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IN THE CIRCUIT COURT OF THE STATE OF OREGON
 FOR THE COUNTY OF MULTNOMAH

GIB, LLC, a California limited liability company,)	Case No. 1012-17526
)	
Plaintiff,)	COMPLAINT
)	
v.)	(Request for Injunctive Relief)
)	
The OREGON DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, through OREGON OSHA, and OREGON HEALTH AND SCIENCES UNIVERSITY, through THE CENTER FOR RESEARCH ON OCCUPATIONAL AND ENVIRONMENTAL TOXICOLOGY,)	
)	NOT SUBJECT TO MANDATORY ARBITRATION
Defendants.)	
)	

COMPLAINT

For its Complaint, Plaintiff GIB, LLC, a California limited liability company which does business as "Brazilian Blowout", ("GIB" or "Plaintiff") alleges as follows:

INTRODUCTION

1.

GIB seeks through this complaint an injunction compelling Oregon OSHA ("OR-OSHA") to cease reporting false and misleading test results and manipulating testing that falsely asserts that GIB's Brazilian Blowout professional solution is unsafe. OR-OSHA's

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unwarranted targeting of GIB has damaged GIB's good name and caused an unreasonable amount of media attention which is based on speculation, hyperbole and pre-determined results, rather than on science. As described more fully herein, OR-OSHA's unlawful, defamatory, damaging and misleading actions have caused GIB irreparable harm and have compelled GIB to seek protection from this Court.

PARTIES

2.

Plaintiff is a California limited liability company that sells keratin smoothing treatment to professional hair stylists utilizing the registered trademark "Brazilian Blowout". Plaintiff is one of many distributors of keratin smoothing treatments which are in the marketplace. Plaintiff is not an Oregon employer nor does it maintain a place of employment within the State of Oregon.

3.

Defendant, Oregon Department of Consumer and Business Services ("DCBS"), is an agency of the State of Oregon. DCBS, through its division OR-OSHA, is authorized to set occupational safety and health standards in Oregon for all employers and places of employment provided that those standards are reasonable.

4.

Defendant, Oregon Health and Sciences University ("OHSU"), is an independent public corporation authorized by Oregon statute. OHSU, through its center, the Center for Research on Environmental and Occupational Toxicology ("CROET"), is authorized to perform research into the incidence and causes of occupational diseases.

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STATEMENT OF FACTS

5.

On or about September 1, 2010, CROET tested Brazilian Blowout to determine if the concentration of formaldehyde in the product required disclosure on a material safety data sheet. CROET used improper testing methods, tested incorrect chemical compounds, and arrived at improper conclusions.

6.

CROET shared its improper test results with OR-OSHA and requested assistance from OR-OSHA in collecting more samples of the product and determining the content of the product. OR-OSHA did nothing to confirm whether the chemical compound measured in CROET'S testing related to any measurement of free anhydrous formaldehyde or whether it posed any actual danger. Had OR-OSHA done so, it would have then realized that the testing methodologies utilized were improper and that the test results from CROET improperly combined the levels of methylene glycol, a liquid, and formaldehyde, which is a gas.

7.

Specifically, had OR-OSHA independently reviewed the testing protocol used by CROET, it would have learned that methylene glycol is a liquid chemical compound, namely, H4CO2, Chemical Abstracts Service Registry No. 463-57-0. Formaldehyde is a gas, namely HCHO, Chemical Abstracts Service Registry No. 50-00-0.

8.

