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ENDORSED  
FILED  
ALAMEDA COUNTY

NOV 10 2010

CLERK OF THE SUPERIOR COURT

By F. Wilson Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

**PEOPLE OF THE STATE OF CALIFORNIA,**  
  
Plaintiff,  
  
v.  
  
**GIB, LLC, dba "BRAZILIAN BLOWOUT," and DOES 1 - 20,**  
  
Defendants.

Case No. **RG 10545880**

**COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTY**

(Health & Saf. Code § 25249.5 et seq. & § 111791 et seq.; Bus. & Prof. Code § 17200 et seq. & § 17500 et seq.)

**I. INTRODUCTION**

1. This complaint seeks to remedy defendants' failure to warn consumers and cosmetic workers, and to inform the state Department of Public Health, that the popular "Brazilian Blowout" brand salon hair treatment product "Acai Professional Smoothing Solution" contains high levels of formaldehyde. The Brazilian Blowout website ([www.brazilianblowout.com](http://www.brazilianblowout.com)) represents that the Brazilian Blowout salon hair treatment will confer "smooth, healthy, frizz-free hair with radiant shine!" through use of a smoothing solution containing "No harsh chemicals!" Laboratory tests belie the company's chemical safety claims, however, and specifically contradict

1 its web site and other marketing claims that Acai Professional Smoothing Solution has "NO  
2 FORMALDEHYDE!!"

3 2. During the ordinary salon use of Acai Professional Smoothing Solution, the product  
4 releases formaldehyde gas, which is a chemical known to the State of California to cause cancer.  
5 Under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health & Saf. Code §  
6 25249.6, also known as "Proposition 65"), businesses must provide persons with a "clear and  
7 reasonable warning" before exposing them to such chemicals. Under the California Safe  
8 Cosmetics Act of 2005 (Health & Saf. Code § 111791 *et seq.*), manufacturers of cosmetics sold in  
9 California must report to the Department of Public Health the inclusion in their cosmetic products  
10 of any chemicals known to the State to cause cancer.

11 3. This complaint additionally seeks to remedy defendants' deceptive identification,  
12 advertizing, and promotion of Acai Professional Smoothing Solution as "formaldehyde free,"  
13 "hyde free," "salon safe," or "safe." California deceptive-advertising law (Bus. & Prof. Code §§  
14 17200, 17500, & 17508) prohibits any person from making or disseminating any statement that is  
15 untrue or misleading with respect to property or services offered for sale.

## 16 II. PARTIES

17 4. Plaintiff is the People of the State of California, by and through the Attorney General  
18 of California, Edmund G. Brown Jr. The Attorney General may bring actions in the name of the  
19 People of the State of California to enforce Proposition 65 (Health & Saf. Code § 25249.7, subd.  
20 (c)); to obtain equitable relief to protect the natural resources of the State from pollution,  
21 impairment, or destruction (Gov't Code § 12607); and to prohibit unfair and unlawful business  
22 practices and deceptive advertising (Bus. & Prof. Code §§ 17200, 17508 and 17535).

23 5. Defendant GIB, LLC is a limited liability company organized and existing under the  
24 laws of the State of California, operating under the fictitious business name "Brazilian Blowout."  
25 GIB, LLC is a person within the meaning of Health and Safety Code section 25249.11  
26 (Proposition 65), Health and Safety Code section 111825 (California Safe Cosmetics Act), and  
27 Business and Professions Code section 17201 (unfair business practices and deceptive  
28

1 advertising). Defendant manufactures Brazilian Blowout hair products and offers them for sale in  
2 California.

3 6. Defendant DOES 1 through 20 are business entities engaged in the import,  
4 manufacture, distribution, and/or sale of Brazilian Blowout hair products. As part of their  
5 business activities, each of Does 1 through 20 causes persons in California to be exposed to  
6 formaldehyde contained in Acai Professional Smoothing Solution without providing a clear and  
7 reasonable warning prior to such exposures. The true names and capacities of the defendants sued  
8 herein as Does 1 through 20 are unknown to plaintiff, who therefore sues them by such fictitious  
9 names. Plaintiff will amend this complaint to allege the true names and capacities of these  
10 defendants when they have been determined. Each of the fictitiously named defendants is  
11 responsible in some manner for the conduct alleged herein.

