

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Patricia Nieto

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9 CONSUMER ADVOCACY GROUP, INC.

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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12
13 **COUNTY OF LOS ANGELES**

14 CONSUMER ADVOCACY GROUP, INC.,
15 in the public interest,

16 Plaintiff,

17 v.

18 AMAZON.COM, INC., a Delaware
19 Corporation;
20 and DOES 1-20,

21 Defendants.

CASE NO. **20STCV41328**

COMPLAINT FOR PENALTY AND
INJUNCTION

Violation of Proposition 65, the Safe
Drinking Water and Toxic Enforcement
Act of 1986 (*Health & Safety Code*, §
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL
CASE (exceeds \$25,000)

22 Plaintiff CONSUMER ADVOCACY GROUP, INC. alleges two causes of action
23 against defendants AMAZON.COM, INC., and DOES 1-20 as follows:
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THE PARTIES

1. Plaintiff CONSUMER ADVOCACY GROUP, INC. (“Plaintiff” or “CAG”) is an organization qualified to do business in the State of California. CAG is a person within the meaning of Health and Safety Code Section 25249.11, subdivision (a). CAG, acting as a private attorney general, brings this action in the public interest as defined under Health and Safety Code Section 25249.7, subdivision (d).
2. Defendant AMAZON.COM, INC. (“AMAZON”) is a Delaware Corporation qualified to do business in Delaware and doing business in the State of California at all relevant times herein.
3. Plaintiff is presently unaware of the true names and capacities of defendants DOES 1-20, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
4. At all times mentioned herein, the term “Defendants” includes AMAZON and DOES 1-20.
5. Plaintiff is informed and believes, and thereon alleges that each of the Defendants at all times mentioned herein have conducted business within the State of California.
6. Upon information and belief, at all times relevant to this action, each of the Defendants, including DOES 1-20, was an agent, servant, or employee of each of the other Defendants. In conducting the activities alleged in this Complaint, each of the Defendants was acting within the course and scope of this agency, service, or employment, and was acting with the consent, permission, and authorization of each of the other Defendants. All actions of each of the Defendants alleged in this Complaint were ratified and approved by every other Defendant or their officers or managing

1 agents. Alternatively, each of the Defendants aided, conspired with and/or facilitated the
2 alleged wrongful conduct of each of the other Defendants.

- 3 7. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the
4 Defendants was a person doing business within the meaning of Health and Safety Code
5 Section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or more
6 employees at all relevant times.

7 **JURISDICTION**

- 8 8. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article
9 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
10 those given by statute to other trial courts. This Court has jurisdiction over this action
11 pursuant to Health and Safety Code Section 25249.7, which allows enforcement of
12 violations of Proposition 65 in any Court of competent jurisdiction.

- 13 9. This Court has jurisdiction over Defendants named herein because Defendants either
14 reside or are located in this State or are foreign corporations authorized to do business in
15 California, are registered with the California Secretary of State, or who do sufficient
16 business in California, have sufficient minimum contacts with California, or otherwise
17 intentionally avail themselves of the markets within California through their
18 manufacture, distribution, promotion, marketing, or sale of their products within
19 California to render the exercise of jurisdiction by the California courts permissible
20 under traditional notions of fair play and substantial justice.

- 21 10. Venue is proper in the County of Los Angeles because one or more of the instances of
22 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or
23 because Defendants conducted, and continue to conduct, business in the County of Los
24 Angeles with respect to the consumer product that is the subject of this action.

25 **BACKGROUND AND PRELIMINARY FACTS**

- 26 11. In 1986, California voters approved an initiative to address growing concerns about
27 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to
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1 chemicals that cause cancer, birth defects, or other reproductive harm." Ballot Pamp.,
2 Proposed Law, Gen. Elec. (Nov. 4, 1986) at p. 3. The initiative, The Safe Drinking
3 Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code Sections
4 25249.5, *et seq.* ("Proposition 65"), helps to protect California's drinking water sources
5 from contamination, to allow consumers to make informed choices about the products
6 they buy, and to enable persons to protect themselves from toxic chemicals as they see
7 fit.

