

1 Clifford Chanler, State Bar No. 135534
Brian C. Johnson, State Bar No. 235965
2 Kimberly Gates, State Bar No. 282369
THE CHANLER GROUP
3 2560 Ninth Street
Parker Plaza, Suite 214
4 Berkeley, CA 94710-2565
Telephone: (510) 848-8880
5 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff
WHITNEY R. LEEMAN, PH.D.
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO
10 UNLIMITED CIVIL JURISDICTION
11

12 WHITNEY R. LEEMAN, PH.D.,
13 Plaintiff,

14 v.

15 LKQ CORPORATION; KEYSTONE
16 AUTOMOTIVE OPERATIONS, INC.; THE
17 COAST DISTRIBUTION SYSTEM, INC.;;
and DOES 1-150, inclusive,
18 Defendants.

Case No. CGC-16-551473

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.5 *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 Whitney R. Leeman, Ph.D.
4 (“Leeman”) and Keystone Automotive Operations, Inc. (“Keystone”), with Leeman and Keystone
5 each referred to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

11 Keystone employs ten or more individuals and is a “person in the course of doing
12 business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health
13 and Safety Code § 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Leeman alleges that the Keystone manufactures, imports, distributes, sells, or offers for
16 sale in California, battery chargers with vinyl/PVC components containing di(2-ethylhexyl)
17 phthalate (“DEHP”), and that it does so without first providing the warning required by
18 Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth
19 defects or other reproductive harm.

20 **1.5 Product Description**

21 For purposes of this Consent Judgment, “Products” are defined as trickle battery chargers
22 with vinyl/PVC clamp grips and/or cords containing DEHP that are manufactured, imported,
23 distributed, sold, or offered for sale in California by Keystone or The Coast Distributions System.,
24 Inc. (“Coast”). Specifically, the products covered by this agreement are limited to those items
25 identified on Exhibit A which is attached hereto.

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1 **1.6 Notice of Violation**

2 On December 29, 2015, Leeman served Keystone, Keystone’s parent company, LKQ
3 Corporation (“LKQ”), Coast Distribution System, Inc. (“Coast” and collectively, the
4 “Defendants”), the California Attorney General, and all other requisite public enforcement
5 agencies with a “60-Day Notice of Violation” (“Notice”). The Notice alleges that Keystone, Coast
6 and LKQ violated Proposition 65 by failing to warn their customers and consumers in California
7 of the health hazards associated with exposures to DEHP from the Products. Since the date of the
8 Notice, LKQ, Keystone and Coast represent that LKQ purchased Coast and merged it into its
9 existing distribution entity, Keystone, a wholly-owned subsidiary of LKQ. To the best of the
10 Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting an action to
11 enforce the violations alleged in the Notice.

12 **1.7 Complaint**

13 On April 13, 2016, Leeman filed the instant action (“Complaint”), naming Keystone,
14 Coast, and LKQ as defendants for the alleged violations that are the subject of the Notice.

15 **1.8 No Admission**

16 Keystone and Coast deny the material, factual, and legal allegations contained in the
17 Notice and Complaint, and maintain that all of the products they have sold and distributed for sale
18 in California have been, and are, in compliance with all laws. Nothing in this Consent Judgment
19 shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
20 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
21 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section
22 shall not, however, diminish or otherwise affect Keystone’s and Coast’s obligations,
23 responsibilities, and duties under this Consent Judgment.

24 **1.9 Jurisdiction**

25 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
26 jurisdiction over Keystone and Coast as to the allegations in the Complaint, that venue is proper in
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1 the County of San Francisco, and that the Court has jurisdiction to enter and enforce the provisions
2 of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

3 **1.10 Effective Date**

4 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
5 the motion for approval of the Consent Judgment is granted by the Court, including the date of any
6 unopposed tentative ruling.

