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ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
07/29/2022 at 01:36:18 PM
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Deputy Clerk

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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 BUDEE, INC., a California Corporation;
DRIVEN DELIVERIES, INC., a California
15 Corporation; and DOES 1 through 100,
inclusive,

16 Defendants.
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Case No.: **22CV015293**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

I.
INTRODUCTION

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3 1. This Complaint is a representative action brought by Environmental Health Advocates,
4 Inc. (“Plaintiff”) in the public interest of the citizens of the State of California (“the People”). Plaintiff
5 seeks to remedy Defendants' failure to inform the People of exposure to the toxic chemicals Cannabis
6 (Marijuana) Smoke (also known as “Marijuana smoke”) and Δ⁹-Tetrahydrocannabinol (also known as
7 “Delta-9-Tetrahydrocannabinol or “THC”), known carcinogens and developmental/reproductive toxins.
8 Defendants expose consumers to Cannabis (Marijuana) smoke and THC by manufacturing, importing,
9 selling, and/or distributing marijuana-related products, including cannabis flower, edibles, vape pens,
10 concentrates, pre-rolls, hash, rosin, shatters, live resins, crystals, wax, kief, topicals, and other cannabis-
11 related accessories (hereinafter, “Products”) on the website <https://www.budee.org/>. Defendants know
12 and intend that customers will use Products that, through reasonably foreseeable use, expose consumers
13 in California to Cannabis (Marijuana) smoke and THC.

14 2. Defendants provide an online platform for consumers in California to procure Products
15 via delivery, direct to consumers’ homes or places of business. Consumers browse Defendants’ website,
16 select the Products they want to purchase, and the Products are then delivered directly to consumers’
17 chosen address. At time of delivery, consumers: (1) show the delivery driver a valid government-issued
18 ID to confirm the consumer is of legal age and is the individual who ordered the Products on Defendants’
19 website; and (2) pay the delivery driver via cash or debit card, after which time the Products are handed
20 over from the delivery driver to the consumer.

21 3. Until recently,¹ at no time during the ordering process on Defendants’ website (e.g., on
22 product description pages or checkout pages) were consumers presented with an online Proposition 65
23 warning. This violated Proposition 65, which mandates an internet warning when consumer products
24 are sold online to California consumers. As explained by the Office of Environmental Health Hazard
25 Assessment, the lead agency tasked with implementing Proposition 65, a warning label on a consumer
26 product alone is insufficient in an online purchase scenario since the consumer may only see the warning

27 ¹ Based on information and belief, Defendants added online warnings *after* receiving
28 Plaintiff’s Notice of Violation of Proposition 65. Defendants are still liable for all Products sold
without an online warning during the statutory period.

1 after they pay for and receive the product. This forces the consumer to make a choice: keep an item that
2 exposes them to a listed chemical, or repackage and return the item while incurring shipping costs and/or
3 restocking fees depending on the return policy of the online seller.

4 4. Given the very nature of the Products, Defendants had actual and constructive notice
5 that Products, through reasonably foreseeable use, expose consumers to listed chemicals including
6 Cannabis (Marijuana) smoke and THC. Moreover, based on information and belief, the suppliers,
7 importers, and manufacturers of Products sold on Defendants' website provided written notice of the
8 need for an online warning and Defendants refused to provide such notice until it received Plaintiff's
9 Notice of Violation of Proposition 65.

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

15 6. California identified and listed THC as a chemical known to cause
16 developmental/reproductive toxicity on January 3, 2020. California identified and listed Cannabis
17 (Marijuana) smoke as a chemical known to cause cancer on June 19, 2009, and as a chemical known to
18 cause developmental/reproductive toxicity on January 3, 2020.

19 7. As explained above, Defendants failed to sufficiently warn consumers and individuals
20 in California about potential exposure to Cannabis (Marijuana) smoke and THC in connection with
21 Defendant's manufacture, import, sale, or distribution of Products. This is a violation of Proposition 65.

22 8. Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers
23 in California before exposing them to Cannabis (Marijuana) smoke and THC in Products. (Health &
24 Safety Code, § 25249.7(a).) Plaintiff also seeks civil penalties against Defendants for its violations of
25 Proposition 65 along with attorney's fees and costs. (Health & Safety Code, § 25249.7(b).)

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II.
PARTIES

9. 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.

10. Defendant BUDEE, INC. (“Budee”) is a corporation organized and existing under the laws of California. Budee 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. Budee manufactures, imports, sells, or distributes the Products in California and Alameda County.

11. Defendant DRIVEN DELIVERIES, INC. (“Driven Deliveries”) is a corporation organized and existing under the laws of California. Driven Deliveries 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. Driven Deliveries manufactures, imports, sells, or distributes the Products in California and Alameda County.

12. 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 the remedies and penalties sought herein.

III.
VENUE AND JURISDICTION

13. 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.

1 Defendants refused to provide such notice until it received Plaintiff’s Notice of Violation of Proposition
2 65.

3 22. Defendants’ actions in this regard were deliberate and not accidental.

4 23. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a
5 60-Day Notice of Violation (“Notice”) as required by and in compliance with Proposition 65. Plaintiff
6 provided the Notice to the various required public enforcement agencies along with a certificate of merit.
7 The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in
8 California of the health hazards associated with exposures to Cannabis (Marijuana) smoke and THC
9 through reasonably foreseeable use of the Products.

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

12 25. Individuals exposed to Cannabis (Marijuana) smoke and THC contained in Products
13 through ingestion or inhalation resulting from reasonably foreseeable use of the Products have suffered
14 and continue to suffer irreparable harm. There is no other plain, speedy, or adequate remedy at law.

15 26. Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation
16 of Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also
17 appropriate pursuant to Health and Safety Code, section 25249.7(a).

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PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against Defendants as follows:

1. Civil penalties in the amount of \$2,500 per day for each violation. Plaintiff alleges that damages total a minimum of \$1,000,000.00;
2. A preliminary and permanent injunction against Defendants from manufacturing, importing, selling, and/or distributing Products in California without providing a clear and reasonable online warning as required by Proposition 65 and related Regulations;
3. Reasonable attorney’s fees and costs of suit; and
4. Such other and further relief as may be just and proper.

Respectfully submitted:

Dated: July 29, 2022

ENTORNO LAW, LLP

By:



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Noam Glick
Craig M. Nicholas

Attorneys for Plaintiff
Environmental Health Advocates, Inc.