5) days after the Effective Date. Defendant agrees and represents that should any settlement
6 payment required by this Consent Judgment not be received by Moore's counsel within ten (10)
7 days after the Effective Date, (a) Defendant shall be liable to Moore for an additional 10% late
8 payment penalty for all unpaid or untimely amount(s); (b) Moore may seek to enforce Defendant's
9 payment obligations under general contract principles and Code of Civil Procedure section 664.6;
10 and (c) Moore shall be entitled to the reasonable fees incurred recovering any unpaid or untimely
11 settlement payments pursuant to general contract principles and Code of Civil Procedure section
12 1021.5.

13 **3.4 Payment Address**

14 All payments required by this Consent Judgment shall be delivered to:

15 The Chanler Group
16 Attn: Proposition 65 Controller
17 2560 Ninth Street
18 Parker Plaza, Suite 214
19 Berkeley, CA 94710

20 **4. CLAIMS COVERED AND RELEASED**

21 **4.1 Moore's Public Release of Proposition 65 Claims**

22 Moore, acting on his own behalf and on behalf of his past and current agents,
23 representatives, attorneys, successors, and assignees, and in the public interest, Moore releases
24 Defendant and its parents, subsidiaries, affiliated entities under common ownership, directors,
25 officers, employees, shareholders, and attorneys ("Releasees"), and each entity to whom Defendant
26 directly or indirectly distributes or sells the Products including, without limitation, its downstream
27 customers, distributors, wholesalers, and retailers ("Downstream Releasees") for any violation
28 arising under Proposition 65 pertaining to the failure to warn about exposures to DEHP from
Products sold, or distributed, manufactured, purchased, or imported, for sale by Defendant prior to
the Effective Date. Compliance with the terms of this Consent Judgment constitutes compliance

1 with Proposition 65 with respect to exposures to DEHP from Products manufactured, imported, sold
2 or distributed for sale by Defendant after the Effective Date.

3 **4.2 Moore's Individual Release of Claims**

4 Moore, in his individual capacity only and *not* in any representative capacity, also provides a
5 release to Defendant, Releasees, and Downstream Releasees, which shall be effective as a full and
6 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
7 attorneys' fees, damages, losses, claims, liabilities and demands of Moore of any nature, character or
8 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
9 exposures to DEHP in Products sold, or distributed, manufactured, purchased, or imported, for sale,
10 by Defendant before the Effective Date.

11 **4.3 Defendant's Release of Moore**

12 Defendant, on its own behalf, and on behalf of its past and current agents, representatives,
13 attorneys, successors, and assignees, hereby waives any and all claims against Moore, and his
14 attorneys and other representatives, for any and all actions taken or statements made by Moore, and
15 his attorneys and other representatives, whether in the course of investigating claims, otherwise
16 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

17 **5. COURT APPROVAL**

18 This Consent Judgment is not effective until it is approved and entered by the Court and shall
19 be null and void if it is not approved and entered by the Court within one year after it has been fully
20 executed by the Parties, or by such additional time as the Parties may agree in writing.

21 **6. DISMISSAL OF OTHER NAMED DEFENDANTS**

22 Moore agrees that within 15 days of the Effective Date or his counsel's receipt of the
23 settlement payments required by Section 3, whichever is later, he will file a request for dismissal
24 without prejudice as to defendant Diversitech Corporation.

25 **7. SEVERABILITY**

26 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
27 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
28 adversely affected.

1 **8. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the state of California
3 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
4 rendered inapplicable by reason of law generally or as to the Products, then Defendant may provide
5 written notice to Moore of any asserted change in the law, and shall have no further injunctive
6 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
7 so affected.

8 **9. NOTICE**

9 Unless specified herein, all correspondence and notice required by this Consent Judgment
10 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
11 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

12 For Morris Products, Inc.:

13 Jeff Schwartz
14 VP of Electrical
15 Morris Products, Inc.
16 53 Carey Road
17 Queensbury, NY 12804

18 with a copy to:

19 Sarah R. Choi, Esq.
20 Dentons US LLP
21 1999 Harrison Street, Suite 1300
22 Oakland, CA 94612

23 For Moore:

24 Proposition 65 Coordinator
25 The Chanler Group
26 2560 Ninth Street
27 Parker Plaza, Suite 214
28 Berkeley, CA 94710-2565

Any Party may, from time to time, specify in writing to the other, a change of address to which all
notices and other communications shall be sent.

10. COUNTERPARTS; FACSIMILE SIGNATURES

 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
which shall be deemed an original, and all of which, when taken together, shall constitute one and the
same document.

11. **POST EXECUTION ACTIVITIES**

Moore agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of this Consent Judgment, which motion Moore shall draft and file, and Defendant shall support, including appearing at the settlement approval hearing if requested.

12. **MODIFICATION**

This Consent Judgment may be modified only by: (i) a written agreement of the Parties and entry of a modified consent judgment thereon by the Court; or (ii) a successful motion or application of any Party, and the entry of a modified consent judgment thereon by the Court.

13. **AUTHORIZATION**

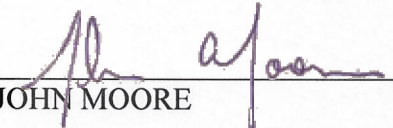
The undersigned are authorized to execute this Consent Judgment and acknowledge that they have read, understand, and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: 7/7/2018

Date: 7/3/18

By: 
JOHN MOORE

By: 
ANDY BERGDOLLE
MORRIS PRODUCTS, INC.