

COPY

1 LEXINGTON LAW GROUP  
2 Howard Hirsch, State Bar No. 213209  
3 Joseph Mann, State Bar No. 207968  
4 503 Divisadero Street  
5 San Francisco, CA 94117  
6 Telephone: (415) 913-7800  
7 Facsimile: (415) 759-4112  
8 hhirsch@lexlawgroup.com  
9 jmann@lexlawgroup.com

ENDORSED  
FILED  
ALAMEDA COUNTY

MAR 09 2021  
CLERK OF THE SUPERIOR COURT  
By Jessica Flannery  
Deputy

7 Attorneys for Plaintiff  
8 CENTER FOR ENVIRONMENTAL HEALTH

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

11  
12 CENTER FOR ENVIRONMENTAL HEALTH,  
13 a non-profit corporation,

14 Plaintiff,

15 v.

16 ESTÉE LAUDER INC.; THE ESTÉE LAUDER  
17 COMPANIES INC.; CLINIQUE  
18 LABORATORIES, LLC; MAKE-UP ART  
19 COSMETICS INC.; MAKE-UP ART  
20 COSMETICS (U.S.), INC.; and DOES 1 through  
21 200, inclusive,

22 Defendants.

Case No. RG21091642

COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES

Health & Safety Code § 25249.6, *et seq*

(Other)

BY FAX

1 Plaintiff Center for Environmental Health, in the public interest, based on information and  
2 belief and investigation of counsel, except for information based on knowledge, hereby makes the  
3 following allegations:

#### 4 **INTRODUCTION**

5 1. This Complaint seeks to remedy Defendants' continuing failure to warn  
6 individuals in California that they are being exposed to perfluorooctanoic acid ("PFOA"). PFOA  
7 is a chemical known to the State of California to cause birth defects and other reproductive harm.  
8 Such exposures have occurred, and continue to occur, through the manufacture, distribution, sale,  
9 and/or use of makeup foundation (the "Products"). Individuals in California, including pregnant  
10 women, are exposed to PFOA when they use, touch, or handle the Products.

11 2. Under California's Proposition 65, Health & Safety Code § 25249.5, *et seq.*, it is  
12 unlawful for businesses to knowingly and intentionally expose individuals in California to  
13 chemicals known to the State to cause birth defects or other reproductive harm without providing  
14 clear and reasonable warnings prior to their exposure. Defendants introduce Products  
15 contaminated with significant quantities of PFOA into the California marketplace, thereby  
16 exposing users of their Products, many of whom are pregnant women, to PFOA.

17 3. Despite the fact that Defendants expose pregnant women and other people who  
18 come into contact with the Products to PFOA, Defendants provide no warnings whatsoever about  
19 these PFOA exposures. Defendants' conduct thus violates the warning provision of Proposition  
20 65. Health & Safety Code § 25249.6.

#### 21 **PARTIES**

22 4. Plaintiff CENTER FOR ENVIRONMENTAL HEALTH ("CEH") is a non-profit  
23 corporation dedicated to protecting the public from environmental health hazards and toxic  
24 exposures. CEH is based in Oakland, California and incorporated under the laws of the State of  
25 California. CEH is a "person" within the meaning of Health & Safety Code § 25249.11(a) and  
26 brings this enforcement action in the public interest pursuant to Health & Safety Code §  
27 25249.7(d). CEH is a nationally recognized non-profit environmental advocacy group that has  
28 prosecuted a large number of Proposition 65 cases in the public interest. These cases have

1 resulted in significant public benefit, including the reformulation of millions of products to  
2 remove toxic chemicals and to make them safer. CEH also provides information to Californians  
3 about the health risks associated with exposure to hazardous substances, where manufacturers and  
4 other responsible parties fail to do so.

5 5. Defendant ESTÉE LAUDER INC. is a person in the course of doing business  
6 within the meaning of Health & Safety Code § 25249.11. Defendant ESTÉE LAUDER INC.  
7 manufactures, distributes, and/or sells Products for sale or use in California.