8 12. Proposition 65 requires the Governor of California to publish a list of chemicals known
9 to the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*
10 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over
11 700 chemicals and chemical families. Proposition 65 imposes warning requirements and
12 other controls that apply to Proposition 65-listed chemicals.

13 13. All businesses with ten (10) or more employees that operate or sell products in California
14 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
15 from knowingly discharging Proposition 65-listed chemicals into sources of drinking
16 water (*Health & Safety Code* § 25249.5), and (2) required to provide "clear and
17 reasonable" warnings before exposing a person, knowingly and intentionally, to a
18 Proposition 65-listed chemical (*Health & Safety Code* § 25249.6).

19 14. Proposition 65 provides that any person "violating or threatening to violate" the statute
20 may be enjoined in any court of competent jurisdiction. *Health & Safety Code* §
21 25249.7. "Threaten to violate" means "to create a condition in which there is a
22 substantial probability that a violation will occur." *Health & Safety Code* § 25249.11(e).
23 Defendants are also liable for civil penalties of up to \$2,500.00 per day per violation,
24 recoverable in a civil action. *Health & Safety Code* § 25249.7(b).

25 15. Plaintiff identified certain practices of exposing, knowingly and intentionally, persons in
26 California to Beauty Cases containing Diethyl Hexyl Phthalate and Bis (2-ethylhexyl)
27 phthalate ("DEHP") without first providing clear and reasonable warnings of such to the
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1 exposed persons prior to the time of exposure. Plaintiff later discerned that Defendants
2 engaged in such practice.

3 16. On January 1, 1988, the Governor of California added DEHP to the list of chemicals
4 known to the State to cause cancer, (*Cal. Code Regs.* tit. 27, § 27001(b)) and on October
5 24, 2003, the Governor added DEHP to the list of chemicals known to the State to cause
6 developmental male reproductive toxicity (*Cal. Code Regs.* tit. 27, § 27001(c)).
7 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
8 after addition of DEHP to the list of chemicals known to the State to cause reproductive
9 toxicity, DEHP became fully subject to Proposition 65 warning requirements and
10 discharge prohibitions.

11 **SATISFACTION OF PRIOR NOTICE**

12 17. Plaintiff served the following notices for alleged violations of Health and Safety Code
13 Section 25249.6, concerning consumer products exposures:

- 14 a. On or about February 14, 2020, Plaintiff gave notice of alleged violations of
15 Health and Safety Code Section 25249.6, concerning consumer products
16 exposures subject to a private action to AMAZON and to the California
17 Attorney General, County District Attorneys, and City Attorneys for each city
18 containing a population of at least 750,000 people in whose jurisdictions the
19 violations allegedly occurred, concerning Beauty Cases.
- 20 b. On or about July 10, 2020, Plaintiff gave notice of alleged violations of Health
21 and Safety Code Section 25249.6, concerning consumer products exposures
22 subject to a private action to AMAZON and to the California Attorney General,
23 County District Attorneys, and City Attorneys for each city containing a
24 population of at least 750,000 people in whose jurisdictions the violations
25 allegedly occurred, concerning Beauty Cases.

1 18. Before sending the notice of alleged violations, Plaintiff investigated the consumer
2 products involved, the likelihood that such products would cause users to suffer
3 significant exposures to DEHP, and the corporate structure of each of the Defendants.

4 19. Plaintiff's notices of alleged violation included Certificates of Merit executed by the
5 attorney for the noticing party, CAG. The Certificates of Merit stated that the attorney
6 for Plaintiff who executed the certificates had consulted with at least one person with
7 relevant and appropriate expertise who reviewed data regarding the exposures to DEHP,
8 the subject Proposition 65-listed chemical of this action. Based on that information, the
9 attorney for Plaintiff who executed the Certificates of Merit believed there was a
10 reasonable and meritorious case for this private action. The attorney for Plaintiff attached
11 to the Certificates of Merit served on the Attorney General the confidential factual
12 information sufficient to establish the basis of the Certificates of Merit.

13 20. Plaintiff's notices of alleged violations also included Certificates of Service and a
14 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986
15 (Proposition 65) A Summary." *Health & Safety Code § 25249.7(d)*.

