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**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**04/26/2022** at 10:08:51 AM  
Clerk of the Superior Court  
By Bernabe Montijo, Deputy Clerk

*Attorneys for Plaintiff, Keep America Safe and Beautiful*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF SAN DIEGO**  
**UNLIMITED CIVIL JURISDICTION**

<b>KEEP AMERICA SAFE AND BEAUTIFUL</b>	)	<b>CASE NO.:</b> 37-2022-00015480-CU-NP-CTL
	)	
<b>Plaintiff,</b>	)	<b>COMPLAINT FOR CIVIL PENALTIES</b>
	)	<b>AND INJUNCTIVE RELIEF</b>
<b>VS.</b>	)	
	)	<i>(Cal. Health &amp; Safety Code § 25249.6 et seq.)</i>
<b>PIT POSSE MOTORSPORTS</b>	)	
	)	
<b>AND</b>	)	
	)	
<b>DOES 1-25 INCLUSIVE</b>	)	
	)	
	)	
<b>DEFENDANTS.</b>	)	

**NATURE OF THE ACTION**

1. This Complaint is a representative action brought by Plaintiff Keep America Safe and Beautiful, in the public interest of the citizens of the State of California, to enforce the people’s right to be informed of the dangers from exposures to DEHP (Di-[2-Ethylhexyl] Phthalate) (hereafter “Listed Chemicals”) toxic chemicals when using the “Pit Posse PP182-2

1 Fuel Jug Hose Filler Racing Utility Gas Can MX Deluxe Kit (Set of 2)” sold by DEFENDANTS  
2 in California.

3 2. By this Complaint, plaintiff seeks to remedy DEFENDANTS` continuing failures  
4 to warn California citizens about their exposure to the Listed Chemicals during the normal and  
5 intended use of the “Pit Posse PP182-2 Fuel Jug Hose Filler Racing Utility Gas Can MX Deluxe  
6 Kit (Set of 2) (hereafter “PRODUCT(S))”, that the DEFENDANT manufactured, distributed and  
7 sold, in the State of California and PRODUCTS that DEFENDANTS continue to manufacture,  
8 distribute and offer for sale in the State of California.

9 3. California citizens, including children, through the act of buying, acquiring or  
10 utilizing the products, are exposed to the listed chemicals in homes, workplaces, and places  
11 throughout California where these products are used.

12 4. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,  
13 California Health & Safety Code § 25249.6 et seq. (Proposition 65), “No person in the course of  
14 doing business shall knowingly and intentionally expose any individual to a chemical known to  
15 the state to cause cancer or reproductive toxicity without first giving clear and reasonable  
16 warning to such individual...” (*Cal. Health & Safety Code § 25249.6.*)

17 5. California identified and listed DEHP (Di-[2-Ethylhexyl] Phthalate) as a chemical  
18 known to cause cancer. DEHP (Di-[2-Ethylhexyl] Phthalate) became subject to the warning  
19 requirements of Proposition 65 for cancer beginning on January 1, 1988 (*27 CCR § 27002; Cal.*  
20 *Health & Safety Code § 25249.6.*)

21 6. California identified and listed DEHP (Di-[2-Ethylhexyl] Phthalate) as a chemical  
22 known to cause birth defects. DEHP (Di-[2-Ethylhexyl] Phthalate) became subject to the  
23 warning requirements of Proposition 65 for reproductive harm beginning on October 24, 2003.  
24 (*27 CCR Sec. 27002; Cal. Health & Safety Code Sec. 25249.6*)

25 7. DEFENDANTS` past and continuing failures to warn consumers and/or other  
26 individuals in the State of California about their exposure to the LISTED CHEMICALS in  
27 conjunction with defendant’s sale of the PRODUCT is a violation of Proposition 65 and subjects  
28 DEFENDANTS to enjoinder of such conduct as well as civil penalties for each such violation.



1 association that either are citizens of the State of California, have sufficient minimum contacts in  
2 the State of California, or otherwise purposefully avail themselves of the California market.  
3 DEFENDANTS` purposeful availment renders the exercise of personal jurisdiction by California  
4 courts consistent with traditional notions of fair play and substantial justice.

5 **FIRST CAUSE OF ACTION**

6 **(Violation of Proposition 65 – Against Defendant)**

7 16. Plaintiff realleges and incorporates by reference, as if full reference, as if fully set  
8 forth herein, Paragraphs 1 through 16, inclusive.

