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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT
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Deputy

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11 CENTER FOR ENVIRONMENTAL HEALTH

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 COUNTY OF ALAMEDA

14 CENTER FOR ENVIRONMENTAL HEALTH,
15 a non-profit corporation,

16 Plaintiff,

17 v.

18 SNOWGLOBE LLC; MTV NETWORKS
19 ENTERPRISES INC.; MTV NETWORKS
20 MUSIC PRODUCTIONS INC.; VIACOMCBS
21 INC.; and DOES 1 through 20, inclusive,

22 Defendants.

Case No. RG19047746

**COMPLAINT FOR INJUNCTIVE
RELIEF AND CIVIL PENALTIES**

Health & Safety Code § 25249.6, *et seq.*

1 Plaintiff Center for Environmental Health, in the public interest, based on information and
2 belief and investigation of counsel, except for information based on knowledge, hereby makes the
3 following allegations:

4 **INTRODUCTION**

5 1. This Complaint seeks to remedy Defendants' failure to warn individuals in
6 California that they are being exposed to benzene, a chemical known to the State of California to
7 cause cancer, birth defects and other reproductive harm. Such exposures have occurred as a result
8 of Defendants' operations during the SnowGlobe Festival. The SnowGlobe Festival is a three-
9 day music festival that takes place annually in December at Lake Tahoe Community College, 1
10 College Drive, South Lake Tahoe, California 96150 (the "Festival"). Individuals present on the
11 grounds of the Festival, including attendees, volunteers and vendors, are exposed to benzene
12 when they inhale the air contaminated with significant amounts of benzene from Defendants'
13 operations. There is a substantial threat of future benzene exposures unless and until Defendants'
14 abate the benzene emissions caused by their operations at the Festival.

15 2. Under California's Proposition 65, Health & Safety Code §25249.5, *et seq.*, it is
16 unlawful for businesses to knowingly and intentionally expose individuals in California to
17 chemicals known to the State to cause birth defects or other reproductive harm without providing
18 clear and reasonable warnings to individuals prior to their exposure.

19 3. Despite the fact that Defendants expose individuals to benzene, Defendants
20 provide no warnings whatsoever about the carcinogenic or reproductive health hazards associated
21 with benzene exposure. Defendants' conduct thus violates the warning provision of Proposition
22 65, Health & Safety Code § 25249.6.

23 **PARTIES**

24 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a non-profit
25 corporation dedicated to protecting the public from environmental health hazards and toxic
26 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of
27 California. CEH is a "person" within the meaning of Health & Safety Code § 25249.11(a) and
28 brings this enforcement action in the public interest pursuant to Health & Safety Code §

1 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has
2 prosecuted a large number of Proposition 65 cases in the public interest. These cases have
3 resulted in significant public benefit, including the reformulation of thousands of products to
4 remove toxic chemicals and to make them safer. CEH also provides information to Californians
5 about the health risks associated with exposure to hazardous substances, where manufacturers and
6 other responsible parties fail to do so.

7 5. Defendant SNOWGLOBE LLC is a person in the course of doing business within
8 the meaning of Health & Safety Code § 25249.11. SNOWGLOBE LLC owns or operates the
9 Festival, which takes place annually in December at Lake Tahoe Community College, 1 College
10 Drive, South Lake Tahoe, California 96150. SNOWGLOBE LLC's operations at the Festival
11 expose individuals present on the grounds of the Festival to benzene without first providing such
12 individuals with clear and reasonable warnings.

13 6. Defendant MTV NETWORKS ENTERPRISES INC. is a person in the course of
14 doing business within the meaning of Health & Safety Code § 25249.11. MTV NETWORKS
15 ENTERPRISES INC. owns or operates the Festival, which takes place annually in December at
16 Lake Tahoe Community College, 1 College Drive, South Lake Tahoe, California 96150. MTV
17 NETWORKS ENTERPRISES INC.'s operations at the Festival operations at the Festival expose
18 individuals present on the grounds of the Festival to benzene without first providing such
19 individuals with clear and reasonable warnings.

20 7. Defendant MTV NETWORKS MUSIC PRODUCTIONS INC. is a person in the
21 course of doing business within the meaning of Health & Safety Code § 25249.11. MTV
22 NETWORKS MUSIC PRODUCTIONS INC. owns or operates the Festival, which takes place
23 annually in December at Lake Tahoe Community College, 1 College Drive, South Lake Tahoe,
24 California 96150. MTV NETWORKS MUSIC PRODUCTIONS INC.'s operations at the
25 Festival expose individuals present on the grounds of the Festival to benzene without first
26 providing such individuals with clear and reasonable warnings.

27 8. Defendant VIACOMCBS INC. is a person in the course of doing business within
28 the meaning of Health & Safety Code § 25249.11. VIACOMCBS INC. owns or operates the

1 Festival, which takes place annually in December at Lake Tahoe Community College, 1 College
2 Drive, South Lake Tahoe, California 96150. VIACOMCBS INC.'s operations at the Festival
3 expose individuals present on the grounds of the Festival to benzene without first providing such
4 individuals with clear and reasonable warnings.