16 21. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
17 gave notice of the alleged violations to AMAZON and the public prosecutors referenced
18 in Paragraph 17.

19 22. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
20 any applicable district attorney or city attorney has commenced and is diligently
21 prosecuting an action against the Defendants.

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FIRST CAUSE OF ACTION

(By CONSUMER ADVOCACY GROUP, INC. and against AMAZON, and DOES 1-10 for Violations of Proposition 65, The Safe Drinking Water and Toxic Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))

Beauty Cases

23. Plaintiff repeats and incorporates by reference paragraphs 1 through 22 of this complaint as though fully set forth herein.

24. Each of the Defendants is, and at all times mentioned herein was, a manufacturer, distributor, promoter, or retailer of Beauty Cases (“Beauty Cases I”), including but not limited to: “BR;” “BEAUTY CASE;” “Beauty For Life;” “TOTAL WT.: 72.48 G / 2.5OZ;” “Designed in U.S.A. Dist. By Rich On Inc. Los Angeles, CA 90023;” www.RICHONCOSMERTICS.com; “Made in China;” “Item #: AL-48A;” “7 16189 16540 8”.

25. Beauty Cases I contain DEHP.

26. Defendants knew or should have known that DEHP has been identified by the State of California as a chemical known to cause cancer and reproductive toxicity and therefore was subject to Proposition 65 warning requirements. Defendants were also informed of the presence of DEHP in Beauty Cases I within Plaintiff’s notice of alleged violations further discussed above at Paragraph 17a.

27. Plaintiff’s allegations regarding Beauty Cases I concerns “[c]onsumer products exposure[s],” which “is an exposure that results from a person’s acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, § 25602(b)*. Beauty Cases I are consumer products, and, as mentioned herein, exposures to DEHP took place as a result of such normal and foreseeable consumption and use.

28. Plaintiff is informed, believes, and thereon alleges that between February 14, 2017 and the present, each of the Defendants knowingly and intentionally exposed California consumers and users of Beauty Cases I, which Defendants manufactured, distributed, or

1 sold as mentioned above, to DEHP, without first providing any type of clear and
2 reasonable warning of such to the exposed persons before the time of exposure.

3 Defendants have distributed and sold Beauty Cases I in California. Defendants know
4 and intend that California consumers will use and consume Beauty Cases I, thereby
5 exposing them to DEHP. Defendants thereby violated Proposition 65.

6 29. The principal routes of exposure are through dermal contact, ingestion and inhalation.

7 Persons sustain exposures by handling Beauty Cases I without wearing gloves or any
8 other personal protective equipment, or by touching bare skin or mucous membranes
9 with or without gloves after handling Beauty Cases I, as well as through direct and
10 indirect hand to mouth contact, hand to mucous membrane, trans-dermal absorption, or
11 breathing in particulate matter emanating from Beauty Cases I during use, as well as
12 though environmental mediums that carry the DEHP once contained within the Beauty
13 Cases I.

14 30. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
15 Proposition 65 as to Beauty Cases I have been ongoing and continuous, as Defendants
16 engaged and continue to engage in conduct which violates Health and Safety Code
17 Section 25249.6, including the manufacture, distribution, promotion, and sale of Beauty
18 Cases I, so that a separate and distinct violation of Proposition 65 occurred each and
19 every time a person was exposed to DEHP by Beauty Cases I as mentioned herein.

20 31. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
21 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
22 violations alleged herein will continue to occur into the future.

23 32. Based on the allegations herein, Defendants are liable for civil penalties of up to
24 \$2,500.00 per day per individual exposure to DEHP from Beauty Cases I, pursuant to
25 Health and Safety Code Section 25249.7(b).

26 33. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
27 filing this Complaint.

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1 **SECOND CAUSE OF ACTION**

2 **(By CONSUMER ADVOCACY GROUP, INC. and against AMAZON, and DOES**
3 **11-20 for Violations of Proposition 65, The Safe Drinking Water and Toxic**
4 **Enforcement Act of 1986 (*Health & Safety Code, §§ 25249.5, et seq.*))**

5 **Cosmetic Accessories**

6 34. Plaintiff repeats and incorporates by reference paragraphs 1 through 33 of this complaint
7 as though fully set forth herein.