### 12 III. JURISDICTION AND VENUE

13 7. This Court has jurisdiction pursuant to California Constitution Article VI, section 10,  
14 because this case is a cause not given by statute to other trial courts

15 8. This Court has jurisdiction over Defendants because defendants named above are  
16 business entities that do sufficient business in California, or otherwise have sufficient minimum  
17 contacts in California, to render the exercise of jurisdiction over them by the California courts  
18 consistent with traditional notions of fair play and substantial justice.

19 9. Venue is proper in this Court because this cause arises in the County of Alameda,  
20 where some of the violations of law have occurred.

### 21 IV. STATUTORY BACKGROUND

#### 22 A. Proposition 65

23 10. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute  
24 passed as "Proposition 65" by a vote of the people in November of 1986.

25 11. The warning requirement of Proposition 65 is contained in Health and Safety Code  
26 section 25249.6, which provides:

27 No person in the course of doing business shall knowingly and intentionally expose  
28 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, except

1 as provided in Section 25249.10.

2 12. Proposition 65 establishes a procedure by which California, through its Governor,  
3 develops and maintains a list of chemicals “known to the State to cause cancer or reproductive  
4 toxicity.” (Health & Saf. Code § 25249.8.) A warning concerning a listed chemical must be  
5 given beginning one year after the chemical first appears on the list. (*Id.*, § 25249.10, subd. (b).)

6 13. Proposition 65 provides that any person “violating or threatening to violate” the  
7 statute may be enjoined in any court of competent jurisdiction. (Health & Saf. Code § 25249.7.)  
8 To “threaten to violate” is defined to mean “to create a condition in which there is a substantial  
9 possibility that a violation will occur.” (*Id.*, § 25249.11, subd.(e).) Violators are also liable for  
10 civil penalties of up to \$2,500 per day for each violation, recoverable in a civil action. (*Id.*, §  
11 25249.7, subd. (b).)

12 14. Actions to enforce Proposition 65 “may be brought by the Attorney General in the  
13 name of the People of the State of California or by any district attorney.” (*Id.*, § 25249.7, subd.  
14 (c).)

15 15. Proposition 65 implementing regulations provide that the warning method “must be  
16 reasonably calculated, considering the alternative methods available under the circumstances, to  
17 make the warning message available to the individual prior to exposure.” (Cal. Code. Regs., tit.  
18 27, § 25601.)

19 16. The regulations identify certain types of warnings that are considered valid for a  
20 consumer product exposure, including: (A) warnings on labels or other labeling, (B) identification  
21 at a retail outlet through “shelf labeling, signs, menus, or a combination thereof,” and (C) “a  
22 system of signs, public advertising identifying the system and toll-free information services, that  
23 provides clear and reasonable warnings.” (Cal. Code Regs., tit. 27, § 25603.1.)

24 17. Proposition 65 regulations further identify certain types of warnings that are  
25 considered valid for an occupational exposure, including: (A) use of a warning on the label or  
26 labeling of a product used in the workplace; (B) posting of a sign in the workplace “in a  
27 conspicuous place and under conditions that make it likely to be read and understood by  
28 employees and other individuals prior to the exposure for which the warning is given”; and (C) a

1 warning to exposed employees that “fully complies with all information, training and labeling  
2 requirements of the federal Hazard Communication Standard (29 CFR section 1910.1200, as  
3 amended on March 7, 1996), [and] the California Hazard Communication Standard (Cal. Code  
4 Regs., title 8, section 5194; as amended on July 6, 2004) . . . .” (Cal. Code Regs., tit. 27, §  
5 25604.1.)

