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Environmental Health Advocates, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

ENVIRONMENTAL HEALTH ADVOCATES,
INC.,

Plaintiff,

v.

99 CENTS ONLY STORES LLC, a California
limited liability company, B2 FASHIONS
INC., a Canadian corporation, and DOES 1
through 100, inclusive,

Defendants.

Case No.: **22CV005246**

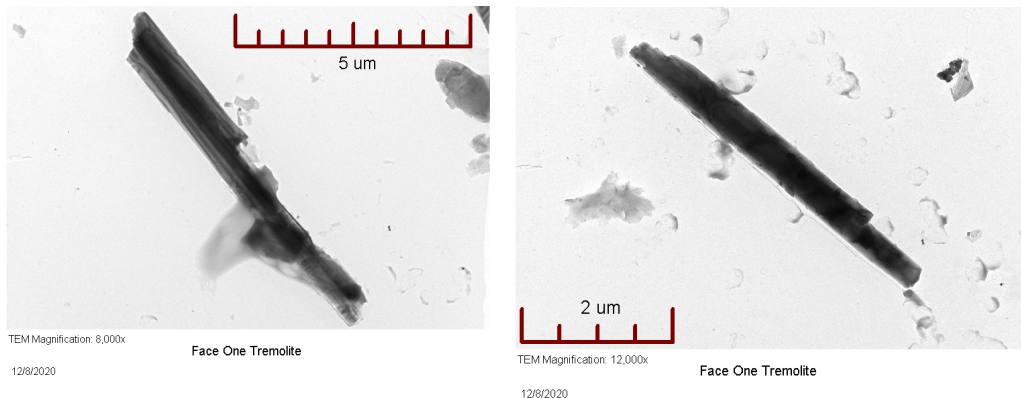
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(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 Face
7 One Sunset in Hawaii Eyeshadow & Blush 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-day notice alerting
10 them to this public health emergency. Below are pictures of asbestos fibers in Defendants’ product:



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

25 3. In short, Defendants chose to ignore the dangers to their own customers’ health, putting
26 profits over customer health and safety. This lawsuit seeks to do what Defendants will not do
27 voluntarily: stop endangering the lives of their own buyers for economic gain. Stop misrepresenting
28 your product as beneficial to consumers when it poses an imminent risk of harm. Defendants know full

1 well that no customers would voluntarily apply asbestos-laced cosmetics to their faces if they knew such
2 a decision could doom them to a future of cancer and a painful, grueling death.

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

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

10 6. Defendants failed to sufficiently warn consumers and individuals in California about
11 potential exposure to asbestos in connection with Defendants’ manufacture, import, sale, or distribution
12 of Products. This is a violation of Proposition 65.

13 7. Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers
14 in California before exposing them to asbestos in Products. (Health & Safety Code, § 25249.7(a).)
15 Plaintiff also seeks civil penalties against Defendants for its violations of Proposition 65 along with
16 attorney’s fees and costs. (Health & Safety Code, § 25249.7(b).)

17 II.

18 PARTIES

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

23 9. Defendant 99 CENTS ONLY STORES LLC (“99 Cent”) is a limited liability company
24 organized and existing under the laws of California. 99 Cent is registered to do business in California,
25 and does business in the County of Alameda, within the meaning of Health and Safety Code, section
26 25249.11. 99 Cent manufactures, imports, sells, or distributes the Products in California and Alameda
27 County.

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

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

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

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

21 21. Defendants’ action in this regard were deliberate and not accidental.

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

27 23. The appropriate public enforcement agencies provided with the Notice failed to
28 commence and diligently prosecute a cause of action against Defendants.

