

**ELECTRONICALLY FILED**

Superior Court of California,  
County of Alameda

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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.

BEAUTY 21 COSMETICS, INC., a California  
corporation, BIG LOTS STORES, INC., an  
Ohio corporation, and DOES 1 through 100,  
inclusive,

Defendants.

Case No.: **21CV001126**

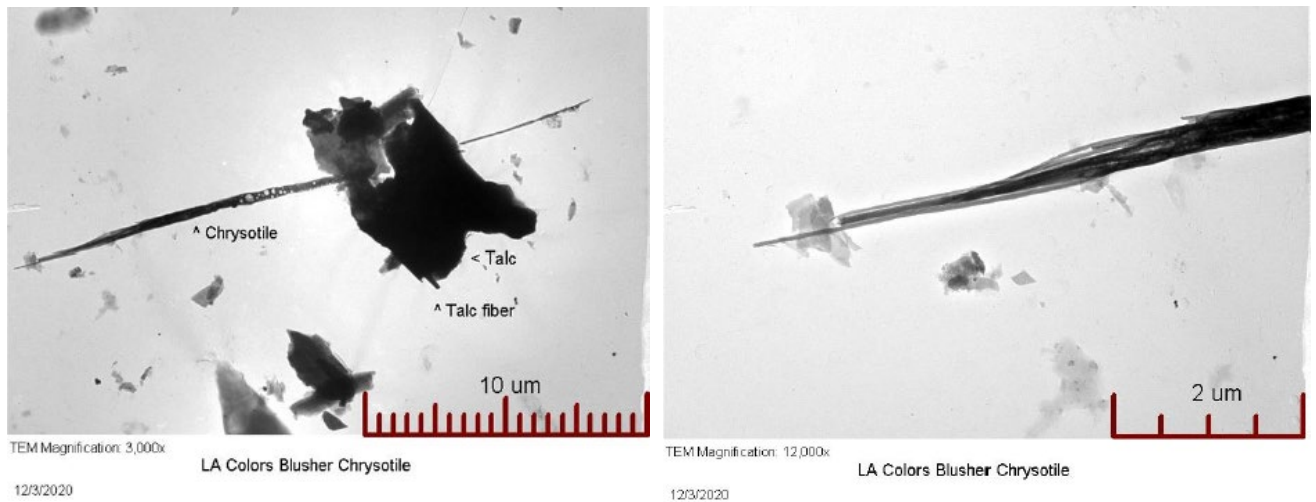
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(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 L.A.  
7 Colors Blusher & Deluxe Brush CBC141 Natural (“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:



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

1 approximately 3,000 Americans are diagnosed with Mesothelioma every year, with asbestos exposure  
2 being the root cause of 90% of the cases.

3 3. In short, Defendants chose to ignore the dangers to their own customers' health, putting  
4 profits over customer health and safety. This lawsuit seeks to do what Defendants will not do  
5 voluntarily: stop endangering the lives of their own buyers for economic gain. Stop misrepresenting  
6 your product as beneficial to consumers when it poses an imminent risk of harm. Defendants know full  
7 well that no customers would voluntarily apply asbestos-laced cosmetics to their faces if they knew such  
8 a decision could doom them to a future of cancer and a painful, grueling death.

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

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

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

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

## 23 II.

### 24 PARTIES

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

1 9. Defendant BEAUTY 21 COSMETICS, INC. (“Beauty 21”) is a corporation organized  
2 and existing under the laws of California. Beauty 21 is registered to do business in California, and does  
3 business in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11.  
4 Beauty 21 manufactures, imports, sells, or distributes the Products in California and Alameda County.

5 10. Defendant BIG LOTS STORES, INC. (“Big Lots”) is a corporation organized and  
6 existing under the laws of Ohio. Big Lots is registered to do business in California, and does business  
7 in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. Big Lots  
8 manufactures, imports, sells, or distributes the Products in California and Alameda County.

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

14 **III.**

15 **VENUE AND JURISDICTION**

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

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

24 14. Defendants have sufficient minimum contacts in the State of California or otherwise  
25 purposefully avails itself of the California market. Exercising jurisdiction over Defendants would be  
26 consistent with traditional notions of fair play and substantial justice.

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1 IV.

2 CAUSES OF ACTION

3 **FIRST CAUSE OF ACTION**

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

5 15. Plaintiff incorporates by reference each and every allegation contained above.

6 16. Proposition 65 mandates that citizens be informed about exposures to chemicals that  
7 cause cancer, birth defects, and other reproductive harm.

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

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

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

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

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



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

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3   Respectfully submitted:

4   Dated: October 25, 2021

**ENTORNO LAW, LLP**



7   By:

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