8 6. Defendant THE ESTÉE LAUDER COMPANIES INC. is a person in the course of  
9 doing business within the meaning of Health & Safety Code § 25249.11. Defendant THE ESTÉE  
10 LAUDER COMPANIES INC. manufactures, distributes, and/or sells Products for sale or use in  
11 California.

12 7. Defendant CLINIQUE LABORATORIES, LLC is a person in the course of doing  
13 business within the meaning of Health & Safety Code § 25249.11. Defendant CLINIQUE  
14 LABORATORIES, LLC manufactures, distributes, and/or sells Products for sale or use in  
15 California.

16 8. Defendant MAKE-UP ART COSMETICS INC. is a person in the course of doing  
17 business within the meaning of Health & Safety Code § 25249.11. Defendant MAKE-UP ART  
18 COSMETICS INC. manufactures, distributes, and/or sells Products for sale or use in California.

19 9. Defendant MAKE-UP ART COSMETICS (U.S.), INC. is a person in the course of  
20 doing business within the meaning of Health & Safety Code § 25249.11. Defendant MAKE-UP  
21 ART COSMETICS (U.S.), INC. manufactures, distributes, and/or sells Products for sale or use in  
22 California.

23 10. DOES 1 through 200 are each a person in the course of doing business within the  
24 meaning of Health & Safety Code § 25249.11. DOES 1 through 200 manufacture, distribute,  
25 and/or sell Products for sale or use in California.

26 11. The true names of DOES 1 through 200 are either unknown to CEH at this time or  
27 the applicable time period before which CEH may file a Proposition 65 action has not run. When  
28 their identities are ascertained or the applicable time period before which CEH may file a

1 Proposition 65 action has run, the Complaint shall be amended to reflect their true names.

2 12. The defendants identified in paragraphs 5 through 9 and DOES 1 through 200 are  
3 collectively referred to herein as “Defendants.”

4 **JURISDICTION AND VENUE**

5 13. The Court has jurisdiction over this action pursuant to Health & Safety Code §  
6 25249.7, which allows enforcement in any court of competent jurisdiction, and pursuant to  
7 California Constitution Article VI, Section 10, because this case is a cause not given by statute to  
8 other trial courts.

9 14. This Court has jurisdiction over Defendants because each is a business entity that  
10 does sufficient business, has sufficient minimum contacts in California, or otherwise intentionally  
11 avails itself of the California market through the sale, marketing, or use of the Products in  
12 California and/or by having such other contacts with California so as to render the exercise of  
13 jurisdiction over it by the California courts consistent with traditional notions of fair play and  
14 substantial justice.

15 15. Venue is proper in Alameda County Superior Court because one or more of the  
16 violations arise in the County of Alameda.

17 **BACKGROUND FACTS**

18 16. The People of the State of California have declared by initiative under Proposition  
19 65 their right “[t]o be informed about exposures to chemicals that cause cancer, birth defects, or  
20 other reproductive harm.” Proposition 65, § 1(b).

21 17. To effectuate this goal, Proposition 65 prohibits exposing people to chemicals  
22 listed by the State of California as known to cause birth defects or other reproductive harm  
23 without a “clear and reasonable warning” unless the business responsible for the exposure can  
24 prove that it fits within a statutory exemption. Health & Safety Code § 25249.6 states, in  
25 pertinent part:

26 No person in the course of doing business shall knowingly and  
27 intentionally expose any individual to a chemical known to the state to  
28 cause cancer or reproductive toxicity without first giving clear and  
reasonable warning to such individual . . . .

1           18.     On November 10, 2017, the State of California officially listed PFOA as a  
2 chemical known to cause reproductive toxicity. PFOA is specifically identified as a  
3 developmental toxicant, which means it causes harm to the developing fetus. 27 Cal. Code Regs.  
4 (“C.C.R.”) § 27001(c). On November 10, 2018, one year after it was listed as a chemical known  
5 to cause reproductive toxicity, PFOA became subject to the clear and reasonable warning  
6 requirement regarding reproductive toxicants under Proposition 65. *Id.*; Health & Safety Code §  
7 25249.10(b).

