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ALAMEDA COUNTY

July 14, 2020

CLERK OF  
THE SUPERIOR COURT  
By Gina Fu, Deputy

CASE NUMBER:

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ENVIRONMENTAL HEALTH ADVOCATES, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA****IN AND FOR THE COUNTY OF ALAMEDA**ENVIRONMENTAL HEALTH ADVOCATES,  
INC., a California corporation,

Plaintiff,

v.

ELITE SPORTS, LLC., a California limited  
liability company, AMAZON.COM, INC., a  
Delaware corporation, and DOES 1 through  
100, inclusive,

Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health &amp; Safety Code § 25249.6 et seq.)

COMPLAINT

## I. INTRODUCTION

1  
2           1.       This Complaint is a representative action brought by Plaintiff in the public interest of  
3 the citizens of the State of California. Plaintiff seeks to enforce the People’s right to be informed of the  
4 presence of di(2-ethylhexyl) phthalate (“DEHP”), found in Elite Sports, LLC.’s (“Elite Sports”),  
5 Boxing Mitts (“Products”) manufactured, imported, sold, or distributed for sale in California, including  
6 for sale by retailer Amazon.com, Inc. (“Amazon”). Elite Sports and Amazon are collectively referred  
7 herein as “Defendants.”

8  
9           2.       Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California  
10 Health & Safety Code Section 25249.6 et seq. (“Proposition 65”), “[n]o person in the course of doing  
11 business shall knowingly and intentionally expose any individual to a chemical known to the state to  
12 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such  
13 individual. . . .” (Cal. Health & Safety Code, § 25249.6.)

14  
15           3.       California identified and listed DEHP as a chemical known to cause birth defects  
16 or other reproductive harm, as well as cancer, as early as January 1, 1988.

17           4.       Defendants’ Products manufactured, imported, sold, or distributed in California contain  
18 prohibited levels of DEHP.

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

22           6.       Plaintiff seeks injunctive relief compelling Defendants to cease exposing consumers in  
23 California to DEHP through its Products and/or sufficiently warn consumers in California before  
24 exposing them to DEHP in Products pursuant to Proposition 65 and related Regulations. (Cal. Health  
25 & Safety Code, § 25249.7(a).) Plaintiff also seeks civil penalties against Defendants for its violations  
26 of Proposition 65, attorney’s fees and costs. (Cal. Health & Safety Code, § 25249.7.)  
27  
28

## II. PARTIES

7. Plaintiff ENVIRONMENTAL HEALTH ADVOCATES, INC. ("Plaintiff") is a corporation organized in the State of California dedicated to protecting the health of California citizens through the elimination or reduction of toxic exposure from consumer products. It brings this action in the public interest pursuant to Health and Safety Code, section 25249.7.

8. Defendant ELITE SPORTS, LLC. ("Elite Sports"), is a limited liability company organized and existing under the laws of California. Elite Sports is registered to do and does business in California, County of Alameda, within the meaning of California Health and Safety Code section 25249.11. Elite Sports manufactures, imports, sells, or distributes Products in California and Alameda County.

9. Defendant AMAZON.COM, INC. ("Amazon"), is a corporation organized and existing under the laws of Delaware. Amazon is registered to do and does business in California, County of Alameda, within the meaning of California Health and Safety Code section 25249.11. Amazon manufactures, imports, sells, or distributes Products in California and Alameda County.

10. Plaintiff does not know the true names and/or capacities, whether individual, partners, or corporate, of the defendants sued herein as DOES 1 through 100, inclusive, and for that reason sues said defendants under fictitious names. Plaintiff will seek leave to amend this Complaint when the true names and capacities of these defendants have been ascertained. Plaintiff is informed and believes and thereon alleges that these defendants are responsible in whole or in part for Plaintiff's alleged damages.

## III. VENUE AND JURISDICTION

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

///

1           12.     Venue is proper in Alameda County Superior Court pursuant to Code of Civil Procedure  
2 sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this County.  
3 Defendant conducted and continue to conduct business in this County as it relates to Products.

4           13.     Defendants have sufficient minimum contacts in the State of California or otherwise  
5 purposefully avail themselves of the California market. Exercising jurisdiction over Defendants would  
6 be consistent with traditional notions of fair play and substantial justice.  
7

#### 8                                   **IV. CAUSES OF ACTION**

##### 9                                   **FIRST CAUSE OF ACTION**

##### 10                                   **(Violation of Proposition 65 – Against all Defendants)**

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

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

14           16.     Defendants manufactured, imported, sold, and/or distributed Products containing DEHP  
15 in violation of California Health and Safety Code section 25249.6 et seq. Plaintiff is informed and  
16 believes such violations have continued after receipt of the Notice (defined *infra*) and will continue to  
17 occur into the future.  
18

19           17.     In manufacturing, importing, selling, and/or distributing Products, Defendants failed to  
20 provide a clear and reasonable warning to consumers and individuals in California who may be exposed  
21 to DEHP through reasonably foreseeable use of the Products.  
22

23           18.     The presence of the DEHP in Products exposes individuals to DEHP through dermal  
24 exposure, ingestion, and inhalation by consumers.

25           19.     Defendants knew or should have known that the Products contained DEHP and exposed  
26 individuals to DEHP in the ways provided above. The Notice informed Defendants of the presence of  
27 DEHP in the Products. Likewise, media coverage concerning DEHP and related chemicals in consumer  
28 products, provided constructive notice to Defendants.

1           20. Defendants' actions in this regard were deliberate and not accidental.

2           21. More than sixty days prior to naming each Defendant in this lawsuit, Plaintiff issued a  
3 60-Day Notice of Violation ("Notices") as required by and in compliance with Proposition 65. Plaintiff  
4 provided the Notices to the various required public enforcement agencies along with a certificate of  
5 merit. The Notices alleged that Defendants violated Proposition 65 by failing to sufficiently warn  
6 consumers in California of the health hazards associated with exposures to DEHP contained in the  
7 Products.  
8

9           22. The appropriate public enforcement agencies provided with the Notices failed to  
10 commence and diligently prosecute a cause of action against Defendants.

11           23. Individuals exposed to DEHP contained in the Products resulting from reasonably  
12 foreseeable use of the Products have suffered and continue to suffer irreparable harm. There is no other  
13 plain, speedy, or adequate remedy at law.

14           24. Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation  
15 of Proposition 65 pursuant to California Health and Safety Code section 252497(b). Injunctive relief is  
16 also appropriate pursuant to California Health and Safety Code section 25249.7(a).  
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**V. PRAYER FOR RELIEF**

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

1. Civil penalties in the amount of \$2,500 per day for each violation;
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 attorney's fees and costs of suit; and
4. Such other and further relief as may be just and proper.

Respectfully submitted:

Dated: July 13, 2020

**NICHOLAS & TOMASEVIC, LLP.**

By:



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