6 18. The California Hazard Communication Standard in turn mandates, *inter alia*, that  
7 manufacturers or importers “[must] assess the hazards of substances which they produce or  
8 import” (Cal. Code Regs., tit. 8, 5194, subd. (b)(1)); that “[i]f a manufacturer [or] importer . . .  
9 has evidence to indicate that a component present in the mixture in concentrations of less than  
10 one percent (or in the case of carcinogens, less than 0.1 percent) could be released in  
11 concentrations which . . . could present a health hazard to employees in those concentrations, the  
12 mixture shall be assumed to present the same hazard” (*id.*, subd.(d)(5)(D)); and that  
13 “manufacturers and importers shall obtain or develop a material safety data sheet for each  
14 hazardous substance they produce or import” that includes the chemical and common name(s)  
15 and Chemical Abstract Services number for all ingredients that “contribute to known hazards” or  
16 “could present a health hazard to employees.” (*Id.*, subd. (g)(1); subd. (g)(2)(A)(2) &(5)).

17 19. Proposition 65 regulations governing environmental exposures, such as those that  
18 might occur in a hair salon, provide for, *inter alia*, use of a warning “that appears on a sign in the  
19 affected area.” (Cal. Code Regs., tit. 27, § 25605.1, subd. (a)(1).)

20 **B. The Unfair Competition Law**

21 20. California Business and Professions Code section 17200 provides that “unfair  
22 competition shall mean and include unlawful, unfair or fraudulent business practice.” Section  
23 17203 of the Business and Professions Code provides that “(a)ny person performing or proposing  
24 to perform an act of unfair competition within this state may be enjoined in any court of  
25 competent jurisdiction.”

26 21. Section 17206(a) provides that any person violating Section 17200 “shall be liable for  
27 a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for each violation, which  
28 shall be assessed and recovered in a civil action brought in the name of the people of the State of

1 California by the Attorney General or by any district attorney.” Under Section 17205, these  
2 penalties are “cumulative to each other and to the remedies or penalties available under all other  
3 laws of this state.”

4 22. Business and Professions Code section 17500 provides that it is unlawful for any  
5 person “to make or disseminate or cause to be made” any statement concerning personal property  
6 or services that “is untrue or misleading.” Section 17535 authorizes the Attorney General to seek  
7 an injunction to prevent such untrue or misleading statements, and to provide restitution to the  
8 victims of such statements. Section 17536 provides that any person violating section 17500  
9 “shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2,500) for  
10 each violation, which shall be assessed and recovered in a civil action brought in the name of the  
11 people of the State of California by the Attorney General . . . .”

12 **C. California Safe Cosmetics Act**

13 23. The California Safe Cosmetics Act of 2005, codified at Health and Safety Code  
14 sections 111791-111820, provides, in relevant part, that “the manufacturer of any cosmetic  
15 product” sold in California shall provide to the Department of Health Services “a complete and  
16 accurate list of its cosmetic products that, as of the date, of submission, are sold in the state and  
17 that contain any ingredient that is a chemical identified as causing cancer or reproductive toxicity  
18 . . . .” (Health & Saf. Code § 111792, subd. (a).) Cosmetics manufacturers submitting required  
19 information must “identify each chemical both by name and Chemical Abstract Service number  
20 and shall specify the product or products in which the chemical is contained.” (*Id.* at subd.  
21 (a)(2).)

22 24. Cosmetics are defined by both California and federal law as articles or components  
23 “intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to,  
24 the human body, or any part of the human body, for cleansing, beautifying, promoting  
25 attractiveness, or altering the appearance.” (Health & Saf. Code § 109900; Food Drug &  
26 Cosmetics Act § 201(i)].



1           32. Brazilian Blowout brand "Acai Professional Smoothing Solution" is a "cosmetic"  
2 within the meaning of state and federal law.

3           33. Acai Professional Smoothing Solution contains formaldehyde as an ingredient.

4           34. Defendant GIB, LLC knows that Acai Professional Smoothing Solution contains  
5 formaldehyde.