OR-OSHA's statutory purpose is to, among other things, ensure the safe working environment for Oregon employees. Despite this limited mandate to protect the employees of this state, on or about October 1, 2010, OR-OSHA undertook actions that were not reasonably aimed at protecting Oregon employees or places of employment when OR-OSHA's

1 Administrator, Michael Wood, appeared on the nationally televised morning show, *Good*
2 *Morning America*, and made a number of statements regarding the purported levels of
3 formaldehyde in the Brazilian Blowout Professional Solution which is the subject of OR-
4 OSHA's later press releases. During that interview, OR-OSHA, by and through Wood, made a
5 number of statements which were unsupported even by the misleading test results obtained by
6 Mr. Wood and OR-OSHA from CROET. Moreover, during that nationally televised interview,
7 Wood failed to disclose that the results were from a third party, that OR-OSHA had not
8 completed any testing of its own, and that the test results combined the levels of two different
9 compounds and referred to them jointly as "formaldehyde," inaccurately implying that
10 Plaintiff's professional solution is unsafe. OR-OSHA's statements on the show were neither
11 accurate, scientific, nor within the agency's authority. They were nothing more than
12 editorializing and speculation, done without disclosing the true facts or true status of
13 OR-OSHA's investigation. These baseless statements caused great alarm throughout the
14 United States among professional hair stylists and end users of Plaintiff's professional solution,
15 severely damaging Plaintiff's sales and causing it great harm. These actions did not support
16 OR-OSHA's legislative mandate.

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20 9.

21 OR-OSHA's misleading and unsupported statements continued. Even though it had not
22 completed its own testing, on or about October 8, 2010, OR-OSHA issued a press release in
23 which it asserted that Brazilian Blowout contained "upwards of 10 percent" formaldehyde. As
24 demonstrated by OR-OSHA's later press release and study, the October 8 press release was
25 inaccurate in that it combined methylene glycol in the formaldehyde measurement and failed to
26 accurately state the levels of methylene glycol. Furthermore, the press release asserted among
27 other things that formaldehyde levels were high enough to "produce medical symptoms for

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2 exposed Oregon workers.” OR-OSHA did so without having conducted any air monitoring
3 tests. Although OR-OSHA tried to bury the truth, its later-released manipulated air monitoring
4 tests demonstrated that the levels of formaldehyde to which Oregon employees are exposed are
5 well within OSHA’s limits. Thus, the October 8 press release misrepresented test results, failed
6 to disclose to the public it is entrusted to protect that it had so manipulated the results, greatly
7 exaggerated any reasonable interpretation of that testing, and appeared to do so in a calculated
8 and deliberate manner. Moreover, despite the fact that Brazilian Blowout is only one of many
9 keratin smoothing treatment on the market—and, as OR-OSHA later admitted, only 1 of
10 several brands tested—the only name mentioned in the October 8 press release was Brazilian
11 Blowout. Thus, OR-OSHA’s manipulation and misreporting unfairly damaged Plaintiff, but
12 also allowed many of its competitors to continue to market brands to the public which also
13 purportedly contain formaldehyde.
14

15 10.

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17 On or about October 11, 2010, Plaintiff informed OR-OSHA of the inaccuracies in the
18 testing and in its press release. Specifically, Plaintiff informed OR-OSHA that its estimate of
19 the levels of formaldehyde in Plaintiff’s product was flatly inaccurate, appeared to combine the
20 results of both methylene glycol and formaldehyde report that as one result, and that
21 OR-OSHA appeared to be doing so without notifying the public that this was the case.
22 OR-OSHA later admitted this is what it had done. In that letter, Plaintiff further called into
23 question the various unnamed testing methodologies implemented by OR-OSHA which were
24 referenced in their October 8 press release. Plaintiff also took issue with OR-OSHA’s act of
25 issuing vague statements relating to supposed health concerns associated with the use of
26 Plaintiff’s professional solution, without discussing what those “concerns” were based on, what
27 symptomologies were of concern, nor any specific bases for such a statement. Plaintiff

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informed OR-OSHA that its product was safe and offered to work with OR-OSHA to prove that. OR-OSHA has failed and refused to take Plaintiff up on that offer and has instead continued to target it to the exclusion of Plaintiff's competitors.

11.

