

1 **GLICK LAW GROUP, PC**  
2 Noam Glick (SBN 251582)  
3 Kelsey McCarthy (SBN 305372)  
4 225 Broadway, Suite 2100  
5 San Diego, California 92101  
6 Telephone: (619) 382-3400  
7 Facsimile: (619) 615-2193  
8 Email: [noam@glicklawgroup.com](mailto:noam@glicklawgroup.com)  
9 Email: [kelsey@glicklawgroup.com](mailto:kelsey@glicklawgroup.com)

10 Attorneys for Plaintiff  
11 Kim Embry

12  
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
14 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

15 KIM EMBRY, an individual

16 Plaintiff,

17 v.

18 COQUETTE INTERNATIONAL, INC., an  
19 Ontario corporation, AMAZON.COM, INC.,  
20 a Delaware corporation, and DOES 1 through  
21 100, inclusive,

22 Defendants.

Case No. **CGC-17-559167**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Cal. Health & Safety Code § 25249.6 et seq.)

**ENDORSED  
FILED**  
Superior Court of California  
County of San Francisco

**MAY 25 2017**

**CLERK OF THE COURT**

BY: BOWMAN LIU  
Deputy Clerk

**BY FAX**  
ONE LEGAL LLC

**I.**  
**INTRODUCTION**

1  
2           1.       This Complaint is a representative action brought by Plaintiff in the public interest of  
3 the citizens of the State of California. Plaintiff seeks to enforce the People’s right to be informed of the  
4 presence of di(2-ethylhexyl) phthalate (“DEHP”) (“Listed Chemical”) found in Darque Womens  
5 Rubber Look PVC Bra manufactured, imported, sold, or distributed for sale in California by  
6 Defendants.

7           2.       Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California  
8 Health & Safety Code Section 25249.6 et seq. (“Proposition 65”), “[n]o person in the course of doing  
9 business shall knowingly and intentionally expose any individual to a chemical known to the state to  
10 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such  
11 individual. . . .” (Cal. Health & Safety Code § 25249.6.)

12           3.       California identified and listed DEHP as a chemical known to cause birth defects or  
13 other reproductive harm as well as cancer as early as January 1, 1988.

14           4.       Darque Womens Rubber Look PVC Bra manufactured, imported, sold, or distributed in  
15 California contains prohibited levels of DEHP (“Products”).

16           5.       Defendants failed to sufficiently warn consumers and individuals in California about  
17 potential exposure to DEHP in connection with Defendants’ manufacture, import, sale, or distribution  
18 of Products. This is a violation of Proposition 65.

19           6.       Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers  
20 in California before exposing them to DEHP in Products or other products containing DEHP pursuant  
21 to Proposition 65 and related Regulations. (Cal. Health & Safety Code § 25249.7(a).) Plaintiff also  
22 seeks civil penalties against Defendant for its violations of Proposition 65. (Cal. Health & Safety Code  
23 § 25249.7(b).)

**II.**  
**PARTIES**

24  
25           7.       Plaintiff is a citizen of the State of California dedicated to protecting the health of  
26 California citizens through the elimination or reduction of toxic exposure from consumer products. She  
27 brings this action in the public interest pursuant to Cal. Health & Safety Code § 25249.7.  
28

8. Defendant COQUETTE INTERNATIONAL, INC. (“Coquette”) is a corporation organized and existing under the laws of Ontario, Canada. Coquette is registered to do and does business in California, County of San Francisco, within the meaning of Cal. Health & Safety Code § 25249.11. Coquette manufactures, imports, sells, or distributes Products in California and San Francisco County.

9. Defendant AMAZON.COM, INC. (“Amazon”) is a corporation organized and existing under the laws of the State of Delaware. Amazon does business in California, County of San Francisco, within the meaning of Cal. Health & Safety Code § 25249.11. Amazon manufactures, imports, sells, or distributes Products in California and San Francisco County. (Amazon and Coquette are collectively referred to as “Defendants.”)

10. The true names of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff. Plaintiff sues these Defendants by fictitious names. Plaintiff is informed and believes, and on that basis alleges, that each fictitiously named defendant is responsible for the acts and occurrences herein alleged. When ascertained, their true names shall be reflected in an amended complaint.

