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ENDORSED
FILED
Superior Court of California
County of San Francisco
APR 13 2016
CLERK OF THE COURT
BY: ROSSALY LA VEGA
Deputy Clerk

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

WHITNEY R. LEEMAN, PH.D.,

Plaintiff,

v.

LKQ CORPORATION; KEYSTONE
AUTOMOTIVE OPERATIONS, INC.; THE
COAST DISTRIBUTION SYSTEM, INC. and
DOES 1 – 150, inclusive,

Defendants.

CGC 16-551473

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

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff WHITNEY R.
3 LEEMAN, PH.D. in the public interest of the citizens of the State of California to enforce the
4 People’s right to be informed of the health hazards caused by exposures to di(2-
5 ethylhexyl)phthalate (“DEHP”), a toxic chemical found in and on the vinyl/PVC charger clamp
6 grips and vinyl/PVC cords sold by defendants in California.

7 2. By this Complaint, plaintiff seeks to remedy defendants’ continuing failure to
8 warn individuals not covered by California’s Occupational Safety Health Act, Labor Code §
9 6300 *et seq.*, who purchase, use, or handle defendants’ products, about the risks of exposures to
10 DEHP present in and on vinyl/PVC charger clamp grips and the vinyl/PVC cords that
11 defendants manufacture, distribute, and offer for sale or use throughout the State of California.
12 Individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et*
13 *seq.*, who purchase, use or handle defendants’ products, are referred to hereinafter as
14 “consumers.”

15 3. Detectable levels of DEHP are found in and on the vinyl/PVC charger clamp
16 grips and the vinyl/PVC cords that defendants manufacture, distribute, and offer for sale to
17 consumers throughout the State of California.

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

23 5. Pursuant to Proposition 65, on October 24, 2003, California listed DEHP as a
24 chemical known to cause birth defects or reproductive harm. DEHP became subject to the
25 “clear and reasonable warning” requirements of the act one year later on October 24, 2004. Cal.
26 Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

1 4. Defendant KEYSTONE AUTOMOTIVE OPERATIONS, INC. (“KEYSTONE
2 AUTOMOTIVE”) is a person in the course of doing business within the meaning of Health and
3 Safety Code §§ 25249.6 and 25249.11.

4 5. KEYSTONE AUTOMOTIVE manufactures, imports, distributes, sells, and/or
5 offers the PRODUCTS for sale or use in the State of California, or implies by its conduct that it
6 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
7 State of California.

8 6. Defendant THE COAST DISTRIBUTION SYSTEM, INC. (“THE COAST
9 DISTRIBUTION”) is a person in the course of doing business within the meaning of Health and
10 Safety Code §§ 25249.6 and 25249.11.

11 7. THE COAST DISTRIBUTION manufactures, imports, distributes, sells, and/or
12 offers the PRODUCTS for sale or use in the State of California, or implies by its conduct that it
13 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the
14 State of California.

15 8. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
16 person in the course of doing business within the meaning of Health and Safety Code § 25249.6
17 and § 25249.11.

18 9. MANUFACTURER DEFENDANTS, and each of them, research, test, design,
19 assemble, fabricate, and manufacture, or each implies by its conduct that it researches, tests,
20 designs, assembles, fabricates, and manufactures one or more of the PRODUCTS offered for
21 sale or use in California.

22 10. Defendants DOES 51-100 (the “DISTRIBUTOR DEFENDANTS”) are each a
23 person in the course of doing business within the meaning of Health and Safety Code § 25249.6
24 and § 25249.11.

25 11. DISTRIBUTOR DEFENDANTS, and each of them, distribute, exchange,
26 transfer, process, and transport one or more of the PRODUCTS to individuals, businesses, or
27 retailers for sale or use in the State of California, or each implies by its conduct that it
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1 distributes, exchanges, transfers, processes, and transports one or more of the PRODUCTS to
2 individuals, businesses, or retailers for sale or use in the State of California.

3 12. Defendants DOES 101-150 (the "RETAILER DEFENDANTS") are each a
4 person in the course of doing business within the meaning of Health and Safety Code § 25249.6
5 and § 25249.11.

6 13. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to
7 individuals in the State of California.

8 14. At this time, the true names of defendants DOES 1 through 150, inclusive, are
9 unknown to Plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to
10 Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, that
11 each of the fictitiously named defendants is responsible for the acts and occurrences alleged
12 herein. When ascertained, their true names shall be reflected in an amended complaint.

13 15. LKQ, KEYSTONE AUTOMOTIVE, THE COAST DISTRIBUTION,
14 MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER
15 DEFENDANTS shall hereinafter be referred to collectively as the "DEFENDANTS."

