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County of Alameda

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By: Chan Huang,
Deputy Clerk

1 **ENTORNO LAW, LLP**

2 Noam Glick (SBN 251582)
3 Craig M. Nicholas (SBN 178444)
4 Jake W. Schulte (SBN 293777)
5 Janani Natarajan (SBN 346770)

6 225 Broadway, Suite 1900
7 San Diego, California 92101
8 Tel: (619) 629-0527
9 Email: noam@entornolaw.com
10 Email: craig@entornolaw.com
11 Email: jake@entornolaw.com
12 Email: janani@entornolaw.com

13 Attorneys for Plaintiff
14 Environmental Health Advocates, Inc.

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **IN AND FOR THE COUNTY OF ALAMEDA**

17 ENVIRONMENTAL HEALTH ADVOCATES,
18 INC.,

19 Plaintiff,

20 v.

21 NEW MILANI GROUP LLC, a Delaware
22 limited liability company; TARGET
23 CORPORATION, a Minnesota corporation; and
24 DOES 1 through 100, inclusive,

25 Defendants.

Case No.: **23CV031628**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

I.
INTRODUCTION

1
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 Defendants’ failure to inform the People of exposure to benzophenone, a known
5 carcinogen. Defendants expose consumers to benzophenone by manufacturing, importing, selling,
6 and/or distributing setting spray products including, but not limited to, Milani, Make it Last, Sunscreen
7 (“Products”). Defendants know and intend that customers will use Products containing benzophenone.

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 benzophenone as a chemical known to cause cancer as
14 early as June 22, 2012.

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

18 5. Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers
19 in California before exposing them to benzophenone in Products. (Health & Safety Code, §
20 25249.7(a).) Plaintiff also seeks civil penalties against Defendants for their violations of Proposition
21 65 along with attorneys’ fees and costs. (Health & Safety Code, § 25249.7(b).)

II.
PARTIES

22
23
24 6. Plaintiff ENVIRONMENTAL HEALTH ADVOCATES, INC. (“Plaintiff”) is a
25 corporation in the State of California dedicated to protecting the health of California citizens through
26 the elimination or reduction of toxic exposure from consumer products. It brings this action in the public
27 interest pursuant to Health and Safety Code, section 25249.7.

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1 13. Defendants have sufficient minimum contacts in the State of California or otherwise
2 purposefully avail themselves of the California market. Exercising jurisdiction over Defendants would
3 be consistent with traditional notions of fair play and substantial justice.

4 **IV.**
CAUSES OF ACTION

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

7 14. Plaintiff incorporates by reference each and every allegation contained above.

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

10 16. Defendants manufactured, imported, sold, and/or distributed Products containing
11 benzophenone in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and
12 believes such violations have continued after receipt of the Notice (defined *infra*) and will continue to
13 occur into the future.

14 17. In manufacturing, importing, selling, and/or distributing Products, Defendants failed to
15 provide a clear and reasonable warning to consumers and individuals in California who may be exposed
16 to benzophenone through reasonably foreseeable use of the Products.

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

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

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

25 21. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a
26 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff
27 provided the Notice to the various required public enforcement agencies along with a certificate of merit.
28 The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in

1 California of the health hazards associated with exposures to benzophenone contained in the Products.

2 22. The appropriate public enforcement agencies provided with the Notice failed to
3 commence and diligently prosecute a cause of action against Defendants.

4 23. Individuals exposed to benzophenone contained in Products through dermal absorption
5 resulting from reasonably foreseeable use of the Products have suffered and continue to suffer
6 irreparable harm. There is no other plain, speedy, or adequate remedy at law.

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

10 **PRAYER FOR RELIEF**

11 Wherefore, Plaintiff prays for judgment against Defendants as follows:

12 1. Civil penalties in the amount of \$2,500 per day for each violation. Plaintiff alleges that
13 damages total a minimum of \$1,000,000.00;

14 2. A preliminary and permanent injunction against Defendants from manufacturing,
15 importing, selling, and/or distributing Products in California without providing a clear and reasonable
16 warning as required by Proposition 65 and related Regulations;

17 3. Reasonable attorney's fees and costs of suit; and


18 4. Such other and further relief as may be just and proper.

19
20 Respectfully submitted:

21 Dated: April 20, 2023

ENTORNO LAW, LLP

22
23 By:



24 Noam Glick

25 Craig M. Nicholas

26 Jake W. Schulte

Janani Natarajan

27 Attorneys for Plaintiff

28 Environmental Health Advocates, Inc.