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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,  
11 INC.,

12 Plaintiff,

13 v.

14 SUN BUM SUNCARE LLC, a Michigan  
limited liability company, and DOES 1  
through 100, inclusive,

15 Defendants.  
16  
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18  
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Case No.: **22CV005117**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

**ELECTRONICALLY FILED**

Superior Court of California,  
County of Alameda

**01/06/2022 at 04:30:37 PM**

By: Xian-xii Bowie, Deputy Clerk

**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 Defendant’s failure to inform the People of exposure to Benzene, a known carcinogen.  
5 Defendant exposes consumers to benzene by manufacturing, importing, selling, and/or distributing Sun  
6 Bum Cool Down Aloe Gel (“Products”). Defendant knows and intends that customers will use Products  
7 containing benzene.

8           2.       Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California  
9 Health and Safety Code, section 25249.6 et seq. (“Proposition 65”), “[n]o person in the course of doing  
10 business shall knowingly and intentionally expose any individual to a chemical known to the state to  
11 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such  
12 individual. . . .” (Health & Safety Code, § 25249.6.)

13           3.       California identified and listed benzene as a chemical known to cause cancer as early as  
14 February 27, 1987, and as a chemical known to cause developmental/reproductive toxicity on December  
15 26, 1997.

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

19           5.       Plaintiff seeks injunctive relief compelling Defendant to sufficiently warn consumers in  
20 California before exposing them to benzene in Products. (Health & Safety Code, § 25249.7(a).)  
21 Plaintiff also seeks civil penalties against Defendant for its violations of Proposition 65 along with  
22 attorney’s 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           14. Defendant manufactured, imported, sold, and/or distributed Products containing  
2 benzene in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and  
3 believes such violations have continued after receipt of the Notice (defined *infra*) and will continue to  
4 occur into the future.

5           15. In manufacturing, importing, selling, and/or distributing Products, Defendant failed to  
6 provide a clear and reasonable warning to consumers and individuals in California who may be exposed  
7 to benzene through reasonably foreseeable use of the Products.

8           16. Products expose individuals to benzene through dermal absorption, ingestion, and  
9 inhalation. This exposure is a natural and foreseeable consequence of Defendant placing Products into  
10 the stream of commerce. As such, Defendant intends that consumers will dermally absorb, ingest, or  
11 inhale Products, exposing them to benzene.

12           17. Defendant knew or should have known that the Products contained benzene and exposed  
13 individuals to benzene in the ways provided above. The Notice informed Defendant of the presence of  
14 benzene in the Products. Likewise, media coverage concerning benzene and related chemicals in  
15 consumer products provided constructive notice to Defendant.

16           18. Defendant's action in this regard were deliberate and not accidental.

17           19. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a  
18 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff  
19 provided the Notice to the various required public enforcement agencies along with a certificate of merit.  
20 The Notice alleged that Defendant violated Proposition 65 by failing to sufficiently warn consumers in  
21 California of the health hazards associated with exposures to benzene contained in the Products.

22           20. The appropriate public enforcement agencies provided with the Notice failed to  
23 commence and diligently prosecute a cause of action against Defendant.

24           21. Individuals exposed to benzene contained in Products through dermal absorption,  
25 ingestion, and inhalation resulting from reasonably foreseeable use of the Products have suffered and  
26 continue to suffer irreparable harm. There is no other plain, speedy, or adequate remedy at law.

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