

1 **GLICK LAW GROUP, P.C.**  
2 Noam Glick (SBN 251582)  
3 Kelsey D. McCarthy (SBN 305372)  
4 225 Broadway, Suite 2100  
5 San Diego, California 92101  
6 Tel: (619) 382-3400  
7 Fax: (619) 615-2193

8 **NICHOLAS & TOMASEVIC, LLP**  
9 Craig M. Nicholas (SBN 178444)  
10 Shaun Markley (SBN 291785)  
11 225 Broadway, 19<sup>th</sup> Floor  
12 San Diego, California 92101  
13 Tel: (619) 325-0492  
14 Fax: (619) 325-0496

15 Attorneys for Plaintiff,  
16 Kim Embry

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
18 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

19 KIM EMBRY, an individual

20 Plaintiff,

21 v.

22 AMAZON.COM, INC., a Delaware  
23 corporation, and DOES 1 through 100,  
24 inclusive,

25 Defendant.

Case No.: **CGC-17-558300**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

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

**APR 21 2017**

**CLERK OF THE COURT**  
**KALENE APOLONIO**  
BY: \_\_\_\_\_ Deputy Clerk

**BY FAX**  
ONE LEGAL LLC

## **I. INTRODUCTION**

1. This Complaint is a representative action brought by Plaintiff Kim Embry (“Embry”) 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”) found in certain PVC hoses that are manufactured, imported, sold, or distributed for sale in California by Defendants.

2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and 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. . . .” (Health & Saf. 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.

4. The PVC hoses manufactured, imported, sold, and/or distributed in California contain prohibited levels of DEHP. This includes the 1" (25mm) ID 10 Ft High Pressure Braided PVC Tubing Clear Hose Braid Reinforced, ASIN: 8963293459. All such PVC hoses containing DEHP shall be referred to as “Products.”

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

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

1           8.       Defendant Amazon.com, Inc. (“Amazon” or “Defendant”) is a corporation organized  
2 and existing under the laws of the state of Delaware. Amazon does business in the County of San  
3 Francisco, California, within the meaning of California Health and Safety Code section 25249.11.  
4 Amazon imports, sells, and/or distributes Products in California and San Francisco County.

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

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

### 13                                   **III.    VENUE AND JURISDICTION**

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

18           12.      Venue is proper in the San Francisco County Superior Court pursuant to Code of Civil  
19 Procedure sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this  
20 County. Defendant conducted and continues to conduct business in this County as it relates to Products.

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

### 24                                   **FIRST CAUSE OF ACTION** 25                                   **(Violation of Proposition 65 – Against all Defendants)**

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

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

1           16. Defendants manufactured, imported, sold, and/or distributed Products containing DEHP  
2 in violation of California Health and Safety Code section 25249.6 *et seq.* Plaintiff is informed and  
3 believes that 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 DEHP through reasonably foreseeable use of the Products.

8           18. The Products expose individuals to DEHP through dermal absorption, ingestion, and  
9 inhalation.

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

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

18           21. On January 19, 2017, Plaintiff provided Amazon 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 Amazon violated Proposition 65 by failing to sufficiently warn consumers in California of the  
22 health hazards associated with exposures to DEHP contained in the Products.

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

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

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

**PRAYER FOR RELIEF**

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

1. Civil penalties in the amount of \$2,500 per day for each violation;
2. A preliminary and permanent injunction against Defendants 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: April 21, 2017

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



By: \_\_\_\_\_

Noam Glick  
Kelsey D. McCarthy

Attorneys for Plaintiff