7 **2. INJUNCTIVE RELIEF**

8 **2.1 Commitment to Reformulate or Provide Warnings**

9 Commencing on the Effective Date and continuing thereafter, Keystone and Coast agree
10 that they will not sell Products in or into California (or sell the Products to retail chains or internet
11 websites such that a person would have reason to believe such sales would end up in a consumer’s
12 possession in California), unless the Products (a) are “Reformulated Products,” as defined by
13 Section 2.2, below; or (b) bear a clear and reasonable health hazard warning in accordance with
14 Section 2.3, below.


15 **2.2 Reformulated Products Defined**

16 For purposes of this Consent Judgment, “Reformulated Products” are defined as Products
17 containing no more than 1,000 parts per million (0.1%) DEHP content in any accessible
18 component (i.e., any component that may be touched or handled during reasonably foreseeable use
19 of the product) when analyzed pursuant to U.S. Environmental Protection Agency testing
20 methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal
21 agencies to determine DEHP content in a solid substance.


22 **2.3 Clear and Reasonable Warnings**

23 Commencing on the Effective Date, for all Products that do not meet the definition of
24 Reformulated Products established by Section 2.1, Keystone and Coast shall provide clear and
25 reasonable warnings in accordance with this Section, or title 27 California Code of Regulations
26 sections 25602 and 25603. Keystone and Coast further agree that any warning used will be
27 prominently placed in relation to the Product with such conspicuousness, when compared with
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1 other words, statements, designs, or devices, as to render it likely to be read and understood by an
2 ordinary individual under customary conditions of purchase or use. For purposes of this Consent
3 Judgment, a warning for the Products displayed or transmitted according to the above criteria, and
4 containing the following statement, shall be deemed clear and reasonable:

5  **WARNING:** This product can expose you to
6 chemicals, including DEHP, which
7 is known to the State of California to
8 cause cancer and birth defects or
9 other reproductive harm. For more
information go to
www.P65Warnings.ca.gov.

10 Or, if placed directly on a Product or its packaging, Keystone and Coast may use the following
11 short-form warning statement, provided it appears in a type size no smaller than the largest type
12 size used for other consumer information on the Product's label and in no case smaller than 6-
13 point type:

14  **WARNING:** Cancer and Reproductive Harm -
15 www.P65Warnings.ca.gov

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17 If Keystone or Coast sells Products via an internet website to customers located in California the
18 warning requirements of this section shall be satisfied if one of the foregoing warning statements
19 appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on
20 the same page as the price for the Product; or (c) on one or more web pages displayed to a
21 purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a
22 black exclamation point in a yellow or white equilateral triangle may appear adjacent to or
23 immediately following the display, description, price, or checkout listing of the Product, if the
24 warning statement appears elsewhere on the same web page in a manner that clearly associates it
25 with the Product(s) to which the warning applies.

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1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty Payment**

3 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims alleged in
4 the Notice and Complaint and referred to in this Consent Judgment, Defendants shall pay \$6,000
5 in civil penalties. This penalty figure was based in significant measure on the representation of
6 Defendants that their Products will be reformulated within the next twelve (12) months; such
7 representation justified a large reduction in the amount of civil fines assessed by Leeman. The
8 civil penalty payment shall be allocated according to Health and Safety Code §§ 25249.12(c)(1)
9 and (d), with seventy-five percent (75%) of the penalty paid to the California Office of
10 Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five percent
11 (25%) of the penalty paid to Leeman. Defendants shall issue their payment in two checks for the
12 following amounts: (a) “OEHHA” in the amount of \$4,500; and (b) “Whitney R. Leeman, Client
13 Trust Account” in the amount of \$1,500. Leeman’s counsel shall be responsible for delivering
14 OEHHA’s portion of the penalty payment to be made under this Consent Judgment.

