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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

11 ENVIRONMENTAL HEALTH ADVOCATES,  
12 INC.,

13 Plaintiff,

14 v.

15 ZOEVA US, LLC, a Delaware limited liability  
company, ULTA BEAUTY, INC., a Delaware  
16 corporation, ULTA BEAUTY CREDIT  
SERVICES CORPORATION, a Delaware  
corporation, and DOES 1 through 100,  
17 inclusive,

18 Defendants.  
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**ELECTRONICALLY FILED**

Superior Court of California,  
County of Alameda

**10/26/2021 at 10:47:47 AM**

By: Xian-xii Bowie, Deputy Clerk

Case No.: **21CV001125**

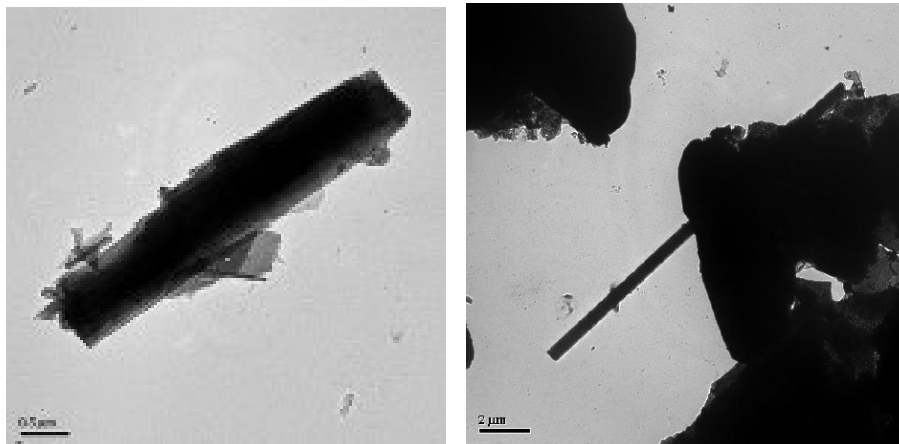
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

I.

**INTRODUCTION**

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3 1. This Complaint is a representative action brought by Environmental Health Advocates,  
4 Inc. (“Plaintiff”) in the public interest of the citizens of the State of California (“the People”). Plaintiff  
5 seeks to remedy Defendants’ failure to inform the People of exposure to asbestos, a known carcinogen.  
6 Defendants expose consumers to asbestos by manufacturing, importing, selling, and/or distributing  
7 Zoeva Spice of Life Voyager Eyeshadow Palette (“Products”). Defendants know and intend that  
8 customers will use Products containing asbestos. Defendants refuse to reformulate their product to avoid  
9 exposing unknowing customers to asbestos, even though Defendants received a 60-notice alerting them  
10 to this public health emergency. Defendants even had the opportunity see photos of the asbestos lurking  
11 in their own product but declined Plaintiff’s offer to see the visual proof. Below are pictures of asbestos  
12 fibers in Defendants’ product:



21 2. California identified and listed asbestos as a chemical known to cause cancer as early  
22 as February 27, 1987. When a person inhales asbestos the fibers can become attached to lung tissue and  
23 over time can cause significant cellular and genetic damage. Asbestos has been shown to be a causal  
24 factor of many deadly cancers, such as Mesothelioma, Ovarian Cancer, Lung Cancer, and Laryngeal  
25 Cancer. Globally, over 90,000 people die from asbestos related diseases each year and, between the  
26 years 1999 and 2017, over 27,000 Californians died from asbestos related diseases. Additionally,  
27 approximately 3,000 Americans are diagnosed with Mesothelioma every year, with asbestos exposure  
28 being the root cause of 90% of the cases.



1 business in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11.  
2 Zoeva US manufactures, imports, sells, or distributes the Products in California and Alameda County.

3 10. Defendant ULTA BEAUTY, INC. (“Ultra Beauty”) is a corporation organized and  
4 existing under the laws of Delaware. Ultra Beauty is registered to do business in California, and does  
5 business in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11.  
6 Ultra Beauty manufactures, imports, sells, or distributes the Products in California and Alameda County.