11. At all times mentioned, Defendants were the agents, alter egos, servants, joint venturers, joint employers, or employees for each other. Defendants acted with the consent of the other Co-Defendants and acted within the course, purpose, and scope of their agency, service, or employment. All conduct was ratified by Defendants, and each of them.

### III. VENUE AND JURISDICTION

12. California Constitution Article VI, Section 10 grants the Superior Court original jurisdiction in all cases except those given by statute to other trial courts. The Health & Safety Code statute upon which this action is based does not give jurisdiction to any other court. As such, this Court has jurisdiction.

13. Venue is proper in San Francisco County Superior Court pursuant to Code of Civil Procedure Sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this County. Defendants conducted and continue to conduct business in this County as it relates to Products.

14. Defendants have sufficient minimum contacts in the State of California or otherwise purposefully avails themselves of the California market. Exercising jurisdiction over Defendants would be consistent with traditional notions of fair play and substantial justice.

#### IV. CAUSES OF ACTION

**FIRST CAUSE OF ACTION**  
**(Violation of Proposition 65 – Against all Defendants)**

15. Plaintiff incorporates by reference each and every allegation contained above.

16. Proposition 65 mandates that citizens be informed about exposures to chemicals that cause cancer, birth defects, and other reproductive harm.

17. Defendants manufactured, imported, sold, and/or distributed Products containing Listed Chemical in violation of California Health & Safety Code Section 25249.6 et seq. Plaintiff is informed and believes such violations have continued after receipt of the Notice (defined *infra*) and will continue to occur into the future.

18. In manufacturing, importing, selling, and/or distributing Products, Defendants failed to provide a clear and reasonable warning to consumers and individuals in California who may be exposed to the Listed Chemical through reasonably foreseeable use of the Products.

19. The presence of Listed Chemical in Products exposes individuals to the Listed Chemicals through dermal absorption and ingestion.

20. Defendants knew or should have known that the Products contained Listed Chemical and exposed individuals to Listed Chemical in the ways provided above. The Notice informed Defendants of the presence of Listed Chemical in the Products. Likewise, media coverage concerning Listed Chemical and related chemicals in consumer products, including PVC products provided constructive notice to Defendants. By manufacturing, importing, distributing, and/or selling Products in California, Defendants should know that the Products contain Listed Chemical and that individuals who come into contact with Products will be exposed to Listed Chemicals.

21. Defendants' actions in this regard were deliberate and not accidental.

22. On March 20, 2017, Plaintiff provided Defendants a 60-Day Notice of Violation (“Notice”) as required by and in compliance with Proposition 65. The Notice was provided to the

1 various required public enforcement agencies and contained a certificate of merit. The Notice alleged  
2 that Defendant violated Proposition 65 by failing to sufficiently warn consumers in California of the  
3 health hazards associated with exposures to Listed Chemical contained in the Products.

4 23. The appropriate public enforcement agencies provided with the Notice failed to  
5 commence and diligently prosecute a cause of action against Defendants.

6 24. Individuals exposed to Listed Chemicals contained in the Products through dermal  
7 absorption and ingestion resulting from reasonably foreseeable use of the Products have suffered and  
8 continue to suffer irreparable harm. There is no other plain, speedy, or adequate remedy at law.

9 25. Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation  
10 of Proposition 65 pursuant to Health & Safety Code Section 252497(b). Injunctive relief is also  
11 appropriate pursuant to Health & Safety Code Section 25249.7(a).


12 **PRAYER FOR RELIEF**

13 Wherefore, Plaintiff prays for judgment against Defendants, and each of them, as follows:

- 14 1. Civil penalties in the amount of \$2,500 per day for each violation;  
15 2. A preliminary and permanent injunction against Defendants from manufacturing,  
16 importing, selling, and/or distributing Products in California without providing a clear  
17 and reasonable warning as required by Proposition 65 and related Regulations;  
18 3. Reasonable attorney's fees and costs of suit; and  
19 4. Such other and further relief as may be just and proper.

20  
21 Dated: May 25, 2017

**GLICK LAW GROUP, PC**

22  
23  
24 By:   
25 Noam Glick  
Kelsey McCarthy  
26 Attorneys for Plaintiff  
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