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(ENDORSED)
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JAN 17 2018
CLERK OF THE COURT
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
BY T. NGO DEPUTY

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF SANTA CLARA

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11 SAFE PRODUCTS FOR CALIFORNIANS,) No. **18CV321935**
LLC,)
12 Plaintiff,) **COMPLAINT FOR CIVIL PENALTIES**
13 vs.) **AND INJUNCTIVE RELIEF**
14) (Health & Safety Code § 25249.5, *et seq.*)
15 AMAZON.COM, LLC; AMAZON.COM,)
INC.; AMAZON FULFILLMENT)
16 SERVICES, INC.; DOES 1 THROUGH 150,)
inclusive;)
17 Defendants.)
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21 Plaintiff, SAFE PRODUCTS FOR CALIFORNIANS, LLC (“Plaintiff”), alleges as
22 follows:

23 **SUMMARY**

24 1. This is a representative action brought by Plaintiff in the public interest of the
25 citizens of the State of California to enforce the public’s right to be informed of the health
26 hazards caused by exposures to di(2-ethylhexyl) phthalate (“DEHP”), a toxic chemical found
27 in and on the products manufactured, distributed, and/or sold by Defendants, AMAZON.COM,
28 LLC; AMAZON.COM, INC.; AMAZON FULFILLMENT SERVICES, INC.; and DOES 1

1 THROUGH 150, inclusive (collectively “Defendants”), as set forth below.

2 2. By this Complaint, Plaintiff seeks to remedy Defendants’ continuing failure to
3 warn individuals not covered by California’s Occupational Safety Health Act, Labor Code
4 § 6300, *et seq.* (“OSHA”), who purchase, use, or handle Defendants’ products, about the risks
5 of exposure to DEHP present in and on the products manufactured, distributed, and sold
6 throughout the State of California. Individuals not covered by OSHA who purchase, use, or
7 handle Defendants’ products are referred to hereinafter as “Consumers.”

8 3. Detectable levels of DEHP are found in and on the luminous soft fishing lures
9 that Defendants manufacture, distribute, and/or offer for sale to Consumers throughout the
10 State of California.

11 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
12 Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”), “[n]o person in the course of
13 doing business shall knowingly and intentionally expose any individual to a chemical known to
14 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
15 warning to such individual ...” Health & Safety Code § 25249.6.

16 5. Pursuant to Proposition 65, on January 1, 1988, California identified and listed
17 DEHP as a chemical known to cause cancer, birth defects and reproductive harm. DEHP
18 became subject to the “clear and reasonable warning” requirements of Proposition 65 one year
19 later on January 1, 1989. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code § 25249.8.

20 6. Defendants manufacture, distribute, import, sell, and offer for sale without
21 health warnings in the State of California, luminous soft fishing lures that contain excessive
22 levels of DEHP including, but not limited to, “OriGlam 10PCS 7cm Luminous Green Night
23 Soft Fishing Lure Bait Kit Lure with Hook Artificial Bait” Item #27534-70, ASIN
24 #B01NBKU2M9. All such products containing DEHP are referred to collectively hereinafter
25 as “Products.”

26 7. Defendants’ failure to warn Consumers in the State of California of the health
27 hazards associated with exposures to DEHP in conjunction with Defendants’ sales of the
28 Products are violations of Proposition 65, and subject Defendants, and each of them, to

1 enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code
2 § 25249.7(a) & (b)(1).

3 8. For Defendants' violations of Proposition 65, Plaintiff seeks preliminary and
4 permanent injunctive relief to compel Defendants to provide Consumers of the Products with
5 the required warning regarding the health hazards associated with exposures to DEHP. Health
6 & Safety Code § 25249.7(a).

7 9. Pursuant to Health & Safety Code § 25249.7(b), Plaintiff also seeks civil
8 penalties against Defendants for their violations of Proposition 65.

9 **JURISDICTION AND VENUE**

10 10. The California Superior Court has jurisdiction over this action pursuant to
11 California Constitution Article VI, section 10, which grants the Superior Court "original
12 jurisdiction in all cases except those given by statute to other trial courts." The statute under
13 which this action is brought does not specify any other basis of subject matter jurisdiction.

