

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**05/11/2022**  
Clerk of the Court  
BY: LAURA SIMMONS  
Deputy Clerk

1 JAMES KAWAHITO (SBN 234851)  
2 KAWAHITO LAW GROUP APC  
3 300 Corporate Pointe, Suite 340  
4 Culver City, CA 90230  
5 Telephone: (310) 746-5300  
6 Facsimile: (310) 593-2520  
7 Email: jkawahito@kawahitolaw.com

8 Attorneys for Plaintiff EnviroProtect, LLC

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **COUNTY OF SAN FRANCISCO**

**CGC-22-599599**

11 ENVIROPROTECT, LLC, in the public  
12 interest,

13 Plaintiff,

14 vs.

15 AMSCAN, INC., a New York Corporation;  
16 and DOES 1 through 50, inclusive,

17 Defendants.

Case Number:

**COMPLAINT FOR INJUNCTIVE RELIEF  
AND CIVIL PENALTIES**

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

18 Plaintiff EnviroProtect, LLC ("EP" or "Plaintiff"), in the public interest, alleges as follows  
19 as to matters within its own knowledge, and on information and belief as to all other matters:

20 **INTRODUCTION**

21 1. This action seeks to remedy the alleged failure of Amscan, Inc ("AMSCAN") and DOES  
22 1-50 (hereinafter individually referred to as "Defendant" and collectively as "Defendants") to  
23 warn consumers in California that they are being exposed to Di-(2-ethylhexyl) phthalate  
24 ("DEHP"), a substance known to the State of California to cause cancer and  
25 developmental/reproductive toxicity. Plaintiff alleges such exposures have occurred through the  
26 manufacture, distribution, sale and consumer use of Defendants costume and costume accessory  
27 packaging and carrying cases and storage cases/bags, which were imported, sold and/or  
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1 distributed for sale in California by AMSCAN (the “Products”). Plaintiff alleges that California  
2 consumers are directly exposed to DEHP through the touching of the components of the  
3 Products. In addition, Plaintiff alleges that DEHP transferred to the hand is then ingested  
4 through hand to mouth contact.

5 2. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and  
6 Safety Code Section 25249.5 *et seq.* (hereinafter “Proposition 65”), it is unlawful for businesses  
7 to knowingly and intentionally expose individuals in California to chemicals known to the State  
8 to cause cancer and/or birth defects or other reproductive harm above the safe harbor levels,  
9 which include the No Significant Risk Levels (“NSRLs”) and/or Maximum Allowable Dose  
10 Levels (“MADLs”) without providing “clear and reasonable” warnings to individuals prior to  
11 their exposure.

12 3. Despite the fact that Defendants’ Products allegedly expose consumers to levels of DEHP  
13 above the listed NSRLs and MADLs, Plaintiff contends that Defendants failed to provide any  
14 warnings about the reproductive and carcinogenic hazards associated with DEHP exposure.  
15 Moreover, plaintiff alleges that Defendants’ manufacture, packaging, distribution, marketing,  
16 and/or sales of the Products without the required Proposition 65 warnings, causes consumers to  
17 be involuntarily, unknowingly and unwittingly exposed to levels of DEHP that violate  
18 Proposition 65. Thus, Plaintiff alleges that Defendants’ conduct subjects them to civil penalties  
19 and injunctive relief.

### 20 JURISDICTION AND VENUE

21 4. This Court has jurisdiction over this action pursuant to Cal. Health & Safety Code §  
22 25249.7, which allows enforcement in any court of competent jurisdiction. The California  
23 Superior Court has jurisdiction over this action pursuant to California Constitution Article VI,  
24 Section 10, which grants the Superior Court “original jurisdiction in all cases except those given  
25 by statute to other trial courts.” The statute under which this is brought does not specify any other  
26 court with jurisdiction.

