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7 Attorneys for Plaintiff  
8 Kim Embry

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

11 KIM EMBRY, an individual

12 Plaintiff,

13 v.

14 CYDEA, INC. DBA KEGCO, a California  
15 corporation, and DOES 1 through 100,  
16 inclusive

17 Defendants.

Case No. RG17883225

**[PROPOSED] CONSENT JUDGMENT**

(Health & Safety Code § 25249.6 *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 Kim Embry (“Embry”) on one hand,  
4     and Cydea, Inc. (“Defendant”) on the other hand (collectively the “Parties”). Defendant manufactures  
5     products under the brand name Kegco, among others.

6             **1.2 Plaintiff**

7             Embry is an individual residing in California and acting in the interest of the general public.  
8     She seeks to promote awareness of exposures to toxic chemicals and to improve human health by  
9     reducing or eliminating hazardous substances contained in consumer products.

10            **1.3 Defendant**

11            Defendant employs ten or more individuals and is a “person in the course of doing business”  
12   for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code  
13   section 25249.6 *et seq.* (“Proposition 65”).

14            **1.4 General Allegations**

15            Embry alleges that Defendant manufactures, imports, sells, and distributes for sale in California  
16   Airline Assemblies that contain di(2-ethylhexyl) phthalate (“DEHP”). Embry further alleges that  
17   Defendant does so without providing a sufficient health hazard warning as required by Proposition 65  
18   and related regulations. Pursuant to Proposition 65, DEHP is listed as a chemical known to cause  
19   cancer and reproductive harm.

20            **1.5 Product Description**

21            For purposes of this Consent Judgment, the “Product” or “Products” are defined as Kegco VF  
22   ALA516-5 I.D. Airline Assemblies that contain DEHP that are manufactured, imported, sold, or  
23   distributed for sale in California by Defendant and Releasees, defined *infra*.

24            **1.6 Notices of Violation**

25            On May 2, 2017, Embry served Defendant, Cydea, Inc. dba Kegco, the California Attorney  
26   General, and all other required public enforcement agencies with a 60-Day Notice of Violation of  
27   California Health and Safety Code section 25249.6 *et seq.* (“Notice”). The Notice alleged that  
28

1 Defendant violated Proposition 65 by failing to sufficiently warn consumers in California of the health  
2 hazards associated with exposures to DEHP contained in the Products.

3 No public enforcer has commenced or is otherwise prosecuting an action to enforce the  
4 violations alleged in the Notice.

### 5 **1.7 Complaint**

6 On November 20, 2017, Embry filed a Complaint against Defendant for the alleged violations  
7 of Health and Safety Code section 25249.6 that are the subject of the Notice (“Complaint”).

### 8 **1.8 No Admission**

9 Defendant denies the material, factual, and legal allegations in the Notices and Complaint, and  
10 maintains that all of the products it has manufactured, imported, sold, and/or distributed for sale in  
11 California, including the Products, have been, and are, in compliance with all laws. Nothing in this  
12 Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of  
13 law, or violation of law, nor shall compliance with this Consent Judgment be construed as an admission  
14 of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall not,  
15 however, diminish or otherwise affect Defendant’s obligations, responsibilities, and duties under this  
16 Consent Judgment.

### 17 **1.9 Jurisdiction**

18 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this  
19 Court has jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in the  
20 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this  
21 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

### 22 **1.10 Effective Date**

23 For purposes of this Consent Judgment, the term “Effective Date” means the date on which the  
24 Court grants the motion for approval of this Consent Judgment, as discussed in Section 5.

## 25 **2. INJUNCTIVE RELIEF**

### 26 **2.1 Reformulation and Warnings**

27 Commencing ninety (90) days after the Effective Date, and continuing thereafter, Defendant  
28 agrees to manufacture or distribute for sale in California only (a) “Reformulated Products” pursuant to

1 Section 2.2, or (b) Products that are labeled with a clear and reasonable warning pursuant to Section  
2 2.3. Defendant and its downstream retailers shall have no obligation to reformulate or label Product  
3 that has been manufactured, distributed, offered for sale, or has otherwise entered the stream of  
4 commerce prior to the Effective Date.

## 5 **2.2 Reformulation Standard**

6 “Reformulated Product” shall mean Product that contains less than one thousand (1,000) parts  
7 per million of DEHP.

