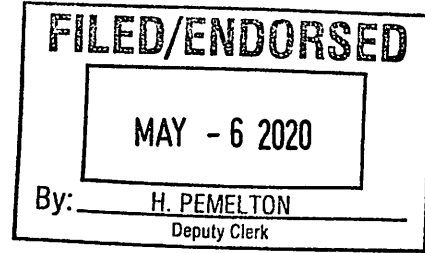


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9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF SACRAMENTO**

11 Kimberly Ann Harrison,

12 Plaintiff,

13 v.

14 Amazon.com, Inc., 8697132 Canada
15 Corporation, and Does 1-20,

16 Defendants.

Case No. *34-2020-00278063*

COMPLAINT FOR DAMAGES

Jury Trial Demanded

17 Kimberly Ann Harrison ("Plaintiff") alleges the following:

18 **INTRODUCTION**

19 1. This complaint is a representative action brought by Kimberly Ann Harrison
20 ("Plaintiff") in the public interest of the citizens of the State of California ("the People"). Plaintiff seeks
21 to remedy Defendants' failure to inform the People of exposure to lead, a known carcinogen.
22 Defendants expose consumers to lead by manufacturing, importing, selling, and/or distributing
23 ForeverSpin Brass Spinning Top - World Famous Spinning Tops ("Products"). Defendants know and
24 intend that customers will be exposed to Products containing lead.

25 2. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986, California
26 Health and Safety Code, section 25249.6 et seq. ("Proposition 65"), "[n]o person in the course of doing
27 business shall knowingly and intentionally expose any individual to a chemical known to the state to
28 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such

1 individual...” (Health & Safety Code, § 25249.6.)

2 3. California identified and listed lead as a chemical known to cause cancer as early as
3 October 1, 1992 and as a chemical known to cause developmental/reproductive toxicity in February of
4 1987.

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

8 5. Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers
9 in California before exposing them to lead in Products. (Health & Safety Code, § 25249.7(a).) Plaintiff
10 also seeks civil penalties against Defendants for their violations of Proposition 65 along with attorney’s
11 fees and costs. (Health & Safety Code, § 25249.7(b).)

12 **PARTIES**

13 6. Plaintiff Kimberly Ann Harrison (“Plaintiff”) is an adult resident of Sacramento County,
14 California. Plaintiff is dedicated to protecting the health of California citizens through the elimination
15 or reduction of toxic exposure from consumer products. Plaintiff brings this action in the public interest
16 pursuant to Health and Safety Code, section 25249.7.

17 7. Defendant Amazon.com, Inc. (“Amazon”) is a corporation organized and existing under
18 the laws of Delaware. Amazon does business in the County of Sacramento, within the meaning of
19 Health and Safety Code, section 25249.11. Amazon manufactures, imports, sells, or distributes the
20 Products in California and Sacramento County.

21 8. Defendant 8697132 Canada Corporation (“8697132 Canada”) is a corporation
22 organized and existing under the laws of Canada. 8697132 Canada does business in the County of
23 Sacramento, within the meaning of Health and Safety Code, section 25249.11. 8697132 Canada
24 manufactures, imports, sells, or distributes the Products in California and Sacramento County.

25 9. Plaintiff does not know the true names and/or capacities, whether individual, partners,
26 or corporate, of the defendants sued herein as Does 1 through 20, inclusive, and for that reason sues
27 said defendants under fictitious names. Plaintiff will seek leave to amend this Complaint when the true
28 names and capacities of these defendants have been ascertained. Plaintiff is informed and believes and

1 thereon alleges that these defendants are responsible in whole or in part for Plaintiff's alleged damages.
2 Together, Amazon, 8697132 Canada, and Does 1 through 20, inclusive, shall be referred to collectively
3 throughout this complaint as "Defendants".

4 10. At all times herein mentioned, Plaintiff believes each defendant identified above were
5 acting for and on behalf of each of the other Defendants, and as their agent, servant, representative, co-
6 venturer, partner, co-conspirator, or employee, and that all acts, conduct, and omissions herein alleged
7 were perpetrated while these defendants were acting within the authorized course and scope and
8 purpose of said agency, servitude, representation, venture, partnership, conspiracy, and/or employment,
9 or the acts were otherwise ratified by each and every Defendant.

10 **JURISDICTION AND VENUE**

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

15 12. Venue is proper in Sacramento County Superior Court pursuant to Code of Civil
16 Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this
17 County. Defendants conducted and continue to conduct business in this County as it relates to Products.

18 13. Defendants have sufficient minimum contacts in the State of California or otherwise
19 purposefully avails itself of the California market. Exercising jurisdiction over Defendants would be
20 consistent with traditional notions of fair play and substantial justice.

21 **FIRST CAUSE OF ACTION**

22 (Violation of Proposition 65 – Against all Defendants)

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

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

26 16. Defendants manufactured, imported, sold, and/or distributed Products containing lead
27 in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and believes such
28 violations have continued after receipt of the Notice (defined infra) and will continue to occur into the

1 future.

2 17. In manufacturing, importing, selling, and/or distributing Products, Defendants failed to
3 provide a clear and reasonable warning to consumers and individuals in California who may be exposed
4 to lead through reasonably foreseeable use of the Products.

5 18. Products expose individuals to lead through dermal contact and ingestion. This exposure
6 is a natural and foreseeable consequence of Defendants placing Products into the stream of commerce.
7 As such, Defendants intend that consumers will contact and ingest Products, exposing them to lead.

8 19. Defendants knew or should have known that the Products contained lead and exposed
9 individuals to lead in the ways provided above. The Notice informed Defendants of the presence of
10 lead in the Products.

11 20. Defendants' action in this regard were deliberate and not accidental.

12 21. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a
13 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff
14 provided the Notice to the various required public enforcement agencies along with a certificate of
15 merit. The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn
16 consumers in California of the health hazards associated with exposures to lead contained in the
17 Products.

18 22. The appropriate public enforcement agencies provided with the Notice failed to
19 commence and diligently prosecute a cause of action against Defendants.

20 23. Individuals exposed to lead contained in Products through dermal contact and ingestion
21 resulting from reasonably foreseeable use of the Products have suffered and continue to suffer
22 irreparable harm. There is no other plain, speedy, or adequate remedy at law.

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

26 **PRAYER FOR RELIEF**

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

- 28 1. Civil penalties in the amount of \$2,500 per day for each violation;

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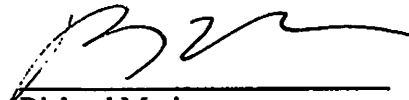
2. A preliminary and permanent injunction against Defendants from manufacturing, importing, selling, and/or distributing Products in California without providing a clear and reasonable warning as required by Proposition 65 and related Regulations;

3. Reasonable Attorneys' fees and costs of suit; and

4. Such other and further relief as may be just and proper.

Dated: May 5, 2020

Law Office of Rick Morin, PC



Richard Morin
Bryce Fick
Attorneys for Plaintiff