

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

GLICK LAW GROUP, P.C.
Noam Glick (SBN 251582)
225 Broadway, Suite 2100
San Diego, California 92101
Tel: (619) 382-3400
Fax: (619) 393-0154
Email: noam@glicklawgroup.com

NICHOLAS & TOMASEVIC, LLP
Craig M. Nicholas (SBN 178444)
Jake W. Schulte (SBN 293777)
225 Broadway, Suite 1900
San Diego, California 92101
Tel: (619) 325-0492
Email: cnicholas@nicholaslaw.org
Email: jschulte@nicholaslaw.org

Attorneys for Plaintiff
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.: RG20067552

FIRST AMENDED COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF

(Health & Safety Code § 25249.6 et seq.)

FILED BY FAX
ALAMEDA COUNTY
August 25, 2020
CLERK OF
THE SUPERIOR COURT
By Nicole Hall, Deputy
CASE NUMBER:
RG20067552

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, and MMA Gloves ("Products") manufactured, imported, sold, or distributed for sale in
6 California, including for sale by retailer Amazon.com, Inc. ("Amazon"). Elite Sports and Amazon are
7 collectively referred 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
18 4. Defendants' Products manufactured, imported, sold, or distributed in California contain
19 prohibited levels of DEHP.

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

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

II. PARTIES

1
2 7. Plaintiff ENVIRONMENTAL HEALTH ADVOCATES, INC. ("Plaintiff") is a
3 corporation organized in the State of California dedicated to protecting the health of California citizens
4 through the elimination or reduction of toxic exposure from consumer products. It brings this action in
5 the public interest pursuant to Health and Safety Code, section 25249.7.

6 8. Defendant ELITE SPORTS, LLC. ("Elite Sports"), is a limited liability company
7 organized and existing under the laws of California. Elite Sports is registered to do and does business
8 in California, County of Alameda, within the meaning of California Health and Safety Code section
9 25249.11. Elite Sports manufactures, imports, sells, or distributes Products in California and Alameda
10 County.

11
12 9. Defendant AMAZON.COM, INC. ("Amazon"), is a corporation organized and existing
13 under the laws of Delaware. Amazon is registered to do and does business in California, County of
14 Alameda, within the meaning of California Health and Safety Code section 25249.11. Amazon
15 manufactures, imports, sells, or distributes Products in California and Alameda County.
16

17 10. Plaintiff does not know the true names and/or capacities, whether individual, partners,
18 or corporate, of the defendants sued herein as DOES 1 through 100, inclusive, and for that reason sues
19 said defendants under fictitious names. Plaintiff will seek leave to amend this Complaint when the true
20 names and capacities of these defendants have been ascertained. Plaintiff is informed and believes and
21 thereon alleges that these defendants are responsible in whole or in part for Plaintiff's alleged damages.
22

III. VENUE AND JURISDICTION

23
24 11. California Constitution Article VI, Section 10, grants the Superior Court original
25 jurisdiction in all cases except those given by statute to other trial courts. The Health & Safety Code
26 statute upon which this action is based does not give jurisdiction to any other court. As such, this Court
27 has jurisdiction.
28

///

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
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

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

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

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

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

[Rest of page intentionally left blank]

V. PRAYER FOR RELIEF

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

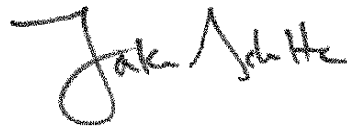
- 1. Civil penalties in the amount of \$2,500 per day for each violation;
- 2. A preliminary and permanent injunction against Defendants from manufacturing, importing, selling, and/or distributing Products in California without providing a clear and reasonable warning as required by Proposition 65 and 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: August 25, 2020

NICHOLAS & TOMASEVIC, LLP.

By:



Jake Schulte
Craig M. Nicholas

GLICK LAW GROUP, P.C.

Noam Glick

Attorneys for Plaintiff