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Superior Court of California,  
County of Alameda

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By: Damaree Franklin,  
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  
0 Email: craig@entornolaw.com  
1 Email: jake@entornolaw.com  
2 Email: janani@entornolaw.com

3 Attorneys for Plaintiff  
4 Environmental Health Advocates, Inc.

5 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

7 ENVIRONMENTAL HEALTH ADVOCATES,  
8 INC.,

9 Plaintiff,

10 v.

11 MALIBU WELLNESS, INC., an Indiana  
12 corporation; and DOES 1 through 100,  
13 inclusive,

14 Defendants.

Case No.: **25CV105596**

**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 diethanolamine ("DEA"), a  
5 known carcinogen. Defendants expose consumers to DEA by manufacturing, importing, selling, and/or  
6 distributing hand sanitizer products including, but not limited to, Malibu C CUR8 Hand Sanitizer 68%  
7 Ethyl Alcohol (“Products”). Defendants know and intend that customers will use Products containing  
8 DEA.

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

14           3.       California identified and listed DEA as a chemical known to cause cancer as early as  
15 June 22, 2012.

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

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

**II.**  
**PARTIES**

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

3 **FIRST CAUSE OF ACTION**

4 **(Violation of Proposition 65 – Against all Defendants)**

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

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

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

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

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

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

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

23 20. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a  
24 60-Day Notice of Violation (“Notice”) as required by and in compliance with Proposition 65. Plaintiff  
25 provided the Notice to the various required public enforcement agencies along with a certificate of merit.  
26 The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in  
27 California of the health hazards associated with exposures to DEA contained in the Products.

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

