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ENDORSED
FILED
ALAMEDA COUNTY

DEC 28 2015

CLERK OF THE SUPERIOR COURT
By Xian-Xii Bowie

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

EMA BELL,

Plaintiff,

vs.

KRACO ENTERPRISES, LLC,
O'REILLY AUTOMOTIVE STORES,
INC., AUTO EXPRESSIONS, LLC,

Defendants.

CASE NO.: RG15798003

JUDGE

DEPT.:

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

Plaintiff Ema Bell ("Plaintiff" or "Bell"), by and through her attorneys, alleges the following cause of action in the public interest of the citizens of the State of California.

BACKGROUND OF THE CASE

1. Plaintiff brings this representative action on behalf of all California citizens to enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified at the Health and Safety Code § 25249.5 *et seq.* ("Proposition 65"), which reads, in relevant part, "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

1 2. This complaint is a representative action brought by Plaintiff in the public interest
2 of the citizens of the State of California to enforce the People’s right to be informed of the health
3 hazards caused by exposure to the chemical Di(2-ethylhexyl) phthalate (DEHP) that is found in
4 seat covers sold and/or distributed by defendants Kraco Enterprises, LLC, Auto Expressions,
5 LLC (collectively, “Kraco”), and O’Reilly Automotive Stores, Inc. (“O’Reilly”) (Kraco and
6 O’Reilly are collectively referred to herein as “Defendants”) in California.

7 3. DEHP is a harmful chemical known to the State of California to cause
8 reproductive toxicity and cancer. On January 1, 1988, the State of California listed DEHP as a
9 chemical known to the State to cause cancer and it has come under the purview of Proposition 65
10 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§
11 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical
12 known to cause developmental male reproductive toxicity.

13 4. Proposition 65 requires all businesses with ten (10) or more employees that
14 operate within California or sell products therein to comply with Proposition 65 regulations.
15 Included in such regulations is the requirement that businesses must label any product containing
16 a Proposition 65-listed chemical with a “clear and reasonable” warning before “knowingly and
17 intentionally” exposing any person to it.

18 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
19 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety
20 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin
21 the actions of a defendant which “violate or threaten to violate” the statute. Health & Safety
22 Code § 25249.7.

23 6. Plaintiff alleges that Defendants produce, manufacture, distribute, import, sell,
24 and/or offer for sale, without the required warning, seat covers in California containing DEHP.
25 These products include, but are not limited to the *Kraco Sport Performance Seat Cover, UPC*
26 *No. 0 19912 54924 8* (the “Product”).

27 7. Defendants’ failure to warn consumers and other individuals in California of the
28 health hazards associated with exposure to DEHP in conjunction with the sale, manufacture,

1 and/or distribution of the Product is a violation of Proposition 65 and subjects Defendants to the
2 enjoinder and civil penalties described herein.

3 8. Plaintiff seeks civil penalties against Defendants for their violations of
4 Proposition 65 in accordance with Health and Safety Code § 25249.7(b).

5 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
6 Defendants to provide purchasers or users of the Product with the required warnings related to
7 the dangers and health hazards associated with exposure to DEHP pursuant to Health and Safety
8 Code § 25249.7(a).

9 **PARTIES**

10 10. Plaintiff is a citizen of the State of California acting in the interest of the general
11 public to promote awareness of exposures to toxic chemicals in products sold in California and
12 to improve human health by reducing hazardous substances contained in such items. He brings
13 this action in the public interest pursuant to Health and Safety Code § 25249.7(d).

14 11. Defendants Kraco design, engineer, market, and distribute automotive accessory
15 products. Sun Capital Partners (“Sun Capital”), a US-based investment firm, acquired defendant
16 Kraco Enterprises LLC in August 2008. In 2010, Sun Capital purchased defendant Auto
17 Expressions LLC and merged it with Kraco Enterprises LLC in October 2010. Through its
18 business, Kraco effectively manufactures, imports, distributes, sells, and/or offers the Product for
19 sale or use in the State of California, or it implies by its conduct that it manufactures, imports,
20 distributes, sells, and/or offers the Product for sale or use in the State of California. Defendants
21 Kraco maintain a registered agent for service of process at c/o CT Corporation System, 818 W
22 7th Street, 2nd Floor, Los Angeles, CA 90017. Defendants Kraco are each a “person” in the
23 course of doing business within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.