## 8 **2.3 Clear and Reasonable Warnings**

9 Except as set forth in Section 2.1, commencing ninety (90) days after the Effective Date,  
10 Defendant shall provide a clear and reasonable warning for any Product that it manufactures,  
11 distributes, or offers for sale in California that is not a Reformulated Product. Defendant shall provide  
12 the warning affixed to the packaging or labeling using language similar to the warning(s) below:

13 (a) **WARNING:** This product can expose you to di(2-ethylhexyl) phthalate  
14 (DEHP) a chemical known to the State of California to cause cancer, birth defects or  
other reproductive harm.

15 Or

16 (b) **WARNING** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

17  
18 If Defendant uses language similar to option (b), the warning text shall be accompanied by a  
19 symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline  
20 placed to the right of and of a size no smaller than the word “WARNING,” as provided by regulations  
21 adopted on or about August 30, 2016.

22 The warning shall be prominently placed with such conspicuousness as compared with other  
23 words, statements, designs, or devices as to render it likely to be read and understood by an ordinary  
24 individual under customary conditions before purchase or use. Each warning shall be provided in a  
25 manner such that the consumer or user is reasonably likely to understand to which specific Product the  
26 warning applies, so as to minimize the risk of consumer confusion.

27 In the event that the Office of Environmental Health Hazard Assessment promulgates one or  
28 more regulations requiring or permitting warning text and/or methods of transmission different than

1 those set forth above, Defendant shall be entitled to use, at its discretion, such other warning text and/or  
2 method of transmission without being deemed in breach of this Agreement.

3 **3. MONETARY SETTLEMENT TERMS**

4 **3.1 Settlement Amount**

5 Defendant shall pay \$38,000 in settlement and total satisfaction of all the claims referred to in  
6 the Notice, the Complaint, and this Consent Judgment. This includes civil penalties in the amount of  
7 three thousand dollars and zero cents (\$3,000.00) pursuant to Health and Safety Code section  
8 25249.7(b) and attorney's fees and costs in the amount of thirty-five thousand dollars and zero cents  
9 (\$35,000.00) pursuant to Code of Civil Procedure section 1021.5 and Health and Safety Code section  
10 25249 et seq.

11 **3.2 Civil Penalty**

12 The portion of the settlement attributable to civil penalties shall be allocated according to Health  
13 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid  
14 to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining  
15 twenty-five percent (25%) of the penalty paid to Embry.

16 All payments owed to Embry, shall be delivered to the following payment address:

17 Noam Glick  
18 Glick Law Group  
19 225 Broadway, Suite 2100  
20 San Diego, CA 92101

21 All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA  
(Memo Line "Prop 65 Penalties") at the following addresses:

22 For United States Postal Service Delivery:

23 Mike Gyurics  
24 Fiscal Operations Branch Chief  
25 Office of Environmental Health Hazard Assessment  
26 P.O. Box 4010  
27 Sacramento, CA 95812-4010

28 For Non-United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street

Sacramento, CA 95814

1  
2 Defendant agrees to provide Embry's counsel with a copy of the check payable to OEHHA,  
3 simultaneous with its penalty payments to Embry.

4 The Parties, including Embry, will exchange completed IRS 1099, W-9, or other forms as  
5 required. Relevant information for Glick Law Group, N&T, and Embry are set out below:

- 6 • "Kim Embry" whose address and tax identification number shall be provided within five  
7 (5) days after this Settlement Agreement is fully executed by the Parties;
- 8 • "Glick Law Group" (EIN: 47-1838518) at the address provided in Section 3.2(a)(i);
- 9 • "Nicholas & Tomasevic" (EIN: 46-3474065) at the address provided in Section 3.2(a)(i);  
10 and
- 11 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA  
12 95814.

### 13 **3.3 Attorney's Fees and Costs**

14 The portion of the settlement attributable to attorney's fees and costs shall be paid to Embry's  
15 counsel, who are entitled to attorney's fees and costs incurred by her in this action, including but not  
16 limited to investigating potential violations, bringing this matter to Defendant's attention, as well as  
17 litigating and negotiating a settlement in the public interest.

18 Defendant shall provide its payment to Embry's counsel in two checks, divided equally, payable  
19 to Glick Law Group, PC (\$17,500) and Nicholas & Tomasevic, LLP (\$17,500) respectively. The  
20 addresses for these two entities are:

21 Noam Glick  
22 Glick Law Group  
23 225 Broadway, Suite 2100  
24 San Diego, CA 92101

25 Craig Nicholas  
26 Nicholas & Tomasevic, LLP  
27 225 Broadway, 19th Floor  
28 San Diego, CA 92101

### **3.4 Timing**

The above-mentioned checks will be issued within fourteen (14) days of the Effective Date.