9 17. The citizens of the State of California have expressly stated in the Safe Drinking  
10 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, et seq.  
11 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer,  
12 birth defects and order reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

13 18. Proposition 65 states, “No person in the course of doing business shall knowingly  
14 and intentionally expose any individual to a chemical known to the state to cause cancer or  
15 productive toxicity without first giving clear and reasonable warning to such individual...  
16 (*Id.*)”

17 19. On May 21, 2021 a sixty-day notice violation, together with the requisite  
18 certificate of merit, was provided to DEFENDANTS, and various public enforcement agencies  
19 stating that as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers and users in  
20 the State of California were being exposed to the LISTED CHEMICAL resulting from the  
21 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first  
22 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

23 20. DEFENDANTS have engaged in the manufacture, distribution and/or offering of  
24 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and  
25 DEFENDANTS’ manufacture, distribution and/or offering of the PRODUCTS for sale or use in  
26 violation of California Health & Safety Code § 25249.6 has continued to occur beyond  
27 DEFENDANTS’ receipt of plaintiff’s sixty-day notice of violation. Plaintiff further alleges and  
28 believes that such violations will continue to occur into the future.

1           21. After receipt of the claims asserted in the sixty-day notices of violation, the  
2 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
3 cause of action against DEFENDANTS under Proposition 65.

4           22. The PRODUCTS manufactured, distributed, and/or offered for sale or use in  
5 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state  
6 limits.

7           23. DEFENDANTS knew or should have known that the PRODUCTS manufactured,  
8 distributed, and/or for sale or use by DEFENDANTS in California contained the LISTED  
9 CHEMICAL.

10           24. The PRODUCTS, through normal use exposes users to the LISTED CHEMICALS  
11 in such a way as to expose individuals to the LISTED CHEMICALS through inhalation, dermal  
12 contact and/or ingestion during the reasonably foreseeable use of the PRODUCTS.

13           25. The normal and reasonably foreseeable use of the PRODUCTS has caused and  
14 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined  
15 by 27 CCR§ 25602(b).

16           26. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of  
17 the PRODUCTS would expose individuals to the LISTED CHEMICAL..

18           27. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from  
19 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-  
20 accidental participation in the manufacture, distribution and/or offer for sale or use of  
21 PRODUCTS to individuals in the State of California.

22           28. DEFENDANTS failed to provide a “clear and reasonable warning” to those  
23 consumers and/or other individuals in the State of California who were or who could become  
24 exposed to the LISTED CHEMICAL during the reasonably foreseeable use of the PRODUCTS.

25           29. Contrary to the express policy and statutory prohibition of Proposition 65, enacted  
26 directly by California voters, individuals exposed to the LISTED CHEMICAL resulting from the  
27 reasonably foreseeable use of the PRODUCTS, sold by DEFENDENTS without a “clear and  
28

1 reasonable warning,” have suffered, and continue to suffer, irreparable harm, for which harm  
2 they have no plain, speedy or adequate remedy at law.

3 30. As a consequence of the above-described acts, DEFENDANTS are liable for a  
4 maximum civil penal of \$2,500 per day for each violation pursuant to California Health & Safety  
5 Code § 25249.7(b).

6 31. As a consequence of the above-described acts, California Health & Safety Code §  
7 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
8 DEFENDANTS.

9 32. Wherefore, plaintiff prays for judgment against DEFENDANTS as set forth  
10 hereinafter.

11 **PRAYER FOR RELIEF**

12 Wherefore, plaintiff prays for judgment against DEFENDANT as follows:

13 1. That the Court, pursuant to California Health & Safety Code § 25249.7(b), assess  
14 civil penalties against DEFENDANTS, in the amount of \$2,500 per day for each violation  
15 alleged herein;

16 2. That the Court, pursuant to California Health & Safety Code § 25249.7(a),  
17 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing or  
18 offering the PRODUCTS for sale or use in California, without providing “clear and reasonable  
19 warnings” as detailed by 27 CCR § 25601, as to the harms associated with exposures to the  
20 LISTED CHEMICAL;


21 3. That the Court grant plaintiff its reasonable attorneys’ fees and cost of suit; and,

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

23 Respectfully Submitted,

24 Dated: April 25, 2022

Law Offices of Stephanie Sy

25  
26 By:  \_\_\_\_\_  
Stephanie Sy, Esq.  
27 Attorney for Plaintiff  
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