15 **3.2 Mediation of Attorneys’ Fees and Costs**

16 **3.2.1 Agreement to Mediate Fees and Costs**

17 After reaching an agreement on all other terms in this Consent Judgment, the Parties were
18 unable to resolve the outstanding issue of the amount of Leeman’s reasonable attorneys’ fees and
19 costs. While the Parties agree that Leeman and her counsel are entitled to reasonable attorneys’
20 fees and costs under the prerequisites set forth by Code of Civil Procedure section 1021.5,
21 including the reasonably anticipated work to be performed through the motion to approve and
22 mediation process, they could not agree on the precise amount. Through this contractual
23 provision, the Parties agree to resolve the sole outstanding issue of the amount of Leeman’s fees
24 and costs with the assistance of mediation, according to the following understanding:

- 25 • The mediation will last for no more than four (4) hours, unless the Parties otherwise
26 mutually agree to continue the mediation.

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- The Parties shall use their best efforts to have the mediation take place at the JAMS offices in San Francisco, California on or before April 9, 2018, but in no event later April 19, 2018.
- On or before March 28, 2018, a mediator will be selected by agreement of the Parties, subject to such time limit being changed by mutual agreement of the Parties. If the Parties are unable to agree to a mediator within that period, the Parties agree to allow JAMS to select an appropriate neutral mediator.
- Each side shall submit confidential mediation briefs to the neutral. Briefs shall not exceed ten (10) pages, exclusive of declarations and not to exceed an additional ten (10) pages with corresponding exhibits, such as time records, if necessary. Accordingly, no responsive briefs shall be filed.
- The sole issue to be decided by the mediator is the attorneys' fee and costs award. This amount shall include the work performed through the mutual execution of this Consent Judgment, as well as the reasonable fees and costs that will necessarily be incurred for future work, as set forth in subsection 3.2.1, supra, for the motion to approve process and mediation.
- In the event that the Parties do not reach an agreement during the mediation, and only if mediation is unsuccessful, Plaintiff and Defendant shall each submit a confidential figure to the mediator. Based on the two figures provided, the mediator shall make a determination as to which of those numbers reflects a fairer settlement figure, given the facts and circumstances presented in this matter, under California law and shall make an award. By agreement of the Parties, this is a so-called "baseball mediation," and the mediator must make an award, if the Parties do not reach an agreement prior to the close of mediation, based on the figures provided, with no other possible outcome. The aggregate of the mediator's award shall include attorneys' fees, costs, the motion to approve, and the mediation of fees, and shall be paid by the Defendants, in a check made payable to "The Chanler

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Group”, within five (5) business days of the neutral’s award at the address listed in Section 3.4, below.

- As set forth in Section 6, below, within five (5) business days of the execution of this agreement, Leeman shall submit the Consent Judgment for approval by the Court, including the use of a mediation process, as set forth in Section 6.
- Upon the Parties’ receipt of the neutral’s mediation award, Leeman shall prepare and file a separate motion for judicial approval of the award amount with the Court, based solely on the outcome of the mediation, and will include in the moving papers such award as part of the motion to approve process.

3.3 Payment Timing; Payments Held in Trust

All payments due under this Consent Judgment shall be held in trust until such time as the Court approves the Parties’ settlement. Within fifteen (15) days after the date this Consent Judgment is fully executed by the Parties, the penalties shall be delivered, and a mediation has concluded as contemplated in Section 3.2, all payments due under this agreement shall be delivered to and held in trust by Defendants’ counsel, Sheppard Mullin Richter & Hampton LLP. Defendants’ counsel shall provide Leeman’s counsel with written confirmation following its receipt of Defendants’ settlement payments. Thereafter, Defendants’ counsel shall hold the funds in trust and shall disburse the funds to Leeman’s counsel within five (5) calendar days of the Effective Date.

3.4 Payment Address

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

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Leeman’s Public Release of Proposition 65 Claims**

3 Leeman, acting on her own behalf and in the public interest, releases Keystone and its
4 parents (including, without limitation, LKQ Corporation), subsidiaries (including, without
5 limitation, Coast), affiliated entities under common ownership, directors, officers, employees, and
6 attorneys (“Releasees”), and each entity to whom Keystone directly or indirectly distributes or
7 sells the Products including, without limitation, its downstream customers, distributors,
8 wholesalers, and retailers (“Downstream Releasees”) for any violation arising under Proposition
9 65 pertaining to the failure to warn about exposures to DEHP from Products sold or distributed for
10 sale by Keystone prior to the Effective Date, as set forth in the Notice. Compliance with the terms
11 of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to
12 DEHP from Products sold or distributed for sale by Keystone after the Effective Date.