1     **4. CLAIMS COVERED AND RELEASED**

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

3             For any claim or violation arising under Proposition 65 alleging a failure to warn about  
4 exposures to DEHP from Products manufactured, imported, sold, or distributed by Defendant prior  
5 to the Effective Date, Embry, acting on her own behalf and in the public interest, releases Defendant  
6 of any and all liability. This includes Defendant’s parents, subsidiaries, affiliated entities under  
7 common ownership, its directors, officers, agents, employees, attorneys, and each entity to whom  
8 Defendant directly or indirectly distributes or sells the Products, including but not limited to,  
9 downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and  
10 licensees (collectively, the “Releasees”). Releasees include Cydea, Inc. dba Kegco, its parent, and all  
11 subsidiaries and affiliates thereof and their respective employees, agents, and assigns that sell  
12 Defendant’s Products. Compliance with the terms of this Consent Judgment constitutes compliance  
13 with Proposition 65 with respect to the alleged or actual failure to warn about exposures to DEHP  
14 from Products manufactured, imported, sold, or distributed by Defendant after the Effective Date.  
15 This Consent Judgment is a full, final and binding resolution of all claims that were or could have  
16 been asserted against Defendant and/or Releasees for failure to provide warnings for alleged  
17 exposures to DEHP contained in Products.

18             **4.2 Embry’s Individual Release of Claims**

19             Embry, in her individual capacity, also provides a release to Defendant and/or Releasees, which  
20 shall be a full and final accord and satisfaction of as well as a bar to all actions, causes of action,  
21 obligations, costs, expenses, attorney’s fees, damages, losses, claims, liabilities, and demands by  
22 Embry of any nature, character, or kind, whether known or unknown, suspected or unsuspected, arising  
23 out of alleged or actual exposures to DEHP in Product and other items similar to Product that are  
24 manufactured, imported, sold, or distributed by Defendant before the Effective Date.

25             **4.3 Defendant’s Release of Embry**

26             Defendant, on its own behalf, and on behalf of Releasees as well as its past and current agents,  
27 representatives, attorneys, successors, and assignees, hereby waives any and all claims against Embry  
28 and her attorneys and other representatives, for any and all actions taken or statements made by Embry

1 and her attorneys and other representatives, whether in the course of investigating claims, otherwise  
2 seeking to enforce Proposition 65 against it, in this matter or with respect to the Products.

3 **5. COURT APPROVAL**

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

7 **6. SEVERABILITY**

8 Subsequent to the Court's approval and entry of this Consent Judgment, if any provision is held  
9 by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

10 **7. GOVERNING LAW**

11 The terms of this Consent Judgment shall be governed by the laws of the state of California and  
12 apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise  
13 rendered inapplicable for reasons, including but not limited to changes in the law, then Defendant may  
14 provide written notice to Embry of any asserted change, and shall have no further injunctive obligations  
15 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

16 **8. NOTICE**

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

20 For Defendant:

21 Bruce Nye  
22 Scali Rasmussen  
23 , CA  
24 1901 Harrison Street, 14th Floor  
25 Oakland, CA 94612  
26 bnye@scalilaw.com

For Embry:

Noam Glick  
Glick Law Group, PC  
225 Broadway, 21st Floor  
San Diego, CA 92101

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



1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

5 **10. POST EXECUTION ACTIVITIES**

6 Embry agrees to comply with the reporting form requirements referenced in Health and Safety  
7 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code  
8 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which  
9 motion Embry shall draft and file. In furtherance of obtaining such approval, the Parties agree to  
10 mutually employ their best efforts, including those of their counsel, to support the entry of this  
11 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For  
12 purposes of this Section, "best efforts" shall include, at a minimum, supporting the motion for approval,  
13 responding to any objection that any third-party may make, and appearing at the hearing before the  
14 Court if so requested.

15 **11. MODIFICATION**

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

19 **12. AUTHORIZATION**


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

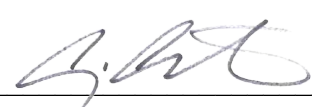
22 **AGREED TO:**

**AGREED TO BY CYDEA, INC.:**

23  
24 Date: April 4, 2019

Date: April 23, 2019

25  
26 By:   
27 **KIM EMBRY**

25  
26 By:   
27 **Craig Costanzo** [print name]