6           35. During the ordinary course of the Brazilian Blowout treatment process, formaldehyde  
7 gas is released from Acai Professional Smoothing Solution into the indoor air of hair salons,  
8 where people are exposed to it.

9           36. The formaldehyde in Acai Professional Smoothing Solution may additionally be  
10 released into household air from treated hair subsequent to a Brazilian Blowout salon treatment,  
11 where people are exposed to it.

12           37. Each defendant has knowingly and intentionally exposed salon workers and  
13 customers to formaldehyde.

14           38. Each defendant has failed to provide salon workers and salon customers with a clear  
15 and reasonable warning in compliance with Proposition 65 and its implementing regulations that  
16 they are being exposed to a chemical known to the State of California to cause cancer.

17           39. Each defendant has failed to disclose to the California Department of Public Health  
18 that Acai Professional Smoothing Solution contains formaldehyde, an ingredient required to be  
19 disclosed pursuant to the Safe Cosmetics Act of 2005.

20           40. Each defendant has deceptively represented, on the Acai Professional Smoothing  
21 Solution product container and in product-promotional materials, that the product is  
22 "formaldehyde free," "hyde free," "salon safe," and/or "safe." Each defendant knew, or in the  
23 exercise of reasonable care should have known, that these representations were false and  
24 deceptive.

25           41. Defendants, and each of them, have caused Acai Professional Smoothing Solution to  
26 be labeled as "formaldehyde free," "hyde free," "salon safe," and or "safe." This false or  
27 misleading labeling has caused the product to be misbranded within the meaning of the Sherman  
28 Food, Drug and Cosmetics Law, Health and Safety Code section 111730.

1 42. Defendants, and each of them, have failed to provide accurate Materials Safety Data  
2 Sheets (MSDS's) disclosing that Acai Professional Smoothing Solution contains formaldehyde,  
3 as required by the regulations set forth in the California Hazard Communication Standard (Cal.  
4 Code Regs., title 8, section 5194).

5 43. Plaintiff believes that evidence will show, after a reasonable opportunity for further  
6 investigation or discovery, that one or more additional products used as part of the Brazilian  
7 Blowout salon hair treatment process, and/or in "Brazilian Blowout" brand recommended home  
8 aftercare products, contain levels of formaldehyde sufficient to trigger Proposition 65 warning  
9 requirements, Safe Cosmetics Act ingredient disclosure requirements, and hazard communication  
10 requirements.

## 11 VI. FIRST CAUSE OF ACTION

12 (For Violation of Proposition 65)

13 44. Paragraphs 1 through 43 are re-alleged as if fully set forth herein.

14 45. Plaintiff believes that evidence will show, after a reasonable opportunity for further  
15 investigation or discovery, that each defendant employs ten or more persons.

16 46. By committing the acts alleged above, each defendant has, in the course of doing  
17 business, knowingly and intentionally exposed individuals to formaldehyde (gas), a chemical  
18 known to the state of California to cause cancer, without first giving a clear and reasonable  
19 warning to such individuals, within the meaning of Health and Safety Code section 25249.6.

20 47. Said violations render each defendant liable to plaintiff for civil penalties of up to  
21 \$2,500 per day for each violation, and provide the basis for other remedies.

## 22 VII. SECOND CAUSE OF ACTION

23 (For Violations of Business and Professions Code section 17500)

24 48. Paragraphs 1 through 47 are re-alleged as if fully set forth herein.

25 49. By committing the acts alleged above, including but not limited to labeling,  
26 advertising, and/or promoting Acai Professional Smoothing Solution as "formaldehyde free,"  
27 "hyde free," "salon safe," and/or "safe," each defendant has engaged in making, disseminating, or  
28 causing to be made or disseminated untrue or misleading statements within the meaning of

1 Business and Professions Code section 17500. Each defendant knew, or in the exercise of  
2 reasonable care should have known, that these statements were untrue or misleading at the time  
3 that they were made.

4 50. Said violations render each defendant liable to plaintiff for civil penalties of up to  
5 \$2,500 for each violation, and provide the basis for other remedies.