14 11. The California Superior Court has jurisdiction over Defendants based on
15 Plaintiff's information and good faith belief that Defendants are each a person, firm,
16 corporation, or association that is a citizen of the State of California, has sufficient minimum
17 contacts in the State of California, and/or purposefully avails itself of the California market.
18 Defendants' purposeful availment renders the exercise of personal jurisdiction by California
19 courts consistent with traditional notions of fair play and substantial justice.

20 12. Venue is proper in the Superior Court for the County of Santa Clara, pursuant to
21 Code of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent
22 jurisdiction, because Plaintiff seeks civil penalties against Defendants, because one or more
23 instances of wrongful conduct occurred, and continue to occur, in this county, and/or because
24 Defendants conducted, and continue to conduct, business in Santa Clara County with respect to
25 the Products.

26 **PARTIES**

27 13. Plaintiff is a limited liability California company with its principal place of
28 business within the State of California, County of Santa Clara. Plaintiff seeks to reduce or

1 eliminate the presence of hazardous substances in consumer products sold in California, and to
2 ensure that California consumers are aware of the presence of such substances in consumer
3 goods so that they can make an educated effort to limit their own exposure where deemed
4 necessary. Plaintiff brings this action in the public interest pursuant to Health & Safety Code
5 § 25249.7(d).

6 14. Defendants AMAZON.COM, LLC; AMAZON.COM, INC.; and AMAZON
7 FULFILLMENT SERVICES, INC. are each persons in the course of doing business within the
8 meaning of Health & Safety Code §§ 25249.6 and 25249.11.

9 15. Defendants manufacture, import, distribute, sell, and/or offer the Products for
10 sale or use in the State of California, or imply by their conduct that they manufacture, import,
11 distribute, sell, and/or offer the Products for sale or use in the State of California.

12 16. Defendants DOES 1 THROUGH 50, inclusive (“Manufacturer Defendants”),
13 are each a person in the course of doing business within the meaning of Health & Safety Code
14 §§ 25249.6 and 25249.11.

15 17. Manufacturer Defendants, and each of them, research, test, design, assemble,
16 fabricate, and manufacture, or each implies by its conduct that it researches, tests, designs,
17 assembles, fabricates, and manufactures, one or more of the Products offered for sale or use in
18 California.

19 18. Defendants DOES 51 THROUGH 100, inclusive (“Distributor Defendants”),
20 are each a person in the course of doing business within the meaning of Health & Safety Code
21 §§ 25249.6 and 25249.11.

22 19. Distributor Defendants, and each of them, distribute, exchange, transfer,
23 process, and transport one or more of the Products to individuals, businesses, or retailers for
24 sale or use in the State of California, or each implies by its conduct that it distributes,
25 exchanges, transfers, processes, and transports one or more of the Products to individuals,
26 businesses, or retailers for sale or use in the State of California.

27 20. Defendants DOES 101 THROUGH 150, inclusive (“Retailer Defendants”), are
28 each a person in the course of doing business within the meaning of Health & Safety Code

1 §§ 25249.6 and 25249.11.

2 21. Retailer Defendants, and each of them, offer the Products for sale to individuals
3 in the State of California.

4 22. At this time, the true names of Defendants DOES 1 THROUGH 150, inclusive,
5 are unknown to Plaintiff, who, therefore, sues said defendants by their fictitious names
6 pursuant to Code of Civil Procedure § 474. Plaintiff is informed and believes, and on that basis
7 alleges, that each of the fictitiously named defendants is responsible for the acts and
8 occurrences alleged herein. When ascertained, their true names shall be reflected in an
9 amended complaint.

10 **FIRST CAUSE OF ACTION**

11 **Violation of Proposition 65**

12 23. Plaintiff re-pleads and incorporates by reference the allegations contained in
13 each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

14 24. Plaintiff is informed and believes, and on that basis alleges, that each of the
15 Defendants employs ten or more persons.

16 25. In enacting Proposition 65, in the preamble to the Safe Drinking Water and
17 Toxic Enforcement Act of 1986, the People of California expressly declared their right “[t]o be
18 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
19 harm.”

20 26. Proposition 65 states, “[no] person in the course of doing business shall
21 knowingly and intentionally expose any individual to a chemical known to the state to cause
22 cancer or reproductive toxicity without first giving clear and reasonable warning to such
23 individual ...” Health & Safety Code § 25249.6.

