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Chad Firke, Executive Officer / Clerk of the Court

By: L. Wiley Deputy

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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.,

Plaintiff,

13 v.

14 ZOEVA US, LLC, a Delaware limited liability
company, a Delaware corporation, and DOES 1
15 through 100, inclusive,

16 Defendants.

Case No.: 21CV001125

**AMENDED COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE RELIEF**

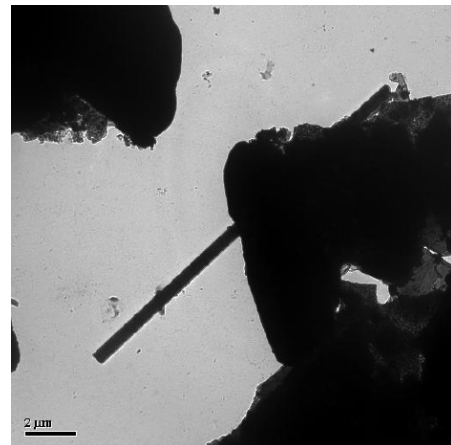
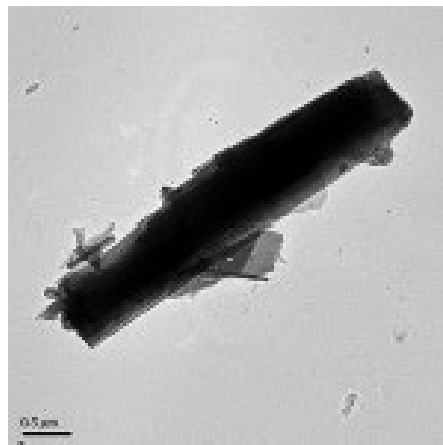
(Health & Safety Code § 25249.6 et seq.)

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I.

INTRODUCTION

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2
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 Defendant’s failure to inform the People of exposure to asbestos, a known carcinogen.
6 Defendant exposed consumers to asbestos by manufacturing, importing, selling, and/or distributing
7 Zoeva eyeshadow and face powders including but not limited to Zoeva Spice of Life Voyager
8 Eyeshadow Palette (“Products”). Defendant knows and intends that customers will use Products
9 containing asbestos. Defendant refuses to reformulate their product to avoid exposing unknowing
10 customers to asbestos, even though Defendant received a 60-notice alerting them to this public health
11 emergency. Defendant even had the opportunity see photos of the asbestos lurking in their own product
12 but declined Plaintiff’s offer to see the visual proof. Below are pictures of asbestos fibers in Defendant’s
13 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 3. In short, Defendant chose to ignore the dangers to their own customers' health, putting
2 profits over customer health and safety. This lawsuit seeks to do what Defendant will not do voluntarily:
3 stop endangering the lives of their own buyers for economic gain. Stop misrepresenting your product
4 as beneficial to consumers when it poses an imminent risk of harm. Defendant knows full well that no
5 customers would voluntarily apply asbestos-laced cosmetics to their faces if they knew such a decision
6 could doom them to a future of cancer and a painful, grueling death.

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

12 5. California identified and listed asbestos as a chemical known to cause cancer as early
13 as February 27, 1987.

14 6. Defendant failed to sufficiently warn consumers and individuals in California about
15 potential exposure to asbestos in connection with Defendant's manufacture, import, sale, or distribution
16 of Products. This is a violation of Proposition 65.

17 7. Plaintiff seeks injunctive relief compelling Defendant to sufficiently warn consumers in
18 California before exposing them to asbestos in Products. (Health & Safety Code, § 25249.7(a).) Plaintiff
19 also seeks civil penalties against Defendant for its violations of Proposition 65 along with attorney's
20 fees and costs. (Health & Safety Code, § 25249.7(b).)

21 **II.**

22 **PARTIES**

23 8. Plaintiff ENVIRONMENTAL HEALTH ADVOCATES, INC. ("Plaintiff") is a
24 corporation in the State of California dedicated to protecting the health of California citizens through
25 the elimination or reduction of toxic exposure from consumer products. It brings this action in the public
26 interest pursuant to Health and Safety Code, section 25249.7.

