1 2 3 4 5 6 7	ENTORNO LAW, LLP Noam Glick (SBN 251582) Jake W. Schulte (SBN 293777) Craig M. Nicholas (SBN 178444) 225 Broadway, Suite 1900 San Diego, California 92101 Tel: (619) 629-0527 Email: noam@entornolaw.com Email: jake@entornolaw.com Email: craig@entornolaw.com	ELECTRONICALLY FILED Superior Court of California, County of Alameda 08/11/2022 at 02:54:33 PM By: Angela Linhares, Deputy Clerk			
8 9	SUPERIOR COURT OF THE STATE OF CALIFORNIA				
10	IN AND FOR THE COUNTY OF ALAMEDA				
11	ENVIRONMENTAL HEALTH ADVOCATES,				
12	INC., Plaintiff,	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF			
13	V.	(Health & Safety Code § 25249.6 et seq.)			
14	HENKEL CORPORATION, a Delaware corporation, BED BATH & BEYOND INC., a	(freatin & Safety Code § 2524).0 et seq.)			
15	New York corporation, and DOES 1 through 100, inclusive,				
16 17	Defendants.				
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I. INTRODUCTION

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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
 antiperspirant products including but not limited to Right Guard Sport Fresh Antiperspirant Aerosol
 ("Products"). Defendants know and intend that customers will use Products 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.)

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.

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 their 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. Defendant HENKEL CORPORATION ("Henkel") is a corporation organized and
 existing under the laws of Delaware. Henkel is registered to do business in California, and does business
 in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. Henkel
 manufactures, imports, sells, or distributes the Products in California and Alameda County.

8. Defendant BED BATH & BEYOND INC. ("BBB") is a corporation organized and
existing under the laws of New York. BBB is registered to do business in California, and does business
in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. BBB
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.

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III. VENUE AND JURISDICTION

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

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

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

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IV. 1 CAUSES OF ACTION 2 **FIRST CAUSE OF ACTION** (Violation of Proposition 65 – Against all Defendants) 3 13. Plaintiff incorporates by reference each and every allegation contained above. 4 14. Proposition 65 mandates that citizens be informed about exposures to chemicals that 5 cause cancer, birth defects, and other reproductive harm. 6 7 15. Defendants manufactured, imported, sold, and/or distributed Products containing 8 benzene in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and 9 believes such violations have continued after receipt of the Notice (defined *infra*) and will continue to 10 occur into the future. 11 16. In manufacturing, importing, selling, and/or distributing Products, Defendants failed to 12 provide a clear and reasonable warning to consumers and individuals in California who may be exposed 13 to benzene through reasonably foreseeable use of the Products. 14 17. Products expose individuals to benzene through dermal absorption and direct inhalation. 15 This exposure is a natural and foreseeable consequence of Defendants placing Products into the stream 16 of commerce. As such, Defendants intend that consumers will use Products, exposing them to benzene. 17 18. Defendants knew or should have known that the Products contained benzene and 18 exposed individuals to benzene in the ways provided above. The Notice informed Defendants of the 19 presence of benzene in the Products. Likewise, media coverage concerning benzene and related 20 chemicals in consumer products provided constructive notice to Defendants. 21 19. Defendants' actions in this regard were deliberate and not accidental. 22 20. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a 23 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff 24 provided the Notice to the various required public enforcement agencies along with a certificate of merit. 25 The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in 26 California of the health hazards associated with exposures to benzene contained in the Products. 27 /// 28 4

1	21.	The appropriate public enforcement	agencies provided	with the Notice failed to	
2	commence and diligently prosecute a cause of action against Defendants.				
3	22.	22. Individuals exposed to benzene contained in Products through dermal absorption and			
4	direct inhalation	direct inhalation resulting from reasonably foreseeable use of the Products have suffered and continue			
5	to suffer irreparable harm. There is no other plain, speedy, or adequate remedy at law.				
6	23.	Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation			
7	of Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also				
8	appropriate pursuant to Health and Safety Code, section 25249.7(a).				
9	PRAYER FOR RELIEF				
10	Wherefore, Plaintiff prays for judgment against Defendants as follows:				
11	1.	Civil penalties in the amount of \$2,500 per day for each violation. Plaintiff alleges that			
12	damages total a minimum of \$1,000,000.00;				
13	2.	2. A preliminary and permanent injunction against Defendants from manufacturing,			
14	importing, selling, and/or distributing Products in California without providing a clear and reasonable				
15	warning as required by Proposition 65 and related Regulations;				
16	3.	Reasonable attorney's fees and costs of suit; and			
17	4.	4. Such other and further relief as may be just and proper.			
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19	Respectfully submitted:				
20	Dated: Augus	st 11, 2022	ENTORNO L	AW, LLP	
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22		By:	Noon Stu		
23		Ν	Noam Glick		
24		Ji	ake W. Schulte		
25			Craig M. Nicholas		
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27			Attorneys for Plaintiff Environmental Health		
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