24 27. On August 30, 2017, Plaintiff served a sixty-day notice of violation, including
25 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at
26 least one person with relevant and appropriate expertise who reviewed relevant data regarding
27 the alleged exposures to DEHP and that counsel believed there was meritorious and reasonable
28 cause for a public action, on Defendants AMAZON.COM, LLC; AMAZON.COM, INC.; and

1 AMAZON FULFILLMENT SERVICES, INC., the California Attorney General's Office, and
2 the requisite public enforcement agencies, alleging that, as a result of Defendants' sales of the
3 Products, Consumers in the State of California are being exposed to DEHP resulting from their
4 reasonably foreseeable use of the Products, without the Consumers first receiving a "clear and
5 reasonable warning" regarding the harms associated with exposures to DEHP, as required by
6 Proposition 65.

7 28. Defendants manufacture, import, distribute, sell, and offer the Products for sale
8 or use in violation of Health & Safety Code § 25249.6, and Defendants' violations have
9 continued beyond their receipt of Plaintiff's sixty-day notice of violation. As such, Defendants'
10 violations are ongoing and continuous in nature and, unless enjoined, will continue in the
11 future.

12 29. After receiving Plaintiff's sixty-day notice of violation, and to Plaintiff's best
13 information and belief, no public enforcement agency has commenced and diligently
14 prosecuted a cause of action against Defendants under Proposition 65 to enforce the alleged
15 violations that are the subject of Plaintiff's notice of violation.

16 30. The Products that Defendants manufacture, import, distribute, sell, and offer for
17 sale or use in California cause exposures to DEHP as a result of the reasonably foreseeable use
18 of the Products. Such exposures caused by Defendants and endured by Consumers in
19 California are not exempt from the "clear and reasonable" warning requirements of Proposition
20 65, yet Defendants provide no clear and reasonable warning.

21 31. Defendants knew or should have known that the Products they manufacture,
22 import, distribute, sell, and offer for sale or use in California contain DEHP.

23 32. DEHP is present in or on the Products in such a way as to expose Consumers
24 through dermal contact, inhalation, and/or ingestion during reasonably foreseeable use.

25 33. The normal and reasonably foreseeable use of the Products has caused, and
26 continues to cause, consumer exposures to DEHP, as defined by title 27 of the California Code
27 of Regulations, section 25602(b).

28 34. Defendants know that the normal and reasonably foreseeable use of the

1 Products exposes individuals to DEHP through dermal contact, inhalation, and/or ingestion.

2 35. Defendants intend that exposures to DEHP through the reasonably foreseeable
3 use of the Products will occur by their deliberate, non-accidental participation in the
4 manufacture, importation, distribution, sale, and offering of the Products for sale or use to
5 Consumers in California.

6 36. Defendants failed to provide a “clear and reasonable warning” to those
7 Consumers in California who have been, or will be, exposed to DEHP through dermal contact,
8 inhalation, and/or ingestion resulting from their use of the Products.

9 37. Contrary to the express policy and statutory prohibition of Proposition 65
10 enacted directly by California voters, consumers exposed to DEHP through dermal contact,
11 inhalation, and/or ingestion as a result of their use of the Products that Defendants sold without
12 a “clear and reasonable” health hazard warning have suffered, and continue to suffer,
13 irreparable harm for which they have no plain, speedy, or adequate remedy at law.

14 38. Pursuant to Health & Safety Code § 25249.7(b), as a consequence of the above-
15 described acts, Defendants, and each of them, are liable for a maximum civil penalty of \$2,500
16 per day for each violation.

17 39. As a consequence of the above-described acts, Health & Safety Code
18 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
19 Defendants.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, for:

- 22 1. Civil penalties in the amount of \$2,500 per day for each violation, pursuant to
23 Health & Safety Code § 25249.7(b);
- 24 2. Preliminary and permanent injunctions mandating that Defendants recall all
25 Products currently in the chain of commerce in California without a “clear and
26 reasonable warning” as defined by California Code of Regulations title 27,
27 section 25601, *et seq.*;
- 28 3. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily

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and permanently enjoin Defendants from manufacturing, distributing, or offering the Products for sale or use in California without first providing a “clear and reasonable warning” in accordance with title 27 of the California Code of Regulations, section 25601, *et seq.*, regarding the harms associated with DEHP;

- 4. Plaintiff’s reasonable attorney’s fees and costs of suit; and
- 5. For such other and further relief as the Court deems proper.

Dated: 1-16-18

MISSION LAW FIRM, A.P.C.

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Safe Products for Californians, LLC