On or about October 29, 2010, OR-OSHA issued another press release, in which it asserted that Brazilian Blowout contained 8.68 percent formaldehyde, without clarifying what a radical change from its prior press release this statement represented. This press release clearly contradicted test results reported in the October 8, 2010, press release and demonstrated the plain lack of reliability of OR-OSHA's and CROET's testing procedures. The press release also implied that the use of Brazilian Blowout exceeded air-quality standards, when OR-OSHA's and CROET's own testing demonstrated that the use of Brazilian Blowout did not exceed OSHA's air quality standards. The October 29, 2010, press release also failed to clarify, acknowledge, or correct the exaggerated and erroneous results published in the October 8 press release. Furthermore, OR-OSHA failed to make clear to the public that the October 29th results included formaldehyde measurements that were up to 50% less than originally reported and inconsistent with its earlier testing. Like the October 8 press release, the October 29 press release was inaccurate and included methylene glycol in the formaldehyde measurement. As in its prior press release and appearance before the press, OR-OSHA again failed to mention in the October 29 press release that other keratin smoothing treatment brands also purportedly contain formaldehyde.

12.

OR-OSHA and CROET manipulated testing protocol in an attempt to harm Plaintiff. Even in so doing, OR-OSHA and CROET could not claim that impermissible amounts of formaldehyde were released when using Plaintiff's product. On or about October 29, 2010,

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2 OR-OSHA and CROET published a report titled "*Keratin Based*" *Hair Smoothing Products*
3 *and the Presence of Formaldehyde* (the "Report"). The Report undermines and contradicts
4 OR-OSHA's press releases and its statements to the press, though it is only with a close reading
5 of the dense report that one can determine that OR-OSHA has had to retract its original, highly
6 inaccurate statements. OR-OSHA's and CROET's manipulated air-monitoring results were
7 published in the Report. By way of example, OR-OSHA and CROET misleads the readers of
8 the Report by using manipulative phrasing and writing that, in air-monitoring testing, the
9 highest short-term air quality results represented "94 percent of [OSHA's] short term limit."
10 The phrasing was misleading and intended to scare the public and create a false perception that
11 the product was unsafe, dangerous, and unhealthy. OR-OSHA and CROET mislead the public
12 with these statements because they failed to disclose that they were manipulating test criteria to
13 get to the "94 percent of [OSHA's] short term limit." For instance, when determining a user's
14 exposure to formaldehyde when using the professional solution, protocol dictates that the
15 testing be conducted over a 15-minute period. Instead, OR-OSHA and CROET almost doubled
16 this time in their air-monitoring testing, failed to disclose this in the press release, and buried it
17 toward the end of the Report.
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21 Furthermore, the Report included air-quality test results that were not derived from test
22 protocol established by federal OSHA rules and adopted by OR-OSHA. OR-OSHA and
23 CROET did not follow protocol for determining whether Brazilian Blowout's solution was
24 within OSHA's Short-Term Exposure Limit ("STEL") of 2 parts per million ("ppm").
25 Moreover, OR-OSHA and CROET manipulated testing by extending the times for measuring
26 STEL levels. OSHA protocol requires that tests last 15 minutes. Instead, OR-OSHA and
27 CROET tested for periods of up to 28 minutes. As admitted by OR-OSHA and CROET, STEL

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2 limits are to be measured over 15 minutes and 2 ppm are permissible, pursuant to OSHA
3 standards. However, OR-OSHA's results include the following:

4 26 minutes of monitoring, STEL levels of 1.88 ppm (BELOW THE LIMIT).

5 20 minutes of monitoring, STEL levels of 1.45 ppm (BELOW THE LIMIT).

6 19 minutes of monitoring, STEL levels of 0.442 ppm (BELOW THE LIMIT).

7 Thus, even when it extended the measuring times, OR-OSHA and CROET could not report any
8 instance of exposure meeting or exceeding OSHA's STEL limits. Even though testing protocol
9 was improperly disregarded, instead of simply admitting Plaintiff's professional solution is
10 safe, OR-OSHA and CROET relied upon manipulated and unreliable data in the press release,
11 the Report itself, and discussions with the press.
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13 14.

