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Superior Court of CA,
County of Santa Clara
18CV335056
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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**
10

11 SAFE PRODUCTS FOR CALIFORNIANS,) No. 18CV335056
12 LLC,)
13 Plaintiff,) **COMPLAINT FOR CIVIL PENALTIES**
14 vs.) **AND INJUNCTIVE RELIEF**
15 AMAZON.COM, INC.; DOES 1 THROUGH) (Health & Safety Code § 25249.5, *et seq.*)
16 150, inclusive;)
17 Defendants.)
18)
19)

20
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 INC.; and DOES 1 THROUGH 150, inclusive (collectively "Defendants"), as set forth below.

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

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

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

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

19 6. Pursuant to Proposition 65, on October 24, 2003, California identified and listed
20 DEHP as a chemical known to cause reproductive toxicity. DEHP became subject to the “clear
21 and reasonable warning” requirements of Proposition 65 one year later on October 24, 2004.
22 Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code § 25249.8.

23 7. Defendants manufacture, distribute, import, sell, and offer for sale without
24 health warnings in the State of California, soft plastic fishing lures that contain excessive levels
25 of DEHP including, but not limited to, “Yoshikawa Bait Wiggle Worm Soft Plastic Fishing
26 Lure Drop Shot Spring Bass Lures Perch 3" Watermelon” Item MIKV75 #001, ASIN
27 #B01N106RPB. All such products containing DEHP are referred to collectively hereinafter as
28 “Products.”

8. Defendants' failure to warn Consumers in the State of California of the health hazards associated with exposures to DEHP in conjunction with Defendants' sales of the Products are violations of Proposition 65, and subject Defendants, and each of them, to enjoinder of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

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

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

JURISDICTION AND VENUE

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

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

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

PARTIES

14. Plaintiff is a limited liability California company with its principal place of business within the State of California, County of Santa Clara. Plaintiff seeks to reduce or eliminate the presence of hazardous substances in consumer products sold in California, and to ensure that California consumers are aware of the presence of such substances in consumer goods so that they can make an educated effort to limit their own exposure where deemed necessary. Plaintiff brings this action in the public interest pursuant to Health & Safety Code § 25249.7(d).

15. Defendant AMAZON.COM, INC. is a person in the course of doing business within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.

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

17. Defendants DOES 1 THROUGH 50, inclusive ("Manufacturer Defendants"), are each a person in the course of doing business within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.

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

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

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

21. Defendants DOES 101 THROUGH 150, inclusive (“Retailer Defendants”), are each a person in the course of doing business within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.

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

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

FIRST CAUSE OF ACTION

Violation of Proposition 65

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

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

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

27. Proposition 65 states, “[no] 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 & Safety Code § 25249.6.

28. On August 30, 2017, Plaintiff served a sixty-day notice of violation, including the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at least one person with relevant and appropriate expertise who reviewed relevant data regarding

1 the alleged exposures to DEHP and that counsel believed there was meritorious and reasonable
2 cause for a public action, on Defendant AMAZON.COM, INC., the California Attorney
3 General's Office, and the requisite public enforcement agencies, alleging that, as a result of
4 Defendant's sales of the Products, Consumers in the State of California are being exposed to
5 DEHP resulting from their reasonably foreseeable use of the Products, without the Consumers
6 first receiving a "clear and reasonable warning" regarding the harms associated with exposures
7 to DEHP, as required by Proposition 65.

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

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

17 31. The Products that Defendants manufacture, import, distribute, sell, and offer for
18 sale or use in California cause exposures to DEHP as a result of the reasonably foreseeable use
19 of the Products. Such exposures caused by Defendants and endured by Consumers in
20 California are not exempt from the "clear and reasonable" warning requirements of Proposition
21 65, yet Defendants provide no clear and reasonable warning.

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

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

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

1 35. Defendants know that the normal and reasonably foreseeable use of the
2 Products exposes individuals to DEHP through dermal contact, inhalation, and/or ingestion.

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

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

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

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

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

21 **PRAYER FOR RELIEF**

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

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

- 1 3. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily
2 and permanently enjoin Defendants from manufacturing, distributing, or
3 offering the Products for sale or use in California without first providing a
4 “clear and reasonable warning” in accordance with title 27 of the California
5 Code of Regulations, section 25601, *et seq.*, regarding the harms associated with
6 DEHP;
- 7 4. Plaintiff’s reasonable attorney’s fees and costs of suit; and
- 8 5. For such other and further relief as the Court deems proper.

9 Dated: 9/17/18

MISSION LAW FIRM A.P.C.

11 Tanya E. Moore
12 Tanya E. Moore
13 Attorney for Plaintiff
14 Safe Products for Californians, LLC