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2014 APR 30 A 0:59

CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA

BY: _____

D WFERER

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA PER LOCAL RULE 5.7(b)
11 COUNTY OF CONTRA COSTA CASE IS ASSIGNED TO
12 UNLIMITED CIVIL JURISDICTION DEPT 3

13 WHITNEY R. LEEMAN, Ph.D.,

14 Plaintiff,

15 v.

16 KERUSSO ACTIVEWEAR, INC., and DOES
1-150, inclusive,

17 Defendants.

Case No.

014-00857

18 **COMPLAINT**
19 **FOR CIVIL PENALTIES AND**
20 **INJUNCTIVE RELIEF**

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

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff Whitney R. Leeman,
3 Ph.D., in the public interest of the citizens of the State of California to enforce the People’s right to
4 be informed of the presence of di(2-ethylhexyl)phthalate (“DEHP”), a toxic chemical found in
5 consumer products such as vinyl/PVC keycovers sold in California.

6 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to warn
7 California citizens about the risk of exposure to DEHP present in and on vinyl/PVC keycovers
8 manufactured, distributed, and offered for sale or use to consumers throughout the State of
9 California.

10 3. Detectable levels of DEHP are commonly found in and on vinyl/PVC keycovers that
11 defendants manufacture, sell, and distribute for sale to consumers throughout the State of California.

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

17 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
18 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became
19 subject to the “clear and reasonable warning” requirements of the act one year later on October 24,
20 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). DEHP
21 is referred to hereinafter as the “LISTED CHEMICAL.”

22 6. Significant levels of the LISTED CHEMICAL have been discovered in or on the
23 vinyl/PVC materials of keycovers that are manufactured, imported, distributed, and/or sold by
24 defendants.

25 7. Examples of keycovers with vinyl/PVC materials containing the LISTED CHEMICAL
26 that are manufactured, imported, distributed and/or sold by defendants are the *Kerusso Two-Sided*
27 *Keycover, Smile, KEYC102, UPC #6 12978 91480 9, #6 12978 80399 8, and Kerusso Two-Sided*
28 *Keycover, Guitar, KEYC108, UPC #6 12978 91480 9, #6 12978 80399 8.*

1 for the acts and occurrences alleged herein. When ascertained, their true names and capacities shall
2 be reflected in an amended complaint.

3 16. KERUSSO and DOES 1 through 150 shall, where appropriate, collectively be referred
4 to as "DEFENDANTS."

5 **VENUE AND JURISDICTION**

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

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

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

21 **FIRST CAUSE OF ACTION**

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

23 20. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs
24 1 through 19, inclusive.

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

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

5 23. On or about December 30, 2013, plaintiff’s sixty-day notice of violation, together with
6 the requisite certificate of merit, was provided to KERUSSO and certain public enforcement
7 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the
8 LISTED CHEMICAL, purchasers and users in the State of California were being exposed to the
9 LISTED CHEMICAL resulting from their reasonably foreseeable use of the PRODUCTS, without
10 the individual purchasers and users first having been provided with a “clear and reasonable warning”
11 regarding such toxic exposures, as required by Proposition 65.

12 24. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,
13 and/or offering of the PRODUCTS for sale or use in violation of Health and Safety Code § 25249.6,
14 and DEFENDANTS’ violations have continued to occur beyond their receipt of plaintiff’s sixty-day
15 notice of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature, and
16 will continue to occur in the future.

17 25. After receiving plaintiff’s sixty-day notice of violation, the appropriate public
18 enforcement agencies have failed to commence and diligently prosecute a cause of action against
19 DEFENDANTS under Proposition 65.

20 26. The PRODUCTS manufactured, imported, sold, and/or distributed for sale or use in
21 California by DEFENDANTS contain the LISTED CHEMICAL such that they require a “clear and
22 reasonable” warning under Proposition 65.

23 27. DEFENDANTS knew or should have known that the PRODUCTS they manufacture,
24 import, distribute, sell, and/or offer for sale or use in California contain the LISTED CHEMICAL.

25 28. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to
26 expose individuals to the LISTED CHEMICAL through dermal contact and/or ingestion during
27 reasonably foreseeable use.

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1 29. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
2 continue to cause, consumer exposures to the LISTED CHEMICAL, as such exposures are defined
3 by title 27 of the California Code of Regulations, section 25602(b).

4 30. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses of the
5 PRODUCTS expose individuals to the LISTED CHEMICAL through dermal contact and/or
6 ingestion.

7 31. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from the
8 reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-accidental
9 participation in the manufacture, importation, distribution, sale, and/or offering of the PRODUCTS
10 for sale or use to individuals in the State of California.

11 32. DEFENDANTS failed to provide a “clear and reasonable warning” to those consumers
12 and other individuals in the State of California who were or who would become exposed to the
13 LISTED CHEMICAL through dermal contact and/or ingestion during the reasonably foreseeable
14 uses of the PRODUCTS.

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

20 34. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-
21 described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day for each
22 violation.

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

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1 **PRAYER FOR RELIEF**

2 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

- 3 1. That the Court, pursuant to Health and Safety Code § 25249.7(b), assess civil penalties
4 against DEFENDANTS in the amount of \$2,500 per day for each violation;
- 5 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and
6 permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS
7 for sale or use in California without first providing a “clear and reasonable warning” as defined by
8 title 27 of the California Code of Regulations, section 25601 *et seq.*, as to the harms associated with
9 exposures the LISTED CHEMICAL;
- 10 3. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and
- 11 4. That the Court grant such other and further relief as may be just and proper.

12 Dated: April 29, 2014

13 Respectfully Submitted,

14 THE CHANLER GROUP

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16 By: 

17 Laralei S. Paras
18 Attorneys for Plaintiff
19 WHITNEY R. LEEMAN, Ph.D.
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