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ELECTRONICALLY  
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*Superior Court of California,  
County of San Francisco*  
**08/01/2022**  
**Clerk of the Court**  
BY: KAREN VALDES  
Deputy Clerk

Attorneys for Plaintiff  
KEEP AMERICA SAFE AND BEAUTIFUL

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO  
UNLIMITED CIVIL JURISDICTION

KEEP AMERICA SAFE AND BEAUTIFUL,  
Plaintiff,  
v.  
ENCASED PRODUCTS, INC.;  
AMAZON.COM, INC.; and DOES 1-30,  
inclusive,  
Defendants.

Case No.

**CGC-22-601018**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

1 Plaintiff KEEP AMERICA SAFE AND BEAUTIFUL, acting in the public interest, alleges a  
2 cause of action against Defendants ENCASED PRODUCTS, INC., AMAZON.COM, INC., and  
3 DOES 1-30.

#### 4 **INTRODUCTION AND NATURE OF THE ACTION**

5 1. This Complaint is a representative action brought by plaintiff Keep America Safe and  
6 Beautiful (“**KASB**”) in the public interest of the citizens of the State of California to enforce the  
7 People’s right to be informed of the health hazards caused by exposures to Bisphenol A (“**BPA**”), a  
8 toxic chemical found in and on the smart phone cases manufactured, imported, distributed, sold or  
9 offered for sale by Defendants in the State of California.

10 2. By this Complaint, plaintiff seeks to remedy Defendants’ continuing failure to warn  
11 individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.*  
12 (“**consumers**”) they are being exposed to substances known to the State of California to cause  
13 developmental and female reproductive toxicity through exposures to BPA, when they purchase, use  
14 or handle Defendants’ smart phone cases.

15 3. Detectable levels of BPA are found in and on the smart phone cases that Defendants  
16 manufacture, import, sell or distribute for sale to individuals throughout California.

17 4. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
18 Health and Safety Code § 25249.6 *et seq.* (“**Proposition 65**”), it is unlawful for a person in the course  
19 of doing business to knowingly and intentionally expose consumers in California to chemicals known  
20 to the State to cause cancer, birth defects or other reproductive harm, without first providing a “clear  
21 and reasonable” health hazard warning to such individuals prior to purchase or use.

22 5. KASB contends and alleges Defendants manufacture, distribute, import, sell, and offer  
23 for sale, in and into California smart phone cases (“**PRODUCTS**”) containing BPA, without  
24 Proposition 65’s requisite health hazard warning regarding the harms associated with exposures to the  
25 chemical, including, but not limited to, *Encased iPhone 12 Pro Max Wallet Case-Purple, Item*  
26 *model# PS129IG, ASIN B08KHQV7YT*. Defendants’ conduct subjects them to civil penalties for each  
27 violation, enjoinder as well as preliminary and permanent injunctive relief. Health & Safety Code  
28 § 25249.7(a) and (b).

**PARTIES**

6. Plaintiff KASB is a non-profit corporation organized under the laws of California and acting in the interest of the general public, dedicated to protecting the health of California citizens and the environment through the elimination or reduction of toxic chemicals utilized in manufacturing consumer products and to increasing public awareness of those chemicals through the promotion of sound environmental practices and corporate responsibility. KASB is a person within the meaning of Health & Safety Code § 25249.11(a), and it brings this action in the public interest, pursuant to Health & Safety Code § 25249.7(d).

7. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant ENCASED PRODUCTS, INC. (“**ENCASED PRODUCTS**”) was and is a “person” “in the course of doing business” with ten (10) or more employees, within the meanings of Health & Safety Code §§ 25249.6 and 25249.11.

8. ENCASED PRODUCTS manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

9. Plaintiff is informed, believes, and thereon alleges, at all relevant times, Defendant AMAZON.COM, INC. (“**AMAZON**”) was and is a “person” “in the course of doing business” with ten (10) or more employees, within the meanings of Health & Safety Code §§ 25249.6 and 25249.11.

10. AMAZON imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California, or implies by its conduct that it imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the State of California.

11. Defendants DOES 1-10 (“**MANUFACTURER DEFENDANTS**”) are each a person in the course of doing business within the meaning of Health & Safety Code §§ 25249.6 and 25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble, fabricate, and manufacture, or each implies by its conduct that it does such for one or more of the PRODUCTS offered for sale or use in California.

12. Defendants DOES 11-20 (“**DISTRIBUTOR DEFENDANTS**”) are each a person in the course of doing business within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.

1 DISTRIBUTOR DEFENDANTS, and each of them, distribute, transfer, and transport, or each  
2 impliedly does so by its conduct, one or more of the PRODUCTS to individuals, businesses, or  
3 retailers for sale or use in the State of California

4 13. Defendants DOES 21-30 (“**RETAILER DEFENDANTS**”) are each a person in the  
5 course of doing business within the meaning of Health & Safety Code §§ 25249.6 and 25249.11.  
6 RETAILER DEFENDANTS, and each of them, by and through their conduct, offer the PRODUCTS  
7 for sale to individuals in the State of California.