5 9. DOES 1 through 20 are each a person in the course of doing business within the
6 meaning of Health & Safety Code § 25249.11. DOES 1 through 20 own or operate the Festival.

7 10. The true names of DOES 1 through 20 are either unknown to CEH at this time or
8 the applicable time period before which CEH may file a Proposition 65 action has not run. When
9 their identities are ascertained or the applicable time period before which CEH may file a
10 Proposition 65 action has run, the Complaint shall be amended to reflect their true names.

11 11. The defendants identified in Paragraphs 5 through 8 and DOES 1 through 20 are
12 collectively referred to herein as "Defendants."

13 **JURISDICTION AND VENUE**

14 12. The Court has jurisdiction over this action pursuant to Health & Safety Code §
15 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to
16 California Constitution Article VI, Section 10, because this case is a cause not given by statute to
17 other trial courts.

18 13. This Court has jurisdiction over Defendants because each is a business entity that
19 does sufficient business, has sufficient minimum contacts in California, or otherwise intentionally
20 avails itself of the California market through the ownership and/or operation of the Festival, or by
21 having such other contacts with California so as to render the exercise of jurisdiction over it by
22 the California courts consistent with traditional notions of fair play and substantial justice.

23 14. Venue is proper in the Alameda County Superior Court because Defendants have
24 no designated principal offices in California with the California Secretary of State. Therefore,
25 venue is proper in any county in California, including the Alameda County Superior Court.

BACKGROUND FACTS

15. The People of the State of California have declared by initiative under Proposition 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm.” Proposition 65, § 1(b).

16. To effectuate this goal, Proposition 65 prohibits exposing people to chemicals listed by the State of California as known to cause cancer, birth defects, or other reproductive harm above certain levels without a “clear and reasonable warning” unless the business responsible for the exposure can prove that it fits within a statutory exemption. Health & Safety Code § 25249.6 states, in pertinent part:

No person in the course of doing business shall knowingly and intentionally expose 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. . . .

17. On February 27, 1987, the State of California officially listed benzene as a chemical known to cause cancer. On February 27, 1988, one year after it was listed as a chemical known to cause cancer, benzene became subject to the clear and reasonable warning requirement regarding carcinogens under Proposition 65. 27 California Code of Regulations (“C.C.R.”) § 27001(b); Health & Safety Code § 25249.10(b).

18. On December 26, 1997, the State of California officially listed benzene as a chemical known to cause reproductive toxicity. Benzene is specifically identified as a reproductive toxicant under two subcategories: “developmental toxicity,” which means harm to the developing fetus, and “male reproductive toxicity,” which means harm to the male reproductive system. 27 C.C.R. § 27001(c). On December 26, 1998, one year after it was listed as a chemical known to cause reproductive toxicity, benzene became subject to the clear and reasonable warning requirement regarding reproductive toxicants under Proposition 65. *Id.*; Health & Safety Code § 25249.10(b).

19. The most recent Festival took place in South Lake Tahoe between December 29, 2018 and January 1, 2019. Forty different musical acts performed at the Festival, and dozens of

1 vendors were present. More than 20,000 people attended the 2018 Festival, including young men
2 and women of child bearing age.

3 20. Defendants' operations during the Festival release significant amounts of benzene
4 into the air, exposing individuals present at the Festival – including but not limited to attendees,
5 volunteers and vendors – to benzene. The primary route of the exposures to benzene is inhalation
6 when individuals inhale the air that has been contaminated with benzene released from the
7 Festival's operations. No clear and reasonable warning is provided regarding the hazards of
8 benzene.

9 21. Any person acting in the public interest has standing to enforce violations of
10 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid
11 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action
12 within such time. Health & Safety Code § 25249.7(d).

13 22. More than sixty days prior to naming each Defendant in this lawsuit, CEH
14 provided a 60-Day "Notice of Violation of Proposition 65" to the California Attorney General, to
15 the District Attorney of El Dorado County, and to each of the named Defendants. In compliance
16 with Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), the Notice included the
17 following information: (1) the name and address of each violator; (2) the statute violated; (3) the
18 time period during which the violations occurred; (4) specific descriptions of the violations,
19 including (a) the routes of exposure to benzene, and (b) the location of the source of the
20 exposures to benzene; and (5) the name of the specific Proposition 65-listed chemical that is the
21 subject of the violations described in the Notice.

22 23. CEH also sent a Certificate of Merit for the Notice to the California Attorney
23 General, the District Attorney of El Dorado County, and to each of the named Defendants. In
24 compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, the Certificate
25 certified that CEH's counsel: (1) has consulted with one or more persons with relevant and
26 appropriate experience or expertise who reviewed facts, studies, or other data regarding the
27 exposures to benzene alleged in the Notice; and (2) based on the information obtained through
28 such consultations, believes that there is a reasonable and meritorious case for a citizen

1 enforcement action based on the facts alleged in the Notice. In compliance with Health & Safety
2 Code § 25249.7(d) and 11 C.C.R. § 3102, the Certificate served on the Attorney General included
3 factual information – provided on a confidential basis – sufficient to establish the basis for the
4 Certificate, including the identity of the person(s) consulted by CEH’s counsel and the facts,
5 studies, or other data reviewed by such persons.

