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ENDORSED  
FILED  
ALAMEDA COUNTY

NOV - 2 2015

CLERK OF THE SUPERIOR COURT  
By MARGARET J. DOWNI  
Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 COUNTY OF ALAMEDA  
12 UNLIMITED CIVIL JURISDICTION

13 MICHAEL DIPIRRO,

14 Plaintiff,

15 v.

16 AMERICAN RECREATION PRODUCTS,  
17 LLC, dba KELTY, INC.; RECREATIONAL  
18 EQUIPMENT, INC., dba "R.E.I."; and DOES  
1-150, inclusive,

19 Defendants.

Case No. RG15791674

**COMPLAINT FOR CIVIL PENALTIES  
AND 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 MICHAEL  
3 DIPIRRO in the public interest of the citizens of the State of California to enforce the People’s  
4 right to be informed of the presence of Tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”), a toxic  
5 chemical found in tents sold in California.

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

10 3. High levels of TDCPP are commonly found in and on the tents that defendants  
11 manufacture, distribute, and offer 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 section 25249.6 *et seq.* (“Proposition 65”), “[n]o 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 . . . .” Health & Safety Code § 25249.6.

17 5. Pursuant to Proposition 65, on October 28, 2011, California identified and listed  
18 TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and  
19 reasonable warning” requirements of the act one year later on October 28, 2012. Cal. Code  
20 Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b). TDCPP is referred  
21 to hereinafter as the “LISTED CHEMICAL.”

22 6. Defendants manufacture, distribute, and sell tents, including, but not limited to,  
23 the *Kelty Discovery 2 Tent (#869-082-0001)*, that contain TDCPP in levels that require a  
24 warning under Proposition 65. All such tents containing TDCPP are referred to collectively  
25 hereinafter as “PRODUCTS.”

26 7. Defendants’ failure to warn consumers and other individuals in the state of  
27 California about their exposure to the LISTED CHEMICAL in conjunction with defendants’  
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1 sales of the PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder  
2 of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a)  
3 & (b)(1).

4 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and  
5 permanent injunctive relief to compel defendants to provide purchasers or users of the  
6 PRODUCTS with the required warning regarding the health hazards of the LISTED  
7 CHEMICAL. Health & Safety Code § 25249.7(a).

8 9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil  
9 penalties against defendants for their violations of Proposition 65.

### 10 **PARTIES**

11 10. Plaintiff MICHAEL DIPIRRO is a citizen of the state of California who is  
12 dedicated to protecting the health of California citizens through the elimination or reduction of  
13 toxic exposures from consumer products; and he brings this action in the public interest  
14 pursuant to Health and Safety Code section 25249.7(d).

15 11. Defendant AMERICAN RECREATION PRODUCTS, LLC, dba KELTY, INC.  
16 ("KELTY") is a person in the course of doing business within the meaning of Health and Safety  
17 Code section 25249.11.

18 12. KELTY manufactures, distributes, and/or offers the PRODUCTS for sale or use in  
19 the state of California, or implies by its conduct that it manufactures, distributes, and/or offers  
20 the PRODUCTS for sale or use in the state of California.

21 13. Defendants RECREATIONAL EQUIPMENT, INC., dba "R.E.I." ("REI") are  
22 each a person in the course of doing business within the meaning of Health and Safety Code  
23 section 25249.11.

24 14. REI manufactures, distributes, and/or offers the PRODUCTS for sale or use in the  
25 state of California, or implies by its conduct that it manufactures, distributes, and/or offers the  
26 PRODUCTS for sale or use in the state of California.



1 because one or more instances of wrongful conduct occurred, and continue to occur, in Alameda  
2 County, and/or because DEFENDANTS conducted, and continue to conduct, business in this  
3 county with respect to the PRODUCTS.

4 24. The California Superior Court has jurisdiction over this action pursuant to  
5 California Constitution Article VI, section 10, which grants the Superior Court “original  
6 jurisdiction in all causes except those given by statute to other trial courts.” The statute under  
7 which this action is brought does not specify any other basis of subject matter jurisdiction.

8 25. The California Superior Court has jurisdiction over DEFENDANTS based on  
9 plaintiff’s information and good faith belief that each defendant is a person, firm, corporation or  
10 association that is a citizen of the state of California, has sufficient minimum contacts in the  
11 state of California, and/or otherwise purposefully avails itself of the California market.  
12 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by  
13 California courts consistent with traditional notions of fair play and substantial justice.

14 **FIRST CAUSE OF ACTION**

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

16 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
17 Paragraphs 1 through 25, inclusive.

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

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

26 29. On April 4, 2015, plaintiff’s sixty-day notice of violation, together with the  
27 requisite certificate of merit, was provided to KELTY, REI and certain public enforcement  
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1 agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing the  
2 LISTED CHEMICAL, purchasers and users in the state of California were being exposed to the  
3 LISTED CHEMICAL resulting from the reasonably foreseeable uses of the PRODUCTS,  
4 without the individual purchasers and users first having been provided with a “clear and  
5 reasonable warning” regarding such toxic exposures, as required by Proposition 65.

6 30. DEFENDANTS have engaged in the manufacture, distribution, and offering of  
7 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and  
8 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s sixty-day  
9 notice of violation. As such, DEFENDANTS’ violations are ongoing and continuous in nature,  
10 and will continue to occur in the future.

11 31. After receiving the claims asserted in the sixty-day notice of violation, the  
12 appropriate public enforcement agencies have failed to commence and diligently prosecute a  
13 cause of action against DEFENDANTS under Proposition 65.

14 32. The PRODUCTS manufactured, distributed, and offered for sale or use in  
15 California by DEFENDANTS contain the LISTED CHEMICAL in amounts above the  
16 allowable state limits, such that they require a “clear and reasonable” warning under Proposition  
17 65.

18 33. DEFENDANTS knew or should have known that the PRODUCTS they  
19 manufacture, distribute, and offer for sale or use in California contain the LISTED  
20 CHEMICAL.

21 34. The LISTED CHEMICAL is present in or on the PRODUCTS in such a way as to  
22 expose individuals through dermal contact, inhalation and/or ingestion during reasonably  
23 foreseeable use.

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

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1           2.     That the Court, pursuant to Health and Safety Code section 25249.7(a),  
2 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
3 offering the PRODUCTS for sale or use in California without first providing a “clear and  
4 reasonable warning” as defined by California Code of Regulations title 27, section 25601 *et*  
5 *seq.*, as to the harms associated with exposures the LISTED CHEMICAL;

6           3.     That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

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

8  
9 Dated: October <sup>30</sup>, 2015

Respectfully Submitted,  
BUSH & HENRY

10  
11 By: \_\_\_\_\_

  
Jennifer Henry  
Attorneys for Plaintiff  
MICHAEL DIPIRRO