

1 Tanya E. Moore, SBN 206683
MISSION LAW FIRM A P.C.
2 332 North Second Street
San Jose, California 95112
3 Telephone (408) 298-2000
Facsimile (408) 298-6046
4 E-mail: service@mission.legal

5 Attorney for Plaintiff
Safe Products for Californians, LLC
6

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Superior Court of CA,
County of Santa Clara
18CV326712
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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SANTA CLARA**
10

11 SAFE PRODUCTS FOR CALIFORNIANS,) No. 18CV326712
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)

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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 lead and lead compounds (“lead”), di(2-ethylhexyl) phthalate
27 (“DEHP”) and diisononyl phthalate (“DINP”), toxic chemicals found in and on the products
28 manufactured, distributed, and/or sold by Defendants, AMAZON.COM, 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 lead, DEHP and DINP present in and on the products manufactured, distributed,
6 and sold throughout the State of California. Individuals not covered by OSHA who purchase,
7 use, or handle Defendants’ products are referred to hereinafter as “Consumers.”

8 3. Detectable levels of lead, DEHP and DINP are found in and on the soft artificial
9 lures that Defendants manufacture, distribute, and/or offer for sale to Consumers throughout
10 the 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 February 27, 1987, California identified and
17 listed lead as a chemical known to cause birth defects and reproductive harm. Lead became
18 subject to the “clear and reasonable warning” requirements of Proposition 65 one year later on
19 February 27, 1988. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code § 25249.8.

20 6. Pursuant to Proposition 65, on October 24, 2003, California identified and
21 listed DEHP as a chemical known to cause birth defects and reproductive harm. DEHP became
22 subject to the “clear and reasonable warning” requirements of Proposition 65 one year later on
23 October 25, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code § 25249.8.

24 7. Pursuant to Proposition 65, on December 20, 2013, California identified and
25 listed DINP as a chemical known to cause birth defects and reproductive harm. DINP became
26 subject to the “clear and reasonable warning” requirements of Proposition 65 one year later on
27 December 20, 2014. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code § 25249.8.

28 8. Defendants manufacture, distribute, import, sell, and offer for sale without

1 health warnings in the State of California, soft artificial lures that contain excessive levels of
2 lead, DEHP and DINP including, but not limited to, “Artificial Octopus Jig Head with Long
3 Tail Soft Lead Skirted Lure for Saltwater Fishing Big Game” ASIN B06XC5WS4X. All such
4 products containing lead, DEHP and DINP are referred to collectively hereinafter as
5 “Products.”

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

11 10. For Defendants’ violations of Proposition 65, Plaintiff seeks preliminary and
12 permanent injunctive relief to compel Defendants to provide Consumers of the Products with
13 the required warning regarding the health hazards associated with exposures to lead, DEHP
14 and DINP. Health & Safety Code § 25249.7(a).

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

17 **JURISDICTION AND VENUE**

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

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

28 14. Venue is proper in the Superior Court for the County of Santa Clara, pursuant to

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

6 **PARTIES**

7 15. Plaintiff is a limited liability California company with its principal place of
8 business within the State of California, County of Santa Clara. Plaintiff seeks to reduce or
9 eliminate the presence of hazardous substances in consumer products sold in California, and to
10 ensure that California consumers are aware of the presence of such substances in consumer
11 goods so that they can make an educated effort to limit their own exposure where deemed
12 necessary. Plaintiff brings this action in the public interest pursuant to Health & Safety Code
13 § 25249.7(d).

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

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

19 18. Defendants DOES 1 THROUGH 50, inclusive (“Manufacturer 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. Manufacturer Defendants, and each of them, research, test, design, assemble,
23 fabricate, and manufacture, or each implies by its conduct that it researches, tests, designs,
24 assembles, fabricates, and manufactures, one or more of the Products offered for sale or use in
25 California.

26 20. Defendants DOES 51 THROUGH 100, inclusive (“Distributor Defendants”),
27 are each a person in the course of doing business within the meaning of Health & Safety Code
28 §§ 25249.6 and 25249.11.

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

6 22. Defendants DOES 101 THROUGH 150, inclusive (“Retailer Defendants”), are
7 each a person in the course of doing business within the meaning of Health & Safety Code
8 §§ 25249.6 and 25249.11.