16 **VENUE AND JURISDICTION**

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

23 17. The California Superior Court has jurisdiction over this action pursuant to
24 California Constitution Article VI, Section 10, which grants the Superior Court "original
25 jurisdiction in all causes except those given by statute to other trial courts." The statute under
26 which this action is brought does not specify any other basis of subject matter jurisdiction.

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

6 **FIRST CAUSE OF ACTION**

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

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

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

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

18 22. On December 29, 2015, plaintiff served a sixty-day notice of violation, together
19 with the accompanying certificate of merit, on LKQ, KEYSTONE AUTOMOTIVE, THE
20 COAST DISTRIBUTION, the California Attorney General, and all other requisite public
21 enforcers alleging that, as a result of DEFENDANTS' sales of the PRODUCTS, consumers in
22 the State of California are being exposed to DEHP resulting from their reasonably foreseeable
23 use of the PRODUCTS, without the consumers first receiving a "clear and reasonable warning"
24 regarding the harms associated with exposures to DEHP, as required by Proposition 65.

25 23. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS
26 for sale or use in violation of Health and Safety Code § 25249.6, and DEFENDANTS'
27 violations have continued beyond their receipt of plaintiff's sixty-day notice of violation. As
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1 such, DEFENDANTS' violations are ongoing and continuous and, unless enjoined, will
2 continue in the future.

3 24. After receiving plaintiff's sixty-day notice of violation, no public enforcement
4 agency has commenced and diligently prosecuted a cause of action against DEFENDANTS
5 under Proposition 65 to enforce the alleged violations that are the subject of plaintiff's notice of
6 violation.

7 25. The PRODUCTS that DEFENDANTS manufacture, import, distribute, sell, and
8 offer for sale or use in California cause exposures to DEHP as a result of the reasonably
9 foreseeable use of the PRODUCTS. Such exposures caused by DEFENDANTS and endured by
10 consumers in California are not exempt from the "clear and reasonable" warning requirements of
11 Proposition 65, yet DEFENDANTS provide no warning. DEFENDANTS' violations of
12 Proposition 65, resulting from their failure to provide warnings to consumers exposed to DEHP
13 from the PRODUCTS have continued since as far back as December 29, 2012.

14 26. DEFENDANTS know or should know that the PRODUCTS they manufacture,
15 import, distribute, sell, and offer for sale in California contain DEHP.

16 27. DEHP is present in or on the PRODUCTS in such a way as to expose consumers
17 through dermal contact and/or ingestion during reasonably foreseeable use.

18 28. The normal and reasonably foreseeable use of the PRODUCTS has caused, and
19 continues to cause, consumer exposures to DEHP, as defined by Title 27 of the California Code
20 of Regulations, § 25602(b).

21 29. DEFENDANTS know that the normal and reasonably foreseeable use of the
22 PRODUCTS exposes individuals to DEHP through dermal contact and/or ingestion.

23 30. DEFENDANTS intend that exposures to DEHP from the reasonably foreseeable
24 use of the PRODUCTS will occur by their deliberate, non-accidental participation in the
25 manufacture, importation, distribution, sale, and offering of the PRODUCTS for sale or use to
26 consumers in California.

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1 31. DEFENDANTS failed to provide a “clear and reasonable warning” to those
2 consumers in California who have been or will be exposed to DEHP through dermal contact
3 and/or ingestion resulting from their use of the PRODUCTS.

4 32. Contrary to the express policy and statutory prohibition of Proposition 65 enacted
5 directly by California voters, consumers exposed to DEHP through dermal contact and/or
6 ingestion as a result of their use of the PRODUCTS that DEFENDANTS sell without a “clear
7 and reasonable” health hazard warning have suffered, and continue to suffer, irreparable harm
8 for which they have no plain, speedy, or adequate remedy at law.

9 33. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above-
10 described acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty of
11 \$2,500 per day for each violation.

12 34. As a consequence of the above-described acts, Health and Safety Code
13 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
14 DEFENDANTS.

15 **PRAYER FOR RELIEF**

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

17 1. That the Court, pursuant to Health and Safety Code § 25249.7(b), assess civil
18 penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each
19 violation;

20 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily
21 and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the
22 PRODUCTS for sale or use in California without a “clear and reasonable warning” in
23 accordance with Title 27 of the California Code of Regulations § 25601 *et seq.*, regarding the
24 harms associated with exposures to DEHP;

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

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

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

Dated: April 13, 2016

Respectfully submitted,
THE CHANLER GROUP

By: K. gates
Kimberly Gates
Attorneys for Plaintiff
WHITNEY R. LEEMAN, PH.D.