7 11. Defendant ULTA BEAUTY CREDIT SERVICES CORPORATION (“Ultra Credit”) is  
8 a corporation organized and existing under the laws of Delaware. Ultra Credit is registered to do business  
9 in California, and does business in the County of Alameda, within the meaning of Health and Safety  
10 Code, section 25249.11. Ultra Credit manufactures, imports, sells, or distributes the Products in  
11 California and Alameda County.

12 12. Plaintiff does not know the true names and/or capacities, whether individual, partners,  
13 or corporate, of the defendants sued herein as DOES 1 through 100, inclusive, and for that reason sues  
14 said defendants under fictitious names. Plaintiff will seek leave to amend this Complaint when the true  
15 names and capacities of these defendants have been ascertained. Plaintiff is informed and believes and  
16 thereon alleges that these defendants are responsible in whole or in part for Plaintiff’s damages.

17 **III.**

18 **VENUE AND JURISDICTION**

19 13. California Constitution Article VI, Section 10 grants the Superior Court original  
20 jurisdiction in all cases except those given by statute to other trial courts. The Health and Safety Code  
21 statute upon which this action is based does not give jurisdiction to any other court. As such, this Court  
22 has jurisdiction.

23 14. Venue is proper in Alameda County Superior Court pursuant to Code of Civil  
24 Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this  
25 County. Defendants conducted and continues to conduct business in this County as it relates to  
26 Products.

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

#### 4 IV.

### 5 CAUSES OF ACTION

#### 6 FIRST CAUSE OF ACTION

#### 7 (Violation of Proposition 65 – Against all Defendants)

8 16. Plaintiff incorporates by reference each and every allegation contained above.

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

11 18. Defendants manufactured, imported, sold, and/or distributed Products containing  
12 asbestos in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and  
13 believes such violations have continued after receipt of the Notice (defined *infra*) and will continue to  
14 occur into the future. Plaintiff's expert utilized a methodology to detect asbestos, as that chemical is  
15 defined by Proposition 65, in the Products that meets and/or is more stringent than the methodology  
16 ordinarily used by OEHHA to detect asbestos. A comparison to the micron scale proves that the fibers  
17 observed in this product of the mineral tremolite were long enough and wide enough to be counted by  
18 any asbestos counting criteria, including phase or polarized light microscopy. Further, asbestiform  
19 tremolite was observed and counted by Plaintiff's expert in analyzing a sample of Defendants' Products  
20 in a manner consistent with the methodologies used by OEHHA to set the Proposition 65 limits.

21 19. In manufacturing, importing, selling, and/or distributing Products, Defendants failed to  
22 provide a clear and reasonable warning to consumers and individuals in California who may be exposed  
23 to asbestos through reasonably foreseeable use of the Products.

24 20. Products expose individuals to asbestos through direct inhalation. This exposure is a  
25 natural and foreseeable consequence of Defendants placing Products into the stream of commerce. As  
26 such, Defendants intend that consumers will use Products, exposing them to asbestos.

27 21. Defendants knew or should have known that the Products contained asbestos and  
28 exposed individuals to asbestos in the way provided above. The Notice informed Defendants of the

1 presence of asbestos in the Products. Likewise, media coverage concerning asbestos and related  
2 chemicals in consumer products provided constructive notice to Defendants.

3 22. Defendants' action in this regard were deliberate and not accidental.

4 23. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a  
5 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff  
6 provided the Notice to the various required public enforcement agencies along with a certificate of merit.  
7 The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in  
8 California of the health hazards associated with exposures to asbestos contained in the Products.

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

11 25. Individuals exposed to asbestos contained in Products through inhalation resulting from  
12 reasonably foreseeable use of the Products have suffered and continue to suffer irreparable harm. There  
13 is no other plain, speedy, or adequate remedy at law.

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

17 **PRAYER FOR RELIEF**

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

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

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

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

25 *[Rest of page intentionally left blank.]*  
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1           4.       Such other and further relief as may be just and proper.

2   Respectfully submitted:

3   Dated: October 26, 2021

**ENTORNO LAW, LLP**



6           By:

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