

**ELECTRONICALLY FILED**

Superior Court of California,  
County of Alameda

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ENVIRONMENTAL HEALTH ADVOCATES, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF ALAMEDA**

ENVIRONMENTAL HEALTH ADVOCATES,  
INC.,

Plaintiff,

v.

EDGEWELL PERSONAL CARE BRANDS,  
LLC, a Delaware limited liability company,  
BED BATH & BEYOND INC., a New York  
corporation, and DOES 1 through 100,  
inclusive,

Defendants.

Case No.: **22CV006660**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

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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 Defendants’ failure to inform the People of exposure to benzene, a known carcinogen. Defendants expose consumers to benzene by manufacturing, importing, selling, and/or distributing Banana Boat Hair and Scalp Defense Sunscreen SPF 30+ (“Products”). Defendants know and intend 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. Defendants failed to sufficiently warn consumers and individuals in California about potential exposure to benzene in connection with Defendants’ manufacture, import, sale, or distribution of Products. This is a violation of Proposition 65.

5. Plaintiff seeks injunctive relief compelling Defendants 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 Defendants for its violations of Proposition 65 along with attorney’s fees and costs. (Health & Safety Code, § 25249.7(b).)

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**II.**  
**PARTIES**

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.



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**IV.**  
**CAUSES OF ACTION**

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

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

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

15. Defendants 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.

16. In manufacturing, importing, selling, and/or distributing Products, Defendants 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.

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

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

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

20. 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 Defendants violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to benzene contained in the Products.