6 24. None of the public prosecutors with the authority to prosecute violations of
7 Proposition 65 has commenced and is diligently prosecuting a cause of action against Defendants
8 under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in CEH’s Notice.

9 25. Defendants know that their operations at the Festival emit significant quantities of
10 benzene into the air, exposing individuals present at the Festival to benzene. Defendants intend
11 that the Festival is operated in a manner that results in such benzene exposures.

12 26. Under Proposition 65, an exposure is “knowing” where the party responsible for
13 such exposure has:

14 knowledge of the fact that a[n] . . . exposure to a chemical listed pursuant
15 to [Health & Safety Code § 25249.8(a)] is occurring. No knowledge that
the . . . exposure is unlawful is required.

16 27 C.C.R. § 25102(n). This knowledge may be either actual or constructive. *See, e.g.*, Final
17 Statement of Reasons Revised (November 4, 1988) (pursuant to former 22 C.C.R. Division 2,
18 § 12601).

19 27. Defendants have actual knowledge of the benzene exposures described herein. For
20 example, the problem of benzene emissions from the operation of diesel vehicles and generators,
21 which are used extensively at the Festival, has been widely reported in scientific journals,
22 government reports and media outlets. Accordingly, Defendants know or should know that their
23 operation of the Festival exposes individuals to benzene. In addition, Defendants have been
24 informed of the benzene exposures caused by their operations at the Festival by means of the 60-
25 Day Notice of Violation and accompanying Certificate of Merit served on them by CEH.

26 28. The benzene exposures at the Festival are the natural consequence of Defendants’
27 operations at the Festival.

1 29. CEH has engaged in good faith efforts to resolve the claims alleged herein prior to
2 filing this Complaint.

3 30. Nevertheless, Defendants have failed to provide clear and reasonable warnings
4 regarding the carcinogenic and reproductive hazards of benzene to individuals present at the
5 Festival. By committing the acts alleged above, Defendants have at all times relevant to this
6 Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to
7 benzene.

8 31. Any person “violating or threatening to violate” Proposition 65 may be enjoined in
9 any court of competent jurisdiction. Health & Safety Code § 25249.7. “Threaten to violate” is
10 defined to mean “to create a condition in which there is a substantial probability that a violation
11 will occur.” Health & Safety Code § 25249.11(e). Proposition 65 provides for civil penalties not
12 to exceed \$2,500 per day for each violation of Proposition 65.

13 **FIRST CAUSE OF ACTION**
14 **(Violations of Health & Safety Code § 25249.6)**

15 32. CEH realleges and incorporates by reference as if specifically set forth herein
16 Paragraphs 1 through 31, inclusive.

17 33. Each Defendant is a person in the course of doing business within the meaning of
18 Health & Safety Code § 25249.11.

19 34. Benzene is a chemical listed by the State of California as known to cause cancer,
20 birth defects and other reproductive harm

21 35. Defendants know and intend that benzene from their operations at the Festival is
22 released into the air, thereby exposing individuals present at the Festival to benzene.

23 36. Defendants have failed to provide clear and reasonable warnings regarding the
24 carcinogenicity and reproductive hazards of benzene to individuals present at the Festival. There
25 is a substantial threat of future unwarned benzene exposures unless and until Defendants’ abate
26 the benzene emissions caused by their operations at the Festival.

27 37. By committing the acts alleged above, Defendants have at all times relevant to this
28 Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to

1 benzene without first giving clear and reasonable warnings to such individuals regarding the
2 carcinogenicity of benzene.

3 **PRAYER FOR RELIEF**

4 CEH prays for judgment against Defendants as follows:

5 1. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and
6 permanently enjoin Defendants from exposing individuals at the Festival to benzene without
7 providing prior clear and reasonable warnings, as CEH shall specify in further application to the
8 Court;

9 2. That the Court, pursuant to Health & Safety Code § 25249.7(a), order Defendants
10 to take action to stop unwarned exposures of individuals at the Festival to benzene, as CEH shall
11 specify in further application to the Court;

12 3. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess civil
13 penalties against each of the Defendants in the amount of \$2,500 per day for each violation of
14 Proposition 65 according to proof;

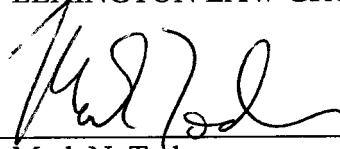
15 4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other
16 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and

17 5. That the Court grant such other and further relief as may be just and proper.
18

19 Dated: December 19, 2019

Respectfully submitted,

20 LEXINGTON LAW GROUP

21 

22 Mark N. Todzo

23 Attorneys for Plaintiff

24 CENTER FOR ENVIRONMENTAL HEALTH
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