

George Rikos, Esq. (SBN 204864)
LAW OFFICES OF GEORGE RIKOS
555 Beech Street, Suite 500
San Diego, CA 92101
Telephone: (858) 342-9161
Facsimile: (858) 724-1453
Email: george@georgerikoslaw.com

Attorneys for Plaintiff,
Victoria Jamison

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Emily Schilawski, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

VICTORIA JAMISON, an individual

Plaintiff,

v.

ISPECLE, LLC. a Delaware limited liability
company; AMAZON.COM, Inc., a Delaware
corporation; and DOES 1 through 10

Defendants.

Case No. 37-2021-00039456-CU-MC-CTL

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

Plaintiff Victoria Jamison ("Plaintiff") brings this action in the interests of the general public
and, on information and belief, hereby alleges:

INTRODUCTION

1. This action seeks to remedy the failure of defendants to warn individuals in
California that they are being exposed to the chemical Diethylhexylphthalate ("DEHP") by their
product, the **ISPECLE Messenger bag** ("Product").

2. California's Proposition 65 (Health & Safety Code § 25249.5, *et seq.*), is a right to
know statute. Under Proposition 65, it is unlawful for business to knowingly and intentionally
expose individuals in California to chemicals known to the State to cause cancer, birth defects, or
other reproductive harm without providing clear and reasonable warnings to individuals prior to

1 themselves of the California market through the distribution and sale of the Products in the State
2 of California to render the exercise of jurisdiction over this defendant by the California courts
3 consistent with traditional notions of fair play and substantial justice.

4 8. Venue in this action is proper in the San Diego Superior Court because Defendants
5 have violated or threaten to violate California law in the County of San Diego.

6 **PARTIES**

7 9. Plaintiff Victoria Jamison is a resident of San Diego County California and
8 working to protect human health and the environment. Plaintiff is a person with the meaning of
9 Health & Safety Code § 25118 and brings this enforcement action in the public interest pursuant to
10 Health & Safety Code § 25249.7(d).

11 10. Defendant ISPECLE, LLC. is a limited liability company organized under the State
12 of Delaware and is a person doing business with the meaning of Health & Safety Code §
13 25249.11. Defendant Amazon.com, Inc. is a corporation organized under the State of Delaware
14 and is a person doing business with the meaning of Health & Safety Code § 25249.11.

15 11. Defendants have manufactured, packaged, distributed, marketed and/or offered the
16 Product for sale or use in California and the County of San Diego. Plaintiff is informed and
17 believes, and thereupon alleges, that Defendants continue to manufacture, package, distribute,
18 market and/or sell the Products in California and in San Diego County.

19 **STATUTORY BACKGROUND**

20 12. The People of the State of California have declared in Proposition 65 their right
21 “[t]o be informed about exposures to chemicals that cause cancer, birth defects or other
22 reproductive harm.” Section 1(b) of Initiative Measure, Proposition 65.

23 13. To effect this goal, Proposition 65 requires that individuals be provided with a
24 “clear and reasonable warning” before being exposed to substances listed by the State of
25 California as causing cancer or reproductive toxicity. Health & Safety Code § 25249.6 states, in
26 pertinent part:

27 No person in the course of doing business shall knowingly and intentionally
28 expose any individual to a chemical known to the state to cause cancer or
reproductive toxicity without first giving clear and reasonable warning to such

individual...

14. “Knowingly” refers to knowledge of the fact that a discharge of, release of, or exposure to a chemical listed pursuant to Section 25249.8(a) of the Act is occurring. No knowledge that the discharge, release or exposure is unlawful is required.” 27 Cal. Code of Regs. (“CCR”) §§ 25102(n).

15. Proposition 65 provides that any “person who violates or threatens to violate” the statute may be enjoined in a court of competent jurisdiction. Health & Safety Code § 25249.7. The phrase “threaten to violate” is defined to mean creating “a condition in which there is a substantial probability that a violation will occur.” Health & Safety Code § 25249.11(e). Violators are liable for civil penalties of up to \$2,500 per day for each violation of the Health & Safety Code § 25249.7.

16. In 1988, the State of California officially listed the chemical DEHP as a chemical known to cause cancer. It was also added again in 2003 for additional toxicities. DEHP became subject to the warning requirement one year later and was therefore subject to the “clear and reasonable” warning requirements of Proposition 65 beginning on January 1, 1989. Health & Safety Code § 25249.6 *et seq.*; 27 Cal. Code Regs. §§ 25000, *et seq.* Defendants failed to comply with Health & Safety Code 25601, *et seq.* because it did not provide a clear and reasonable warning as required. Defendant further failed to comply with 27 Cal. Code Regs. §§ 25602 because it failed to provide a clear and reasonable warning for internet purchases as required. Defendants also failed to comply with 27 Cal. Code Regs. § 25603 because it did not provide a clear and reasonable warning on the subject product as required by § 25603(a)(1).

FACTUAL BACKGROUND

17. To test Defendant’s Products for DEHP, Plaintiff hired a well-respected and accredited testing laboratory and toxicologist. The results of testing undertaken by Plaintiff of the Products show that they were in excess of the safe harbor limits and therefore in violation for DEHP.