8           19.     PFOA is a “forever chemical” that is highly persistent and bioaccumulative in the  
9 human body. As such, even a short-term exposure to PFOA results in a body burden that can  
10 persist for years and even increase with additional exposures. *See* U.S. Environmental Protection  
11 Agency, *Drinking Water Health Advisory for Perfluorooctanoic Acid (PFOA)* (May 2016), at 13,  
12 24-25, 55. Exposure to PFOA has been linked to various reproductive impacts, such as decreased  
13 fertility and birth weight, and a host of other deleterious health effects, such as liver damage,  
14 thyroid disease, and asthma. *See* U.S. Department of Health and Human Services, Agency for  
15 Toxic Substances and Disease Registry, *Toxicological Profile for Perfluoroalkyls (Draft for*  
16 *Public Comment)* (June 2018), at 5-6.

17           20.     Although PFOA is not an ingredient that is used to manufacture the Products,  
18 certain chemicals found in the Products are known to degrade into PFOA. One such chemical is  
19 C9-15 fluoroalcohol phosphate, which is intentionally added to the Products as a skin conditioner  
20 that helps the Products adhere to the user’s skin for longer periods of time. *See* Ministry of  
21 Environment and Food of Denmark, Environmental Protection Agency, *Risk Assessment of*  
22 *Fluorinated Substances in Cosmetic Products* (October 2018), at 27. Exposure to PFOA is of  
23 particular concern given that the Products are predominantly used by females of reproductive age,  
24 including teenage girls.

25           21.     Defendants’ Products contain sufficient quantities of PFOA such that individuals,  
26 including pregnant women, who use, touch, and/or handle the Products are exposed to PFOA  
27 through the average use of such Products. The routes of exposure for the violations are dermal  
28 absorption directly through the skin when users apply the Products or touch and/or handle

1 Products, and ingestion via hand-to-mouth contact after consumers touch and/or handle the  
2 Products.

3 22. No clear and reasonable warning is provided with the Products regarding the  
4 exposures to PFOA, which occur through ordinary use of the Products.

5 23. Any person acting in the public interest has standing to enforce violations of  
6 Proposition 65 provided that such person has supplied the requisite public enforcers with a valid  
7 60-Day Notice of Violation and such public enforcers are not diligently prosecuting the action  
8 within such time. Health & Safety Code § 25249.7(d).

9 24. More than sixty days prior to naming each Defendant in this lawsuit, CEH  
10 provided a 60-Day “Notice of Violation” of Proposition 65 to the California Attorney General, to  
11 the District Attorneys of every county in California, to the City Attorneys of every California city  
12 with a population greater than 750,000, and to each of the named Defendants. In compliance with  
13 Health & Safety Code § 25249.7(d) and 27 C.C.R. § 25903(b), each Notice included the  
14 following information: (1) the name and address of each violator; (2) the statute violated; (3) the  
15 time period during which violations occurred; (4) specific descriptions of the violations, including  
16 (a) the routes of exposure to listed chemicals from the Products, and (b) the specific type of  
17 Products sold and used in violation of Proposition 65; and (5) the name of the specific Proposition  
18 65-listed chemical that is the subject of the violations described in each Notice.

19 25. CEH also sent a Certificate of Merit for each Notice to the California Attorney  
20 General, to the District Attorneys of every county in California, to the City Attorneys of every  
21 California city with a population greater than 750,000, and to each of the named Defendants. In  
22 compliance with Health & Safety Code § 25249.7(d) and 11 C.C.R. § 3101, each Certificate  
23 certified that CEH’s counsel: (1) has consulted with one or more persons with relevant and  
24 appropriate experience or expertise who reviewed facts, studies, or other data regarding the  
25 exposures to PFOA alleged in each Notice; and (2) based on the information obtained through  
26 such consultations, believes that there is a reasonable and meritorious case for a citizen  
27 enforcement action based on the facts alleged in each Notice. In compliance with Health &  
28 Safety Code § 25249.7(d) and 11 C.C.R. § 3102, each Certificate served on the Attorney General

1 included factual information – provided on a confidential basis – sufficient to establish the basis  
2 for the Certificate, including the identity of the person(s) consulted by CEH’s counsel and the  
3 facts, studies, or other data reviewed by such persons.