24 12. Defendant O’Reilly designs, engineers, markets, and distributes automotive
25 accessory products. Through its business, O’Reilly effectively manufactures, imports,
26 distributes, sells, and/or offers the Product for sale or use in the State of California, or it implies
27 by its conduct that it manufactures, imports, distributes, sells, and/or offers the Product for sale
28 or use in the State of California. O’Reilly maintains a registered agent for service of process at

1 c/o CT Corporation System, 818 W 7th Street, 2nd Floor, Los Angeles, CA 90017. O'Reilly is a
2 "person" in the course of doing business within the meaning of Health & Safety Code §§
3 25249.6 and 25249.11.

4 VENUE AND JURISDICTION

5 13. Venue is proper in the County of Alameda because one or more of the instances
6 of wrongful conduct occurred, and continue to occur in this county and/or because Defendants
7 conducted, and continue to conduct, business in the County of Alameda with respect to the
8 Product.

9 14. This Court has jurisdiction over this action pursuant to California Constitution
10 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
11 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the
12 enforcement of violations of Proposition 65 in any Court of competent jurisdiction; therefore,
13 this Court has jurisdiction over this lawsuit.

14 15. This Court has jurisdiction over Defendants because they have sufficient
15 minimum contacts with the State of California, and/or have otherwise purposefully availed
16 themselves of the California market. Such purposeful availment has rendered the exercise of
17 jurisdiction by California courts consistent and permissible with traditional notions of fair play
18 and substantial justice.

19 SATISFACTION OF NOTICE REQUIREMENTS

20 16. On January 22, 2015, Plaintiff gave notice of alleged violation of Health and
21 Safety Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California
22 citizens to DEHP contained in the Product without proper warning, subject to a private action to
23 Defendants and to the California Attorney General's office and the offices of the County District
24 attorneys and City Attorneys for each city with a population greater than 750,000 persons
25 wherein the herein violations allegedly occurred. On August 13, 2015 the Notice was amended
26 and reserved on Defendants.

27 17. The Notice complied with all procedural requirements of Proposition 65 including
28 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at

1 least one person with relevant and appropriate expertise who reviewed relevant data regarding
2 DEHP exposure, and that counsel believed there was meritorious and reasonable cause for a
3 private action.

4 18. After receiving Plaintiff's Notice, and to Plaintiff's best information and belief,
5 none of the noticed appropriate public enforcement agencies have commenced and diligently
6 prosecuted a cause of action against Defendants under Proposition 65 to enforce the alleged
7 violations which are the subject of Plaintiff's Notice of violation.

8 19. Plaintiff is commencing this action more than sixty (60) days from the date of her
9 Notice to Defendants, as required by law.

10 **FIRST CAUSE OF ACTION**

11 **(By Plaintiff against Defendants for the Violation of Proposition 65)**

12 20. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of
13 this complaint as though fully set forth herein.

14 21. Defendants have, at all times mentioned herein, acted as a manufacturer,
15 distributor, and/or retailer of the Product.

16 22. The Product contains DEHP, a hazardous chemical found on the Proposition 65
17 list of chemicals known to be hazardous to human health.

18 23. The Product does not comply with the Proposition 65 warning requirements.

19 24. Plaintiff, based on her best information and belief, avers that at all relevant times
20 herein, and at least since January 9, 2015, continuing until the present, that Defendants have
21 continued to knowingly and intentionally expose California users and consumers of the Product
22 to DEHP without providing required warnings under Proposition 65.

23 25. The exposures that are the subject of the Notice result from the purchase,
24 acquisition, handling and recommended use of the product. Consequently, the primary route of
25 exposure to these chemicals is through dermal absorption through direct contact with the seat
26 cover, and ingestion by handling and touching the seat cover with subsequent touching of the
27 users hand to mouth. Additionally, vapor phase DEHP is likely to be produced from the product
28 and ingested within the enclosed space of the vehicle cabin.

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