8 14. At this time, the true names of Defendants DOES 1 through 30, inclusive, are unknown to  
9 plaintiff, who, therefore, sues said DOES Defendants by their fictitious names, pursuant to Code of  
10 Civil Procedure § 474. Plaintiff is informed and believes, and on that basis alleges, each of the  
11 fictitiously named Defendants is responsible in some manner for the acts and occurrences alleged  
12 herein and the damages caused thereby. When ascertained, their true names and capacities shall be  
13 reflected in an amended complaint.

14 15. At all times mentioned herein, ENCASED PRODUCTS, AMAZON, MANUFACTURER  
15 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall,  
16 hereinafter, where appropriate, be referred to collectively as the “**DEFENDANTS.**”

### 17 **JURISDICTION AND VENUE**

18 16. This Court has jurisdiction over this action, pursuant to Cal. Health & Safety Code  
19 § 25249.7, allowing enforcement by any court of competent jurisdiction. The California Superior  
20 Court has jurisdiction over this action, pursuant to California Constitution Article VI, section 10,  
21 which grants the Superior Court “original jurisdiction in all causes except those given by statute to  
22 other trial courts.” The statute under which this action is brought does not specify any other basis of  
23 subject matter jurisdiction.

24 17. The California Superior Court has jurisdiction over DEFENDANTS, based on plaintiff’s  
25 information and good faith belief DEFENDANTS are each a person, firm, corporation or association  
26 that is a citizen of the State of California, does sufficient business in California, has sufficient  
27 minimum contacts in California, and/or otherwise purposefully and intentionally avail themselves of  
28 the California market through their manufacture, importation, distribution, promotion, marketing or

1 sale of PRODUCTS within the State. DEFENDANTS’ purposeful availment renders the exercise of  
2 personal jurisdiction by California courts consistent with traditional notions of fair play and  
3 substantial justice.

4 18. Venue is proper in the Superior Court for the County of San Francisco, pursuant to Code  
5 of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
6 because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of  
7 wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS  
8 conducted, and continue to conduct, business in the County of San Francisco with respect to the  
9 PRODUCTS that are the subject of this action.

#### 10 **REGULATORY BACKGROUND AND LAW**

11 19. In 1986, the people of the State of California approved an initiative addressing the harms  
12 caused by hazardous chemicals and declared their right “[t]o be informed about exposures to  
13 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp., Proposed  
14 General Law, Gen. Elec. (Nov. 4, 1986) at p.3.

15 20. Formally known as the Safe Drinking Water and Toxic Enforcement Act of 1986 and  
16 codified at Health & Safety Code § 25249.6 *et seq.*, Proposition 65 states, in relevant part, “[n]o  
17 person in the course of doing business shall knowingly and intentionally expose any individual to a  
18 chemical known to cause cancer or reproductive toxicity without first giving a clear and reasonable  
19 warning to such individual...”

20 21. Under the Act, a “person in the course of doing business” is defined as a business with  
21 ten (10) or more employees. Health & Safety Code § 25249.11(b). Businesses are prohibited from  
22 exposing individuals to hazardous chemicals without first giving a “clear and reasonable” warning.  
23 Health & Safety Code § 25249.6.

24 22. Exposing individuals to hazardous chemicals means to cause individuals to ingest, inhale,  
25 contact via body surfaces or otherwise come into contact with a listed chemical. 27 CCR § 25102(i).  
26 An exposure to a hazardous chemical is defined as one that “results from a person’s acquisition,  
27 purchase, storage, consumption or other reasonably foreseeable use of a product...”  
28 27 C.C.R. § 25600(h).

23. Under Proposition 65, persons violating the statute may be enjoined in any court of competent jurisdiction and may be subject to civil penalties of up to \$2,500 per day, per violation. Health & Safety Code § 25249.7.

24. On May 11, 2015, pursuant to Proposition 65's implementing regulations, California identified and listed BPA as a chemical known to the State cause female reproductive toxicity. BPA became subject to the "clear and reasonable warning" requirements one year later, on May 11, 2016. 27 C.C.R. § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b).

## **STATEMENT OF FACTS**

25. Plaintiff purchased DEFENDANTS' PRODUCTS, without a warning, in California.

26. Plaintiff investigated and tested DEFENDANTS' PRODUCTS at an accredited lab, and consulted with a person with relevant and appropriate knowledge and expertise, who, after reviewing the collected data and analyzing the risk of exposure to BPA, determined the PRODUCTS subject consumers in California to exposure to the listed chemical at levels requiring a warning under the statute, based on touching, handling or otherwise utilizing PRODUCTS in accordance with their reasonably foreseeable and intended usages.

