

1 **NICHOLAS & TOMASEVIC, LLP**

2 Craig M. Nicholas (SBN 178444)

3 Shaun Markley (SBN 291785)

4 225 Broadway, 19th Floor

5 San Diego, California 92101

6 Telephone: (619) 325-0492

7 Facsimile: (619) 325-0496

8 Email: cnicholas@nicholaslaw.org

9 Email: smarkley@nicholaslaw.org

10 **GLICK LAW GROUP, P.C.**

11 Noam Glick (SBN 251582)

12 Kelsey D. McCarthy (SBN 305372)

13 225 Broadway, Suite 2100

14 San Diego, CA 92101

15 Telephone: (619) 382-3400

16 Facsimile: (619) 615-2193

17 Email: noam@glicklawgroup.com

18 Email: kelsey@glicklawgroup.com

19 Attorneys for Plaintiff

20 Kim Embry

21 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

22 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

23 KIM EMBRY, an individual

24 Plaintiff,

25 v.

26 AMAZON.COM, INC., a Delaware  
27 corporation, and DOES 1 through 100,  
28 inclusive,

Defendant.

Case No.: **CGC - 17 - 558420**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

**BY FAX**

**ONE LEGAL LLC**

ENDORSED  
FILED  
San Francisco County Superior Court

APR 27 2017

CLERK OF THE COURT  
BY: DENNIS TOYAMA  
Deputy Clerk

**I.**  
**INTRODUCTION**

1. This Complaint is a representative action brought by Plaintiff in the public interest of the citizens of the State of California. Plaintiff seeks to enforce the People’s right to be informed of the presence of di(2-ethylhexyl) phthalate (“DEHP”) and Diisononyl phthalate (“DINP”) (collectively “Listed Chemicals”) found in White Flexible Pvc Vinyl Vent Duct Hoses manufactured, imported, sold, or distributed for sale in California by Defendant.

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

3. California identified and listed DEHP as a chemical known to cause birth defects or other reproductive harm as well as cancer as early as January 1, 1988. Likewise, California identified and listed DINP as a chemical known to cause cancer as early as December 20, 2013.

4. White Flexible Pvc Vinyl Vent Duct Hoses manufactured, imported, sold, or distributed in California contain prohibited levels of Listed Chemicals (“Products”).

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

6. Plaintiff seeks injunctive relief compelling Defendant to provide consumers and individuals in California with sufficient warning pursuant to Proposition 65 and related Regulations. (Cal. Health & Safety Code § 25249.7(a).) Plaintiff also seeks civil penalties against Defendant for its violations of Proposition 65. (Cal. Health & Safety Code § 25249.7(b).)

**II.**  
**PARTIES**

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

8. Defendant AMAZON.COM, INC. (“Amazon” or “Defendant”) 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.

9. 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.

10. 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

11. 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.

12. 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. Defendant conducted and continues to conduct business in this County as it relates to Products.

13. Defendant has sufficient minimum contacts in the State of California or otherwise purposefully avails itself of the California market. Exercising jurisdiction over Defendant would be consistent with traditional notions of fair play and substantial justice.

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

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

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

1           16. Defendants manufactured, imported, sold, and/or distributed Products containing Listed  
2 Chemicals 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 and will continue to occur into  
4 the future.

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

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

10          19. Defendants knew or should have known that the Products contained Listed Chemicals  
11 and exposed individuals to Listed Chemicals in the ways provided above. The Notice and certificate of  
12 merit, discussed *infra*, informed Defendants of the presence of Listed Chemicals in the Products.  
13 Likewise, media coverage concerning Listed Chemicals in consumer products, including hoses,  
14 provided constructive notice to Defendants. By manufacturing, importing, distributing, and/or selling  
15 the Products in California, Defendants should know that the Products contain Listed Chemicals and  
16 that individuals who come into contact with the Products will be exposed to Listed Chemicals.

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

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

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

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

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

4                                   **PRAYER FOR RELIEF**

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

- 6           1. Civil penalties in the amount of \$2,500 per day for each violation;
- 7           2. A preliminary and permanent injunction against Defendants from manufacturing,  
8 importing, selling, and/or distributing Products in California without providing a clear  
9 and reasonable warning as required by Proposition 65 and related Regulations;
- 10          3. Reasonable attorney's fees and costs of suit; and
- 11          4. Such other and further relief as may be just and proper.
- 12

13          Dated: April 26, 2017

**NICHOLAS & TOMASEVIC, LLP**

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16          By:



Craig Nicholas

Shaun Markley

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18                                   Attorneys for Plaintiff

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