1 5. This Court has jurisdiction over Defendants because they are business entities that do  
2 sufficient business, have sufficient minimum contacts or otherwise intentionally avails themselves  
3 of the California market through the sale, marketing, or use of the Products in the California  
4 market and/or by having such other contact with California so as to render the exercise of  
5 jurisdiction over them by the California courts consistent with traditional notions of fair play and  
6 substantial justice.

7 6. Venue is proper in this Court because, upon information and belief, one or more of the  
8 violations arise in San Francisco County.

9 **THE PARTIES**

10 7. EP is a limited liability company organized under the laws of California acting in the  
11 interest of the general public seeking to further, among other causes, the protection of the  
12 environment, awareness of dangerous chemicals in consumer products, and corporate  
13 accountability. EP is a “person” within the meaning of Cal. Health & Safety Code § 25249.11(a)  
14 and brings this enforcement action in the public interest pursuant to Cal. Health & Safety Code §  
15 25249.7(d).

16 8. EP is informed and believes, and thereon alleges, that defendant AMSCAN is a New York  
17 Corporation who supplies consumer products to various retail stores in the state of California.  
18 AMSCAN is therefore a “person in the course of doing business” within the meaning of Cal.  
19 Health & Safety Code § 25249.11(b).

20 9. EP is unaware of the true names or capacities of the Defendants sued herein under the  
21 fictitious names DOES 1-50, but prays for leave to amend and serve such fictitiously named  
22 Defendants pursuant to California Code of Civil Procedure § 474, once their names and capacities  
23 become known.

24 10. EP is informed and believes, and thereon alleges, that each and all of the acts and  
25 omissions alleged herein were performed by, or are attributable to, Defendants and DOES 1-50,  
26 each acting as the agent for the other, with legal authority to act on the other’s behalf. Upon  
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1 information and belief, the acts of Defendants were in accordance with, and represent the official  
2 policies of Defendants.

3 11. At all times herein mentioned, upon information and belief, the Defendants, and each of  
4 them, ratified each and every act or omission complained of herein. At all times herein  
5 mentioned, upon information and belief, Defendants, and each of them, aided and abetted the acts  
6 and omissions of each and all the other Defendants proximately causing the damages herein  
7 alleged.

8 12. EP is informed and believes, and thereon alleges, that each of Defendants are in some  
9 manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences,  
10 and transactions alleged herein.

11 **STATUTORY AND REGULATORY BACKGROUND**

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

15 14. To effectuate this goal, Proposition 65 requires that individuals be provided with a "clear  
16 and reasonable warning" before being exposed to substances listed by the State of California as  
17 causing cancer or reproductive toxicity. Cal. Health and Safety Code §25249.6 states, in pertinent  
18 part:

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

23 15. A product exposure to a chemical is one that "results from a person's acquisition,  
24 purchase, storage, consumption, or other reasonably foreseeable use of a product . . . ." 27 C.C.R.  
25 §25600(h).

26 16. Proposition 65 provides that any "person who violates or threatens to violate" the statute  
27 may be enjoined in a court of competent jurisdiction. Cal. Health & Safety Code §25249.7. The  
28 phrase "threaten to violate" is defined to mean creating "a condition in which there is a substantial  
probability that a violation will occur" Cal. Health & Safety Code §25249.11(e). Violators are

1 liable for civil penalties of up to \$2,500 per day for each violation of the Act. Cal. Health &  
2 Safety Code §25249.7.

3 17. On October 24, 2003, the State of California officially listed DEHP as a chemical known  
4 to cause cancer. On October 24, 2004, one year after it was listed as a chemical known to cause  
5 cancer and reproductive/developmental toxicity, DEHP became subject to the clear and reasonable  
6 warning requirement regarding under Proposition 65. 27 C.C.R. §27001(c); Cal. Health & Safety  
7 Code §25249.10(b). Due to the toxicity of DEHP, the California Office of Environmental Health  
8 Hazard Assessment (“OEHHA”) set the NSRL for exposure to DEHP at 310 micrograms per day  
9 and a MADL of 410 micrograms per day for oral ingestion.