27. Based on the foregoing, Plaintiff's attorney executed a certificate of merit, attesting there was a reasonable and meritorious case for this private action and included the factual information supporting the certificate when it served the notice on the California Attorney General's Office, as required. Health & Safety Code § 25249.7(d); Title 11 C.C.R. § 3102.

28. Thereafter, on May 13, 2021, plaintiff served a 60-Day Notice of Violation (“**Notice**”), together with the certificate of merit, on ENCASED PRODUCTS, AMAZON, the California Attorney General’s Office, and the requisite public enforcement agencies, alleging, as a result of DEFENDANTS’ sales of the PRODUCTS, consumers in the State of California were, and are, being exposed to BPA through their reasonably foreseeable use of the PRODUCTS as intended without first receiving a “clear and reasonable warning,” as required by Proposition 65.

29. After receiving plaintiff's Notice, no public enforcement agency has commenced and is diligently prosecuting a cause of action against DEFENDANTS under Proposition 65 to enforce the alleged violations that are the subject of the Notice.

1 **FIRST CAUSE OF ACTION**

2 **(Violation of Proposition 65 - Against All DEFENDANTS)**

3 30. KASB realleges and incorporates by reference, as if fully stated herein, the allegations set  
4 forth in Paragraphs 1 through 29, inclusive.

5 31. DEFENDANTS' PRODUCTS contain BPA in levels requiring a clear and reasonable  
6 warning under Proposition 65.

7 32. DEFENDANTS know or should have known the PRODUCTS they manufacture, import,  
8 distribute, sell, and offer for sale in California contain BPA. As a result of plaintiff's Notice,  
9 DEFENDANTS also have actual knowledge of the presence of BPA in the PRODUCTS.

10 33. The PRODUCTS DEFENDANTS manufacture, import, distribute, sell, and offer for sale  
11 in or into the State of California cause exposures to BPA, both direct and/or indirect dermal contact  
12 and ingestion, through the reasonably foreseeable use of the PRODUCTS.

13 34. The normal and reasonably foreseeable use of the PRODUCTS has caused, and continues  
14 to cause, exposures to BPA.

15 35. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS  
16 exposes consumers to BPA through direct and indirect dermal contact and/or ingestion.

17 36. DEFENDANTS intend exposures to BPA from the reasonably foreseeable use of the  
18 PRODUCTS to occur by their deliberate, non-accidental participation in the California marketplace.

19 37. The exposures to BPA, caused by DEFENDANTS and endured by consumers in  
20 California, are not exempt from the "clear and reasonable" warning requirements of Proposition 65.

21 38. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers  
22 and other individuals in California who have been, or who will be, exposed to BPA through direct  
23 and indirect dermal contact and/or ingestion resulting from the use of the PRODUCTS as intended.

24 39. Contrary to the express policy and statutory prohibition of Proposition 65, consumers  
25 exposed to BPA through dermal contact and ingestion as a result of their use of the PRODUCTS that  
26 DEFENDANTS sold without a "clear and reasonable" health hazard warning, have suffered, and  
27 continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.  
28

1 40. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for sale  
2 or use in violation of Health & Safety Code § 25249.6, and DEFENDANTS' violations have  
3 continued beyond their receipt of plaintiff's Notice. As such, DEFENDANTS' violations are  
4 ongoing and continuous in nature and, unless enjoined, will continue in the future.

5 41. Pursuant to Health & Safety Code § 25249.7(b), as a consequence of the above-described  
6 acts, DEFENDANTS, and each of them, are liable for a maximum civil penalty of \$2,500 per day for  
7 each violation.

8 42. As a consequence of the above-described acts, Health and Safety Code § 25249.7(a) also  
9 specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

10 **PRAYER FOR RELIEF**

11 Wherefore, KASB prays for relief and judgment against DEFENDANTS, and each of them,  
12 as follows:

13 1. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and  
14 permanently enjoin DEFENDANTS from manufacturing, distributing, importing, marketing or  
15 otherwise offering the PRODUCTS for sale or use in California without first providing a "clear and  
16 reasonable warning" to consumers addressing the harms associated with exposures to BPA;

17 2. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary and  
18 permanent injunctions mandating DEFENDANTS recall all PRODUCTS currently in the chain of  
19 commerce in California that do not bear a clear and reasonable health hazard warning;

20 3. That the Court assess civil penalties against DEFENDANTS, and each of them, in the  
21 amount of \$2,500 per day for each violation of Proposition 65, in an amount to be determined at trial;

22 4. That the Court award plaintiff its reasonable attorneys' fees and costs of suit, incurred  
23 herein; and

24 5. That the Court grant any further relief as it deems just and equitable.

25 Dated: July 29, 2022

Respectfully submitted,

26  
27 By: 

Laralee Paras  
Attorneys for Plaintiff  
*Keep America Safe and Beautiful*