8 35. Each of the Defendants is, and at all times mentioned herein was, a manufacturer,
9 distributor, promoter, or retailer of Beauty Cases (“Beauty Cases II”), including but not
10 limited to: Brown Trunk Case “BR® Beauty Case”; “Beauty For Life”; “Total Weight:
11 72.48G/e.5 oz; “Item #: AL-48A”; “ASIN: B071SHVY5J”; “UPC 7 16189 16540 8”;
12 “Made in China”.

13 36. Beauty Cases II contain DEHP.

14 37. Defendants knew or should have known that DEHP has been identified by the State of
15 California as a chemical known to cause cancer and reproductive toxicity and therefore
16 was subject to Proposition 65 warning requirements. Defendants were also informed of
17 the presence of DEHP in Beauty Cases II within Plaintiff’s notice of alleged violations
18 further discussed above at Paragraph 17b.

19 38. Plaintiff’s allegations regarding Beauty Cases II concerns “[c]onsumer products
20 exposure[s],” which “is an exposure that results from a person’s acquisition, purchase,
21 storage, consumption, or other reasonably foreseeable use of a consumer good, or any
22 exposure that results from receiving a consumer service.” *Cal. Code Regs. tit. 27, §*
23 *25602(b)*. Beauty Cases II are consumer products, and, as mentioned herein, exposures
24 to DEHP took place as a result of such normal and foreseeable consumption and use.

25 39. Plaintiff is informed, believes, and thereon alleges that between July 19, 2017 and the
26 present, each of the Defendants knowingly and intentionally exposed California
27 consumers and users of Beauty Cases II, which Defendants manufactured, distributed, or
28 sold as mentioned above, to DEHP, without first providing any type of clear and

1 reasonable warning of such to the exposed persons before the time of exposure.

2 Defendants have distributed and sold Beauty Cases II in California. Defendants know
3 and intend that California consumers will use and consume Beauty Cases II, thereby
4 exposing them to DEHP. Defendants thereby violated Proposition 65.

5 40. The principal routes of exposure are through dermal contact, ingestion and inhalation.
6 Persons sustain exposures by handling Beauty Cases II without wearing gloves or any
7 other personal protective equipment, or by touching bare skin or mucous membranes
8 with or without gloves after handling Beauty Cases II, as well as through direct and
9 indirect hand to mouth contact, hand to mucous membrane, trans-dermal absorption, or
10 breathing in particulate matter emanating from Beauty Cases II during use, as well as
11 though environmental mediums that carry the DEHP once contained within the Beauty
12 Cases II.

13 41. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
14 Proposition 65 as to Beauty Cases II have been ongoing and continuous, as Defendants
15 engaged and continue to engage in conduct which violates Health and Safety Code
16 Section 25249.6, including the manufacture, distribution, promotion, and sale of Beauty
17 Cases II, so that a separate and distinct violation of Proposition 65 occurred each and
18 every time a person was exposed to DEHP by Beauty Cases II as mentioned herein.

19 42. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
20 mentioned herein is ever continuing. Plaintiff further alleges and believes that the
21 violations alleged herein will continue to occur into the future.

22 43. Based on the allegations herein, Defendants are liable for civil penalties of up to
23 \$2,500.00 per day per individual exposure to DEHP from Beauty Cases II, pursuant to
24 Health and Safety Code Section 25249.7(b).

25 44. Plaintiff has engaged in good faith efforts to resolve the claims alleged herein prior to
26 filing this Complaint.

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1 **PRAYER FOR RELIEF**

2 Plaintiff demands against each of the Defendants as follows:

- 3 1. A permanent injunction mandating Proposition 65-compliant warnings;
- 4 2. Penalties pursuant to Health and Safety Code Section 25249.7, subdivision (b);
- 5 3. Costs of suit;
- 6 4. Reasonable attorney fees and costs; and
- 7 5. Any further relief that the court may deem just and equitable.

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9 Dated: October 28, 2020

YEROUSHALMI & YEROUSHALMI*

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13 Reuben Yeroushalmi
14 Attorneys for Plaintiff,
15 CONSUMER ADVOCACY GROUP, INC.