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ALAMEDA COUNTY

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16

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **IN AND FOR THE COUNTY OF ALAMEDA**

19 KIM EMBRY, an individual

20 Plaintiff,

21 v.

22 CYDEA INC. dba KEGCO, a California  
23 corporation, and DOES 1 through 100,  
inclusive,

24 Defendants.  
25  
26  
27  
28

Case No.:

RG17883225

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

**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” or “Listed Chemical”) found in Kegco BF ALA516-  
5 5 I.D Air Line Assembly & 2 Snap Clamps, 5’/5/16” Blue manufactured, imported, sold, or distributed  
6 for sale in California by Defendant.

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 reproductive  
13 hazards on January 1, 1988.

14           4.       Kegco BF ALA516-5 I.D Air Line Assembly & 2 Snap Clamps, 5’/5/16” Blue  
15 manufactured, imported, sold, or distributed in California contains prohibited levels of DEHP  
16 (“Products”).

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

20           6.       Plaintiff seeks injunctive relief compelling Defendant to sufficiently warn consumers in  
21 California before exposing them to DEHP in Products or other products containing DEHP pursuant to  
22 Proposition 65 and related Regulations. (Cal. Health & Safety Code § 25249.7(a).) Plaintiff also seeks  
23 civil penalties against Defendant for its violations of Proposition 65. (Cal. Health & Safety Code §  
24 25249.7(b).)

**II.**  
**PARTIES**

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



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

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

8           17. The presence of Listed Chemical in Products exposes individuals to the Listed  
9 Chemicals through dermal absorption, ingestion and inhalation.

10           18. Defendant knew or should have known that the Product contained Listed Chemical and  
11 exposed individuals to Listed Chemical in the ways provided above. The Notice informed Defendant  
12 of the presence of Listed Chemical in the Products. Likewise, media coverage concerning Listed  
13 Chemical and related chemicals in consumer products, provided constructive notice to Defendant. By  
14 manufacturing, importing, distributing, and/or selling Products in California, Defendant should know  
15 that the Products contain Listed Chemical and that individuals who come into contact with Products  
16 will be exposed to Listed Chemicals.

17           19. Defendant's actions in this regard were deliberate and not accidental.

18           20. On May 2, 2017, Plaintiff provided Defendant a 60-Day Notice of Violation ("Notice")  
19 as required by and in compliance with Proposition 65. The Notice was provided to the various required  
20 public enforcement agencies and contained a certificate of merit. The Notice alleged that Defendant  
21 violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards  
22 associated with exposures to Listed Chemical contained in the Products.

23           21. The appropriate public enforcement agencies provided with the Notice failed to  
24 commence and diligently prosecute a cause of action against Defendant.

25           22. Individuals exposed to Listed Chemicals contained in the Products through ingestion  
26 resulting from reasonably foreseeable use of the Products have suffered and continue to suffer  
27 irreparable harm. There is no other plain, speedy, or adequate remedy at law.  
28

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


**PRAYER FOR RELIEF**

Wherefore, Plaintiff prays for judgment against Defendant as follows:

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

Dated: November 20, 2017

**GLICK LAW GROUP, PC**

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