18. Based on testing results, on September 25, 2020, Plaintiff sent a 60-Day Notice of Proposition 65 Violations (“Notice”) to defendants regarding the Product.

1 19. On the same day they were sent to Defendants, each Notice was also sent to the
2 requisite public enforcement agencies.

3 20. Each of the Notices described above were issued pursuant to, and in compliance
4 with, the requirements of Health & Safety Code § 25249.7(d) and the statute's implementing
5 regulations regarding the notice of the violations to be given to certain public enforcement
6 agencies and to the violators. Each of the Notices included, *inter alia*, the following information:
7 the name, address, and telephone number of the noticing individuals; the name of the alleged
8 violator; the statute violated; the approximate time period during which violations occurred; and
9 descriptions of the violations, including the chemical involved, the routes of toxic exposure, and
10 the specific product or type of product causing the violations, and was issued as follows:

- 11 a. The relevant Defendants were provided a copy of the Notice by U.S. Mail.
- 12 b. The relevant Defendants were provided a copy of the document entitled "The
13 Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A
14 Summary," which is also known as Appendix A to Title 27 of Cal. Code Regs §
15 25903.
- 16 c. The California Attorney General was provided a copy of the Notice via online
17 submission.
- 18 d. The California Attorney General was provided with a Certificate of Merit by
19 the attorney for the noticing party, stating that there is a reasonable and
20 meritorious case for this action, and attaching factual information sufficient to
21 establish a basis for the certificate, including the identity of the persons
22 consulted with and relied on by the certified, and the facts, studies, or other data
23 reviewed by those persons, pursuant to Health & Safety Code § 25249.7(h)(2).
- 24 e. The district attorneys, city attorneys or prosecutors of each jurisdiction within
25 which the Nut Butter Products are offered for sale within California were
26 provided with a copy of the Notice pursuant to Health & Safety Code §
27 25249.7(d)(1).

28 21. At least 60-days have elapsed since Plaintiff sent each of the Notices to Defendants.

1 The appropriate public enforcement agencies have failed to commence and diligently prosecute a
2 cause of action under Health & Safety Code § 25249.5, *et seq.* against Defendants based on the
3 allegations herein.

4 22. On information and belief, the Products have been manufactured,
5 distributed, and/or sold by Defendants in California. On information and belief, the Product
6 continues to be distributed and sold in California without the requisite warning information.

7 23. At all times relevant to this action, Defendants have knowingly and intentionally
8 exposed the users of the Products to DEHP without first giving a clear and reasonable warning to
9 such individuals.

10 24. As a proximate result of acts of Defendants as persons in the course of doing
11 business within the meaning of Health & Safety Code § 25249.11, individuals throughout the
12 State of California, including the County of San Diego, have been exposed to DEHP without a
13 clear and reasonable warning. The individuals subject to the illegal exposures include normal and
14 foreseeable users of the Products, as well as all other persons exposed to the Products.

15
16 **FIRST CAUSE OF ACTION**
17 **(Violations of Health and Safety Code § 25249.5, *et seq.*)**

18 25. Plaintiff re-alleges and incorporates by reference Paragraphs 1 through 24,
19 inclusive, as if specifically set forth herein.

20 26. Defendants are a person doing business within the meaning of Health & Safety
21 Code § 25249.11.

22 27. DEHP is listed on the State of California as a chemical known to cause cancer.

23 28. Defendants have and continues to knowingly and intentionally expose individuals
24 who have dermal contact with the Products to the chemical DEHP without first providing a clear
25 and reasonable warning to such individuals pursuant to Health & Safety Code §§ 25249.6 and
26 25249.11(f).

27 29. Continuing commission by Defendants of the acts alleged above will irreparably
28 harm the citizens of the State of California, for which harm they have no plain, speedy, or

adequate remedy at law.


PRAYER FOR RELIEF

Wherefore, Plaintiff prays for the following relief:

1. A preliminary and permanent injunction, pursuant to Health & Safety Code § 25249.7(b), enjoining Defendants, their agents, employees, assigns and all persons acting in concert or participating with Defendants, from distributing or selling the Products in California without first providing a clear and reasonable warning that consumers of the Products are exposed to DEHP;
2. An injunctive order, pursuant to Health & Safety Code § 25249.7(b), compelling Defendants to identify and locate each individual who has purchased the Product and to provide a warning to such persons that they have been exposed to a chemical known to cause cancer.
3. An assessment of civil penalties pursuant to Health & Safety Code § 25249.7(b) against Defendants in the amount of \$2,500 per day for violation of Proposition 65;
4. An award to Plaintiff of its reasonable attorney's fees and costs of suit pursuant to California Code of Civil Procedure § 1021.5, as Plaintiff shall specify in further application to the Court; and,
5. Such other and further relief as may be just and proper.

DATED: September 15, 2021

LAW OFFICES OF GEORGE RIKOS


George Rikos
Attorney for Plaintiff
Victoria Jamison