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7 Attorneys for Plaintiff
ENVIRONMENTAL HEALTH ADVOCATES, INC.
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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF ALAMEDA**

11 ENVIRONMENTAL HEALTH ADVOCATES,
INC.,

12 Plaintiff,

13 v.

14 ZNDER, INC., a Delaware corporation,
AMAZON.COM, INC., a Delaware
corporation, and DOES 1 through 100,
15 inclusive,

16 Defendants.
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Case No.: **22CV011664**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

I.
INTRODUCTION

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2 1. This Complaint is a representative action brought by Environmental Health Advocates,
3 Inc. (“Plaintiff”) in the public interest of the citizens of the State of California (“the People”). Plaintiff
4 seeks to remedy Defendants’ failure to inform the People of exposure to Di-n-butyl Phthalate (“DBP”),
5 a known carcinogen. Defendants expose consumers to DBP by manufacturing, importing, selling, and/or
6 distributing air pressure gauges including, but not limited to, Nilight 50026R Digital Tire Inflator
7 Pressure Gauge (“Products”). Defendants know and intend that customers will use Products containing
8 DBP.

9 2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California
10 Health and 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. . . .” (Health & Safety Code, § 25249.6.)

14 3. California identified and listed DBP as a chemical known to cause
15 developmental/reproductive toxicity on December 2, 2005.

16 4. Defendants failed to sufficiently warn consumers and individuals in California about
17 potential exposure to DBP in connection with Defendants’ manufacture, import, sale, or distribution of
18 Products. This is a violation of Proposition 65.

19 5. Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers
20 in California before exposing them to DBP in Products. (Health & Safety Code, § 25249.7(a).) Plaintiff
21 also seeks civil penalties against Defendants for their violations of Proposition 65 along with attorney’s
22 fees and costs. (Health & Safety Code, § 25249.7(b).)

II.
PARTIES

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

1 7. Defendant ZNDER, INC. (“ZNDER”) is a corporation organized and existing under the
2 laws of Delaware. ZNDER is registered to do business in California, and does business in the County
3 of Alameda, within the meaning of Health and Safety Code, section 25249.11. ZNDER manufactures,
4 imports, sells, or distributes the Products in California and Alameda County.

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

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

15 **III.**
16 **VENUE AND JURISDICTION**

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

21 11. Venue is proper in Alameda County Superior Court pursuant to Code of Civil
22 Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this
23 County. Defendants conducted and continue to conduct business in this County as it relates to Products.

24 12. Defendants have sufficient minimum contacts in the State of California or otherwise
25 purposefully avail themselves of the California market. Exercising jurisdiction over Defendants would
26 be consistent with traditional notions of fair play and substantial justice.

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1 **IV.**
2 **CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION**
4 **(Violation of Proposition 65 – Against all Defendants)**

5 13. Plaintiff incorporates by reference each and every allegation contained above.

6 14. Proposition 65 mandates that citizens be informed about exposures to chemicals that
7 cause cancer, birth defects, and other reproductive harm.

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

12 16. In manufacturing, importing, selling, and/or distributing Products, Defendants failed to
13 provide a clear and reasonable warning to consumers and individuals in California who may be exposed
14 to DBP through reasonably foreseeable use of the Products.

15 17. Products expose individuals to DBP through dermal absorption and ingestion. This
16 exposure is a natural and foreseeable consequence of Defendants placing Products into the stream of
17 commerce. As such, Defendants intend that consumers will use Products, exposing them to DBP.

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

22 19. Defendants' actions in this regard were deliberate and not accidental.

23 20. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a
24 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff
25 provided the Notice to the various required public enforcement agencies along with a certificate of merit.
26 The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in
27 California of the health hazards associated with exposures to DBP contained in the Products.

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