10 **STATEMENT OF RELEVANT FACTS**

11 18. EP purchased the Product in August 2021.

12 19. To test Defendants’ Products for phthalates, EP engaged a well-respected and accredited  
13 testing laboratory to determine the amount of DEHP contained in the Products pursuant to testing  
14 methods adopted by the Federal Consumer Products Safety Commission. The testing revealed  
15 that the Product had levels of DEHP that Plaintiff believes would result in exposure of DEHP to  
16 consumers higher than the limit proscribed by the NSRL and MADL.

17 20. Plaintiff alleges that Defendants’ Products contain sufficient quantities of DEHP such that  
18 individuals who handle the Products are exposed to significant amounts of DEHP through the  
19 average and intended use of the Products. For example, ordinary consumers absorb DEHP  
20 through the skin when they touch, use, and/or handle the Products. Ordinary consumers also  
21 ingest DEHP via hand to mouth contact after they touch, use, or handle the Products and then  
22 touch their mouths or other objects that are then placed in their mouths.

23 21. Plaintiff alleges that Defendants know and intend that consumers will use the products in  
24 the manner stated above, and that they will be exposed to any chemicals such as DEHP that exist  
25 in the Products.

1 22. At all times relevant to this action, Defendants, therefore, have knowingly and  
2 intentionally exposed the users, consumers and/or handlers of the Products to DEHP without first  
3 giving a clear and reasonable warning to such individuals.

4 23. EP is informed and believes, and thereon alleges, that Defendants have, since August 2020,  
5 and continuing through the present, exposed California consumers to DEHP from use of the  
6 Products without providing clear and reasonable Proposition 65 warnings.

7 24. As a proximate result of acts by Defendants, as persons in the course of doing business  
8 within the meaning of Health & Safety Code §25249.11, Plaintiff alleges they have subjected  
9 consumers to violative exposures through the normal and foreseeable use of the Products.

10 25. Any person acting in the public interest has standing to enforce violations of Proposition  
11 65 provided that such person has supplied the requisite public enforcers with a valid 60-Day  
12 Notice of Violation and such public enforcers are not diligently prosecuting the action with such  
13 time. Cal. Health & Safety Code §25249.7(d).

14 26. On September 28, 2021, EP served a “60-Day Notice of Violations of California Health &  
15 Safety Code Section 25249.5 et seq.” (“Notice”) to the California Attorney General, the District  
16 Attorneys of every county in California, and the City Attorneys of every California city with a  
17 population greater than 750,000 where EP alleges a violation occurred. Defendants were also  
18 served a copy of the Notice. The Notice included, *inter alia*, the following information: the name,  
19 address, and telephone number of the noticing individual; the name of the alleged violator; the  
20 statute violated; the approximate time period during which violations occurred; and descriptions of  
21 the violations including the chemicals involved, the routes of toxic exposure, and the specific  
22 product or type of product causing the violations. The Notice package to Defendants also included  
23 the most recent version of Appendix A, the Final Adopted Regulatory Text for Title 27 of the  
24 California Code of Regulations, Section 5903 as amended. In compliance with California Health  
25 & Safety Code § 25249.7(d) and 11 C.C.R. §3102, EP provided factual information – on a  
26 confidential basis – to the Attorney General sufficient to satisfy basis for the Certificate of Merit,  
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1 including the testing performed by EP, and/or its litigation consultants, and the facts, studies, or  
2 other data supporting the Certificate.

3 27. After expiration of the sixty (60) day notice period, the appropriate public enforcement  
4 agencies have failed to commence and diligently prosecute a cause of action under California  
5 Health & Safety Code §25249.5 *et seq.* against Defendants based on the allegations herein.

6 28. EP has engaged in good faith efforts to resolve the claims alleged herein prior to filing this  
7 complaint, and as a result, the parties have reached a consent judgment that they intend to file with  
8 the Court to resolve the claims in this lawsuit.