27 9. Defendant ZOEVA US, LLC ("Zoeva US") is a limited liability company organized
28 and existing under the laws of Delaware. Zoeva US is registered to do business in California, and does

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

8 **III.**

9 **VENUE AND JURISDICTION**

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

14 12. Venue is proper in Alameda County Superior Court pursuant to Code of Civil
15 Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this
16 County. Defendant conducted and continues to conduct business in this County as it relates to Products.

17 13. Defendant has sufficient minimum contacts in the State of California or otherwise
18 purposefully avails itself of the California market. Exercising jurisdiction over Defendant would be
19 consistent with traditional notions of fair play and substantial justice.

20 **IV.**

21 **CAUSES OF ACTION**

22 **FIRST CAUSE OF ACTION**

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

24 14. Plaintiff incorporates by reference each and every allegation contained above.

25 15. Proposition 65 mandates that citizens be informed about exposures to chemicals that
26 cause cancer, birth defects, and other reproductive harm.

27 16. Defendant manufactured, imported, sold, and/or distributed Products containing
28 asbestos in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and

1 believes such violations have continued after receipt of the Notice (defined infra) and will continue to
2 occur into the future. Plaintiff's expert utilized a methodology to detect asbestos, as that chemical is
3 defined by Proposition 65, in the Products that meets and/or is more stringent than the methodology
4 ordinarily used by OEHHA to detect asbestos. A comparison to the micron scale proves that the fibers
5 observed in this product of the mineral tremolite were long enough and wide enough to be counted by
6 any asbestos counting criteria, including phase or polarized light microscopy. Further, asbestiform
7 tremolite was observed and counted by Plaintiff's expert in analyzing a sample of Defendant's Products
8 in a manner consistent with the methodologies used by OEHHA to set the Proposition 65 limits.

9 17. In manufacturing, importing, selling, and/or distributing Products, Defendant failed to
10 provide a clear and reasonable warning to consumers and individuals in California who may be exposed
11 to asbestos through reasonably foreseeable use of the Products.

12 18. Products expose individuals to asbestos through direct inhalation. This exposure is a
13 natural and foreseeable consequence of Defendant placing Products into the stream of commerce. As
14 such, Defendant intends that consumers will use Products, exposing them to asbestos.

15 19. Defendant knew or should have known that the Products contained asbestos and
16 exposed individuals to asbestos in the way provided above. The Notice informed Defendant of the
17 presence of asbestos in the Products. Likewise, media coverage concerning asbestos and related
18 chemicals in consumer products provided constructive notice to Defendant.

19 20. Defendant's action in this regard were deliberate and not accidental.

20 21. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a
21 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff
22 provided the Notice to the various required public enforcement agencies along with a certificate of merit.
23 The Notice alleged that Defendant violated Proposition 65 by failing to sufficiently warn consumers in
24 California of the health hazards associated with exposures to asbestos contained in the Products.

25 22. The appropriate public enforcement agencies provided with the Notice failed to
26 commence and diligently prosecute a cause of action against Defendant.

27 23. Individuals exposed to asbestos contained in Products through inhalation resulting from

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1 reasonably foreseeable use of the Products have suffered and continue to suffer irreparable harm. There
2 is no other plain, speedy, or adequate remedy at law.

3 24. Defendant is liable for a maximum civil penalty of \$2,500 per day for each violation of
4 Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also
5 appropriate pursuant to Health and Safety Code, section 25249.7(a).

6 **PRAYER FOR RELIEF**

7 Wherefore, Plaintiff prays for judgment against Defendant as follows:

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

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

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

14 4. Such other and further relief as may be just and proper.

15
16 Respectfully submitted:

17 Dated: May 18, 2022

18 **ENTORNO LAW, LLP**

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20
21 By: _____
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23 Noam Glick
24 Craig M. Nicholas

25 Attorneys for Plaintiff
26 Environmental Health Advocates, Inc.