14 In addition, OR-OSHA's October 29 Report, like its press releases and statements to the
15 press, misleads the public and wrongfully promotes fear of Plaintiff's Brazilian Blowout
16 professional solution by combining the levels of methylene glycol and formaldehyde and
17 reporting them as one and the same. OR-OSHA does not clearly identify what it has done, that
18 doing so is of debate in the scientific community, and does not reveal that methylene glycol and
19 formaldehyde have different CAS numbers. Furthermore, the Report reveals, but attempts to
20 hide or minimize, that the results referenced in OR-OSHA's October 8 release were
21 substantially different than the later results. In short, the Report itself is erroneous, supported
22 by manipulated data, and unfairly targets Plaintiff.
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25 The Report also indicates that twelve different products were tested, but only the
26 Brazilian Blowout brand was mentioned repeatedly and prominently throughout the Report.
27 Brazilian Blowout is the only name mentioned in its press releases and interviews. Yet

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2 OR-OSHA and CROET did test other brands and claim that approximately a dozen additional
3 brands contain formaldehyde. These other brands are never disclosed to the public, except in
4 the last portion of the Report. OR-OSHA and CROET misrepresented to the public that
5 Brazilian Blowout's composition is unacceptable and dangerous, despite the fact that, as it was
6 measured by OR-OSHA and CROET, air quality was within OSHA limits. Finally, the Report
7 fails to address any potential exposure to hair care professionals or their clients.

8
9 16.

10 OR-OSHA has engaged in activities that are unlawful, *ultra vires*, defamatory,
11 negligent, and retaliatory in nature. As a result of these activities and the inaccurate,
12 misleading, harmful, and prejudicial press releases by OR-OSHA, as well as its improper
13 testing methodologies, Plaintiff has lost sales, consumer goodwill, and industry market share.
14 In addition, third parties have widely disseminated the incorrect and misleading information
15 from the press releases and the Report. Additionally, because OR-OSHA has failed to identify
16 in its press releases or in its various interviews the other brands which were tested, it has
17 unfairly targeted Plaintiff to the exclusion of those brands. As a result, if Defendants credit
18 their own testing results, they have failed to meet their statutory purpose of protecting
19 Oregonians by failing to ensure that the public is aware of other brands that contain the same
20 chemicals. This is further evidence of OR-OSHA's desire to harm Plaintiff for questioning the
21 content of its press releases.

22
23 17.

24 Unless enjoined from doing so, Defendants will continue to engage in the unlawful and
25 unauthorized conduct detailed above, including, but not limited to, targeting Plaintiff,
26 manipulating testing methodologies, and failing to accurately report the results of their tests in
27 press releases and in interviews. If they do, Plaintiff will continue to suffer great and

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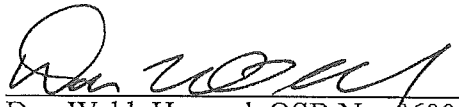
irreparable injury and damage. Because of the difficulty in determining the amount of damages that may result from that improper conduct, Plaintiff has no adequate remedy at law.

* * * * *

WHEREFORE, Plaintiff prays for and demands judgment against Defendants, and each of them, as follows:

- 1. For an injunction:
 - a. Enjoining Defendants from directly or indirectly disseminating any further information related to the formaldehyde content of Brazilian Blowout or that the use Brazilian Blowout exceeds air quality standards;
 - b. Ordering Defendants to remove from their websites the press releases and the Report and all other references to GIB or Brazilian Blowout, except as expressly allowed by this Court; and;
 - c. Ordering Defendants to disseminate an explanation admitting to the inaccurate results and improper protocol used in the Report;
- 2. For Plaintiff's costs and disbursements incurred herein; and
- 3. For such other relief as the Court deems equitable and appropriate.

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By: 
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Of Attorneys for Plaintiff

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