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2	Jake W. Schulte (SBN 293777) Craig M. Nicholas (SBN 178444)	Superior Court of California,		
3	225 Broadway, Suite 1900	County of Alameda 01/06/2022 at 04:30:37 PM		
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6	Attorneys for Plaintiff			
7	ENVIRONMENTAL HEALTH ADVOCATES, INC.			
8	SUPERIOR COURT OF THE STATE OF CALIFORNIA			
9	IN AND FOR THE COUNTY OF ALAMEDA			
10	ENVIRONMENTAL HEALTH ADVOCATES, INC.,	Case No.: 22CV005117		
11	Plaintiff,	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF		
12	v.	(Health & Safety Code § 25249.6 et seq.)		
13	SUN BUM SUNCARE LLC, a Michigan limited liability company, and DOES 1			
14	through 100, inclusive,			
15	Defendants.			
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I. INTRODUCTION

- 1. This Complaint is a representative action brought by Environmental Health Advocates, Inc. ("Plaintiff") in the public interest of the citizens of the State of California ("the People"). Plaintiff seeks to remedy Defendant's failure to inform the People of exposure to Benzene, a known carcinogen. Defendant exposes consumers to benzene by manufacturing, importing, selling, and/or distributing Sun Bum Cool Down Aloe Gel ("Products"). Defendant knows and intends that customers will use Products containing benzene.
- 2. Under California's Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code, section 25249.6 et seq. ("Proposition 65"), "[n]o person in the course of doing business shall knowingly and intentionally 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. . . ." (Health & Safety Code, § 25249.6.)
- 3. California identified and listed benzene as a chemical known to cause cancer as early as February 27, 1987, and as a chemical known to cause developmental/reproductive toxicity on December 26, 1997.
- 4. Defendant failed to sufficiently warn consumers and individuals in California about potential exposure to benzene in connection with Defendant's manufacture, import, sale, or distribution of Products. This is a violation of Proposition 65.
- 5. Plaintiff seeks injunctive relief compelling Defendant to sufficiently warn consumers in California before exposing them to benzene in Products. (Health & Safety Code, § 25249.7(a).) Plaintiff also seeks civil penalties against Defendant for its violations of Proposition 65 along with attorney's fees and costs. (Health & Safety Code, § 25249.7(b).)

II. <u>PARTIES</u>

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

7. Defer	ndant SUN BUM SUNC	CARE LLC ("SBS") is	a limited liability company
organized and existin	g under the laws of Michig	gan. SBS is registered to o	do business in California, and
does business in the	County of Alameda, wit	hin the meaning of Heal	th and Safety Code, section
25249.11. SBS manu	ufactures, imports, sells, o	or distributes the Products	s in California and Alameda
County.			

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

III. VENUE AND JURISDICTION

- 9. California Constitution Article VI, Section 10 grants the Superior Court original jurisdiction in all cases except those given by statute to other trial courts. The Health and Safety Code statute upon which this action is based does not give jurisdiction to any other court. As such, this Court has jurisdiction.
- 10. Venue is proper in Alameda County Superior Court pursuant to Code of Civil Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this County. Defendant conducted and continues to conduct business in this County as it relates to Products.
- 11. Defendant has sufficient minimum contacts in the State of California or otherwise purposefully avails itself of the California market. Exercising jurisdiction over Defendant would be consistent with traditional notions of fair play and substantial justice.

IV. CAUSES OF ACTION

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

- 12. Plaintiff incorporates by reference each and every allegation contained above.
- 13. Proposition 65 mandates that citizens be informed about exposures to chemicals that cause cancer, birth defects, and other reproductive harm.

- 14. Defendant manufactured, imported, sold, and/or distributed Products containing benzene in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and believes such violations have continued after receipt of the Notice (defined *infra*) and will continue to occur into the future.
- 15. In manufacturing, importing, selling, and/or distributing Products, Defendant failed to provide a clear and reasonable warning to consumers and individuals in California who may be exposed to benzene through reasonably foreseeable use of the Products.
- 16. Products expose individuals to benzene through dermal absorption, ingestion, and inhalation. This exposure is a natural and foreseeable consequence of Defendant placing Products into the stream of commerce. As such, Defendant intends that consumers will dermally absorb, ingest, or inhale Products, exposing them to benzene.
- 17. Defendant knew or should have known that the Products contained benzene and exposed individuals to benzene in the ways provided above. The Notice informed Defendant of the presence of benzene in the Products. Likewise, media coverage concerning benzene and related chemicals in consumer products provided constructive notice to Defendant.
 - 18. Defendant's action in this regard were deliberate and not accidental.
- 19. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff provided the Notice to the various required public enforcement agencies along with a certificate of merit. The Notice alleged that Defendant violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to benzene contained in the Products.
- 20. The appropriate public enforcement agencies provided with the Notice failed to commence and diligently prosecute a cause of action against Defendant.
- 21. Individuals exposed to benzene contained in Products through dermal absorption, ingestion, and inhalation 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.

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