4 26. None of the public prosecutors with the authority to prosecute violations of  
5 Proposition 65 has commenced and/or is diligently prosecuting a cause of action against  
6 Defendants under Health & Safety Code § 25249.5, *et seq.*, based on the claims asserted in  
7 CEH’s Notices.

8 27. Defendants both know and intend that consumers in California, including pregnant  
9 women, will use, touch and/or handle the Products, thus exposing them to PFOA through the  
10 average use of the Products. The problem of PFOA in cosmetic products such as makeup has  
11 been the subject of extensive media reporting in recent years.

12 28. Nevertheless, Defendants continue to expose consumers, including pregnant  
13 women, to PFOA without prior clear and reasonable warnings regarding the reproductive hazards  
14 of PFOA.

15 29. CEH has engaged in good-faith efforts to resolve the claims alleged herein prior to  
16 filing this Complaint.

17 30. Any person “violating or threatening to violate” Proposition 65 may be enjoined in  
18 any court of competent jurisdiction. Health & Safety Code § 25249.7. “Threaten to violate” is  
19 defined to mean “to create a condition in which there is a substantial probability that a violation  
20 will occur.” Health & Safety Code § 25249.11(e). Proposition 65 provides for civil penalties not  
21 to exceed \$2,500 per day for each violation of Proposition 65.

22 **FIRST CAUSE OF ACTION**  
23 **(Violations of Health & Safety Code § 25249.6)**

24 31. CEH realleges and incorporates by reference as if specifically set forth herein  
25 Paragraphs 1 through 30, inclusive.

26 32. PFOA is a chemical listed by the State of California as known to cause birth  
27 defects and other reproductive harm.

28 33. By placing their Products into the stream of commerce, each Defendant is a person

1 in the course of doing business within the meaning of Health & Safety Code § 25249.11.

2 34. Defendants know that the average use of their Products will expose users of their  
3 Products to PFOA. Defendants intend that the Products be used in a manner that results in users  
4 of their Products being exposed to the PFOA contained therein.

5 35. Defendants have failed, and continue to fail, to provide clear and reasonable  
6 warnings to users of their Products regarding the exposures to PFOA which occur from use of the  
7 Products.

8 36. By committing the acts alleged above, Defendants have at all times relevant to this  
9 Complaint violated Proposition 65 by knowingly and intentionally exposing individuals to PFOA  
10 without first giving clear and reasonable warnings to such individuals regarding those exposures.

11 Wherefore, CEH prays for judgment against Defendants, as set forth hereafter.

12 **PRAYER FOR RELIEF**

13 Wherefore, CEH prays for judgment against Defendants as follows:

14 1. That the Court, pursuant to Health & Safety Code § 25249.7(a), preliminarily and  
15 permanently enjoin Defendants from offering the Products for sale in California without either  
16 reformulating the Products such that no Proposition 65 warnings are required or providing prior  
17 clear and reasonable warnings, as CEH shall specify in further application to the Court;

18 2. That the Court, pursuant to Health & Safety Code § 25249.7(a), order Defendants  
19 to take action to stop ongoing unwarned exposures to PFOA resulting from use of Products sold  
20 by Defendants, as CEH shall specify in further application to the Court;

21 3. That the Court, pursuant to Health & Safety Code § 25249.7(b), assess civil  
22 penalties against each Defendant in the amount of \$2,500 per day for each violation of  
23 Proposition 65 according to proof;

24 4. That the Court, pursuant to Code of Civil Procedure § 1021.5 or any other  
25 applicable theory, grant CEH its reasonable attorneys' fees and costs of suit; and  
26  
27  
28



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

5. That the Court grant such other and further relief as may be just and proper.

Dated: March 8, 2021

Respectfully submitted,

LEXINGTON LAW GROUP



---

Joseph Mann  
Attorneys for Plaintiff  
CENTER FOR ENVIRONMENTAL HEALTH