9 **FIRST CAUSE OF ACTION**

10 **(Injunctive Relief Pursuant to Cal. Health & Safety Code §25249.5 *et seq.*)**

11 29. EP incorporates by reference and re-alleges as if fully stated herein the material allegations  
12 set out in paragraphs 1 through 28, inclusive.

13 30. By committing the acts alleged in this Complaint, Plaintiff alleges that Defendants at all  
14 times relevant to this action, and continuing through the present, have violated California Health  
15 & Safety Code §25249.6 by, in the course of doing business, knowingly and intentionally  
16 exposing individuals in California to chemicals known to the State of California to cause cancer or  
17 reproductive toxicity without first giving clear and reasonable warnings to such persons who use,  
18 consume or handle the Products containing DEHP, pursuant to California Health & Safety Code  
19 §§25249.6 and 25249.11(f).

20 31. By the above-described acts, Plaintiff alleges Defendants have violated California Health  
21 & Safety Code §25249.6 and are therefore subject to preliminary and permanent injunctions  
22 ordering Defendants to stop violating Proposition 65, to provide warnings to all present and future  
23 customers, and to provide warnings to Defendants' past customers who purchased or used the  
24 Products without receiving a clear and reasonable warning.

25 32. An action for injunctive relief under Proposition 65 is specifically authorized by California  
26 Health & Safety Code §25249.7(a).

1 33. Plaintiff alleges that Defendants actions in selling the Products without clear and  
2 reasonable warnings will irreparably harm the citizens of the State of California, for which harm  
3 they have no plain, speedy, or adequate remedy at law.

4 34. In the absence of preliminary and then permanent injunctive relief, Plaintiff alleges that  
5 Defendants will continue to create a substantial risk of irreparable injury by continuing to cause  
6 consumers to be involuntarily, unknowingly and unwittingly exposed to DEHP through the use,  
7 consumption and/or handling of the Products.

8 **SECOND CAUSE OF ACTION**

9 **(Civil Penalties Pursuant to Cal. Health & Safety Code §25249.5 et seq)**

10 35. EP incorporates by reference and re-alleges as if fully stated herein the material allegations  
11 set out in paragraphs 1 through 34, inclusive.

12 36. By committing the acts alleged in this Complaint, Plaintiff alleges Defendants at all times  
13 relevant to this action, and continuing through the present, have violated California Health &  
14 Safety Code §25249.6 by, in the course of doing business, knowingly and intentionally exposing  
15 individuals in California to chemicals known to the State of California to cause cancer or  
16 reproductive toxicity without first giving clear and reasonable warnings to such persons who use,  
17 consume or handle the Products containing DEHP, pursuant to California Health & Safety Code  
18 §§25249.6 and 25249.11(f).

19 37. By engaging in the above-described acts, Plaintiff alleges Defendants are liable, pursuant  
20 to California Health & Safety Code §25249.7(b), for a civil penalty of up to \$2,500 per day per  
21 violation for each unlawful exposure to DEHP from the Products in an amount in excess of \$1  
22 million.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, EP prays for relief and judgment against Defendants, and each of them, as  
25 follows:



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**As to the Causes of Action**

1. A preliminary and permanent injunction, pursuant to California Health & Safety Code Code §25249.7(a), enjoining Defendants, their agents, employees, assigns and all persons acting in concert or participating with Defendants, from manufacturing, distributing, marketing or selling the Products in California without either reformulating the Products or providing a clear and reasonable warning, within the meaning of Proposition 65, that the users and/or handlers of the Products are exposed to DEHP;
2. An assessment of civil penalties pursuant to California Health & Safety Code §25249.7(b) against Defendants in the amount of \$2,500 per day for each violation of Proposition 65, in an amount to be determined at trial;
3. For an award to EP of its reasonable attorneys' fees and costs of suit incurred herein; and
4. For such equitable or other relief as the Court may deem just and proper.

Dated: May 6, 2022

KAWAHITO LAW GROUP APC

By:   
James Kawahito  
Attorneys for Plaintiff  
EXVIROPROTECT, LLC