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

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

17 **FIRST CAUSE OF ACTION**

18 **Violation of Proposition 65**

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

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

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

27 28. Proposition 65 states, “[no] person in the course of doing business shall
28 knowingly and intentionally expose any individual to a chemical known to the state to cause

1 cancer or reproductive toxicity without first giving clear and reasonable warning to such
2 individual ...” Health & Safety Code § 25249.6.

3 29. On October 20, 2017, Plaintiff served a sixty-day notice of violation, including
4 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at
5 least one person with relevant and appropriate expertise who reviewed relevant data regarding
6 the alleged exposures to lead, DEHP and DINP and that counsel believed there was meritorious
7 and reasonable cause for a public action, on Defendant AMAZON.COM, INC.; the California
8 Attorney General’s Office, and the requisite public enforcement agencies, alleging that, as a
9 result of Defendants’ sales of the Products, Consumers in the State of California are being
10 exposed to lead, DEHP and DINP resulting from their reasonably foreseeable use of the
11 Products, without the Consumers first receiving a “clear and reasonable warning” regarding the
12 harms associated with exposures to lead, DEHP and DINP, as required by Proposition 65.

13 30. Defendants manufacture, import, distribute, sell, and offer the Products for sale
14 or use in violation of Health & Safety Code § 25249.6, and Defendants’ violations have
15 continued beyond their receipt of Plaintiff’s sixty-day notice of violation. As such, Defendants’
16 violations are ongoing and continuous in nature and, unless enjoined, will continue in the
17 future.

18 31. After receiving Plaintiff’s sixty-day notice of violation, and to Plaintiff’s best
19 information and belief, no public enforcement agency has commenced and diligently
20 prosecuted a cause of action against Defendants under Proposition 65 to enforce the alleged
21 violations that are the subject of Plaintiff’s notice of violation.

22 32. The Products that Defendants manufacture, import, distribute, sell, and offer for
23 sale or use in California cause exposures to lead, DEHP and DINP as a result of the reasonably
24 foreseeable use of the Products. Such exposures caused by Defendants and endured by
25 Consumers in California are not exempt from the “clear and reasonable” warning requirements
26 of Proposition 65, yet Defendants provide no clear and reasonable warning.

27 33. Defendants knew or should have known that the Products they manufacture,
28 import, distribute, sell, and offer for sale or use in California contain lead, DEHP and DINP.

1 34. Lead, DEHP and DINP are present in or on the Products in such a way as to
2 expose Consumers through dermal contact and/or ingestion during reasonably foreseeable use.

3 35. The normal and reasonably foreseeable use of the Products has caused, and
4 continues to cause, consumer exposures to lead, DEHP and DINP, as defined by title 27 of the
5 California Code of Regulations, section 25602(b).

6 36. Defendants know that the normal and reasonably foreseeable use of the
7 Products exposes individuals to lead, DEHP and DINP through dermal contact and/or
8 ingestion.

9 37. Defendants intend that exposures to lead, DEHP and DINP through the
10 reasonably foreseeable use of the Products will occur by their deliberate, non-accidental
11 participation in the manufacture, importation, distribution, sale, and offering of the Products
12 for sale or use to Consumers in California.

13 38. Defendants failed to provide a “clear and reasonable warning” to those
14 Consumers in California who have been, or will be, exposed to lead, DEHP and DINP through
15 dermal contact, and/or ingestion resulting from their use of the Products.

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

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

24 41. As a consequence of the above-described acts, Health & Safety Code
25 § 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
26 Defendants.

27 **PRAYER FOR RELIEF**

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

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1. Civil penalties in the amount of \$2,500 per day for each violation, pursuant to Health & Safety Code § 25249.7(b);
2. Preliminary and permanent injunctions mandating that Defendants recall all Products currently in the chain of commerce in California without a “clear and reasonable warning” as defined by California Code of Regulations title 27, section 25601, *et seq.*;
3. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily 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 lead, DEHP and DINP;
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: 4-17-18

MISSION LAW FIRM A.P.C.

Tanya Moore

Tanya E. Moore
Attorney for Plaintiff
Safe Products for Californians, LLC