13 **4.2 Leeman’s Individual Release of Claims**

14 Leeman, in her individual capacity only and *not* in her representative capacity, also
15 provides a release to Keystone, Releasees, and Downstream Releasees which shall be effective as
16 a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
17 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Leeman of any
18 nature, character or kind, whether known or unknown, suspected or unsuspected, arising out of
19 alleged or actual exposures to DEHP in Products sold or distributed for sale by Keystone before
20 the Effective Date.

21 **4.3 Keystone’s Release of Leeman**

22 Keystone, on its own behalf, and on behalf of its past and current agents, subsidiary
23 Releasee Coast, representatives, attorneys, successors, and assignees, hereby waives any and all
24 claims against Leeman and her attorneys and other representatives, for any and all actions taken or
25 statements made, whether in the course of investigating claims, otherwise seeking to enforce
26 Proposition 65 against it in this matter, or with respect to the Products.

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1 **5. NOTICE OF SETTLEMENT; DISMISSAL OF LKQ CORPORATION**

2 Within five (5) days of the date that the Parties mutually execute this Consent Judgment,
3 Leeman shall file a notice of settlement with the Court, in order to vacate the upcoming trial,
4 slated for April 9, 2018. Leeman agrees that, within ten (10) days of the Effective Date, or her
5 receipt of the settlement payments required by Sections 3.1 and 3.2, whichever is later, she will
6 file a request for dismissal without prejudice as to defendant and Releasee, LKQ Corporation.

7 **6. COURT APPROVAL**

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

12 **7. SEVERABILITY**

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

16 **8. GOVERNING LAW**

17 The terms of this Consent Judgment shall be governed by the laws of the state of
18 California and apply within the state of California. If Proposition 65 is repealed, or is otherwise
19 rendered inapplicable by reason of law generally or as to the Products, then Keystone and Coast
20 may provide written notice to Leeman of any asserted change in the law, and shall have no further
21 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
22 Products are so affected.

23 **9. NOTICE**

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

2 Bill Rogers, President
3 Keystone Automotive Operations, Inc.
4 44 Tunkhannock Avenue
5 Pittston, PA 18643

6 With a copy to:

7 Steve O'Neil, Esq.
8 Sheppard Mullin Richter & Hampton LLP
9 333 South Hope Street, 43rd Floor
10 Los Angeles, CA 90071

11 For Leeman:

12 Proposition 65 Coordinator
13 The Chanler Group
14 2560 Ninth Street
15 Parker Plaza, Suite 214
16 Berkeley, CA 94710-2565

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

19 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

23 **11. POST EXECUTION ACTIVITIES**

24 Leeman agrees to comply with the reporting form requirements referenced in Health and
25 Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
26 Code § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
27 furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, and
28 those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial
approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall
include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
supporting the motion, and appearing at the hearing before the Court.

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1 **12. MODIFICATION**

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

5 **13. AUTHORIZATION**

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

8 **AGREED TO:**

AGREED TO:

9 Date: 3/27/2018

Date: 3/28/2018

10
11 By: *Whitney R. Leeman*
12 WHITNEY R. LEEMAN, PH.D.

By: *Matthew McKay* *Bill Rogers*, *Secretary*
13 KEYSTONE AUTOMOTIVE OPERATIONS,
14 INC.

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EXHIBIT A

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The specific Products released by this Consent Judgment are, as follows:

- A. Powerhouse TC2 2 AMP Trickle Charger, #19216, UPC #0 88805 19216 8; and
- B. Powerhouse TC2-P 2 AMP Plug-In Trickle Charger, #19216, UPC #0 88805 19674 6.