#### 6 **VIII. THIRD CAUSE OF ACTION**

7 (For Violation of Business and Professions Code section 17508)

8 51. Paragraphs 1 through 50 are re-alleged as if fully set forth herein.

9 52. By committing the acts alleged above, including but not limited to labeling,  
10 advertising, and/or promoting Acai Professional Smoothing Solution as "formaldehyde free,"  
11 "hyde free," "salon safe," and/or "safe," each defendant has made false or misleading advertising  
12 claims within the meaning of Business and Professions Code section 17508(a).

13 53. Said violations render each defendant liable to plaintiff for civil penalties of up to  
14 \$2,500 for each violation, and provide the basis for other remedies. If an advertisement is in  
15 violation of both Business and Professions Code section 17508(a) and section 17500, the court  
16 may impose a civil penalty for either violation, but not for both.

#### 17 **IX. FOURTH CAUSE OF ACTION**

18 (For Violation of Business and Professions Code section 17200)

19 54. Paragraphs 1 through 53 are re-alleged as if fully set forth herein.

20 55. By committing the acts alleged above, each defendant has engaged in unlawful  
21 business practices that constitute unfair competition within the meaning of Business and  
22 Professions Code section 17200. Such acts include, but are not limited to:

23 A. Violating Proposition 65;

24 B. Violating Business and Professions Code section 17500;

25 C. Violating Business and Professions Code section 17508;

26 D. Violating the Safe Cosmetics Act, by failing to provide to the state Department  
27 of Health a complete and accurate list of the cosmetics products that it manufactures, and  
28 that it sells in California, that contain any chemical ingredient identified as causing cancer,  
where plaintiff believes that evidence will show, after a reasonable opportunity for further

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investigation or discovery, that defendant GIB, LLC had annual aggregate sales of cosmetics products, both within and outside of California, of at least one million dollars (\$1,000,000), based on its most recent tax year filing;

E. Violating the Sherman Food, Drug, and Cosmetics Law prohibition on misbranding of a cosmetic; and

F. Violating California hazard communication regulations requiring that a Material Safety Data Sheet identify all ingredients that contribute to known hazards or could present a health hazard to employees.

53. By committing the acts alleged above, defendants are liable to plaintiff for civil penalties of up to \$2,500 for each violation.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiff prays that the Court:

1. Pursuant to the First through Fourth Causes of Action, grant civil penalties according to proof;

2. Pursuant to Health and Safety Code section 25249.7, and Business and Professions Code sections 17203, 17535, and other applicable laws, enter such preliminary injunctions, permanent injunctions, or other orders as plaintiff shall specify in further application to the court:

(a) prohibiting defendants, and their successors, agents, representatives, employees, and all persons who act in concert with them, from exposing persons within the State of California to formaldehyde gas without providing clear and reasonable warnings; (b) prohibiting defendants, and their successors, agents, representatives, employees, and all persons who act in concert with them, from selling Acai Professional Smoothing Solution in the State of California until GIB, LLC submits required product ingredient information to the state Department of Public Health; and (c) prohibiting defendants, and their successors, agents, representatives, employees, and all persons who act in concert with them, from labeling, promoting, or otherwise advertizing Acai Professional Smoothing Solution as "formaldehyde free," "hyde free," "salon safe," or "safe," or making similar representations, unless and until the product is reformulated to render these statements truthful product descriptions;

3. Enter such orders as may be necessary to restore to any person in interest any money which may have been acquired by means of these unlawful acts, untrue or misleading

1 representations, or false or misleading advertising claims, as provided for in Business and  
2 Professions Code sections 17203 and 17535, and other applicable laws;

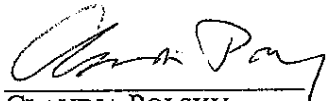
- 3 4. Award plaintiff its cost of suit; and  
4 5. Grant such other and further relief as the court deems just and proper.

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Dated: November 9, 2010

Respectfully Submitted,

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