

**FILED**

Superior Court of California  
County of Alameda

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF ALAMEDA**

ENVIRONMENTAL HEALTH ADVOCATES,  
INC.,

Plaintiff,

v.

MARKWINS BEAUTY BRANDS, INC., a  
California corporation, 99 CENTS ONLY  
STORES, LLC, a California limited liability  
company, and DOES 1 through 100, inclusive,

Defendants.

Case No.: 22CV008716

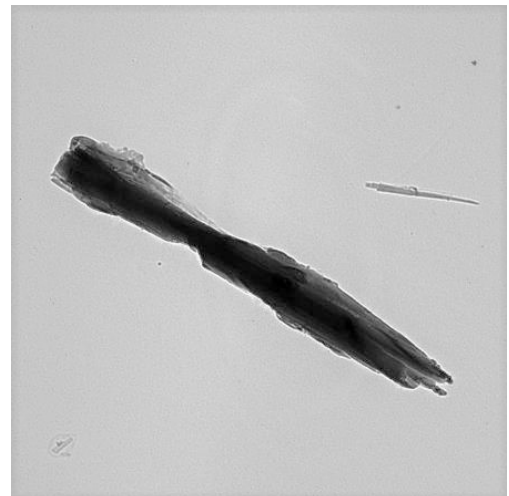
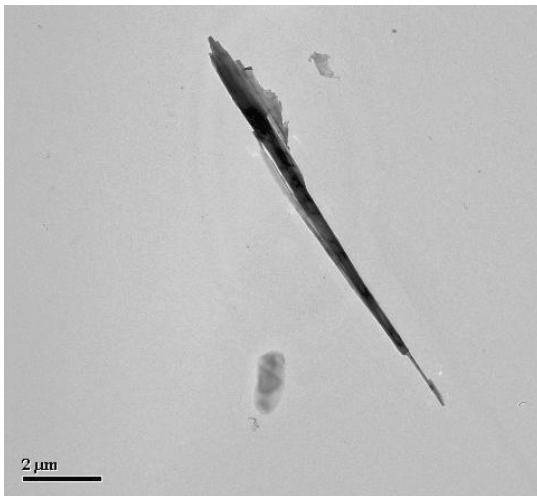
**AMENDED COMPLAINT FOR CIVIL  
PENALTIES AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

I.

**INTRODUCTION**

1. This Complaint is a representative action brought by Environmental Health Advocates, Inc. (“Plaintiff”) in the public interest of the citizens of the State of California (“the People”). Plaintiff seeks to remedy Defendants’ failure to inform the People of exposure to asbestos, a known carcinogen. Defendants expose consumers to asbestos by manufacturing, importing, selling, and/or distributing highlighting products including, but not limited to, Beauty Benefits Highlighting Duo (“Products”). Defendants know and intend that customers will use Products containing asbestos. Below are pictures of asbestos fibers found in an exemplar of Defendants’ Products:



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

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

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

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

## II.

## PARTIES

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

7. Defendant MARKWINS BEAUTY BRANDS, INC. (“MBB”) is a corporation organized and existing under the laws of California. MBB is registered to do business in California, and does business in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. MBB manufactures, imports, sells, or distributes the Products in California and Alameda County.

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

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

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**III.**

**VENUE AND JURISDICTION**

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

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

12. Defendants have sufficient minimum contacts in the State of California or otherwise purposefully avail themselves of the California market. Exercising jurisdiction over Defendants would be consistent with traditional notions of fair play and substantial justice.

**IV.**

**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**

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

13. Plaintiff incorporates by reference each and every allegation contained above.

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

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

1 in a manner consistent with the methodologies used by OEHHA to set the Proposition 65 limits.

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

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

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

12 19. Defendants' actions in this regard were deliberate and not accidental.

13 20. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a  
14 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff  
15 provided the Notice to the various required public enforcement agencies along with a certificate of merit.  
16 The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in  
17 California of the health hazards associated with exposures to asbestos contained in the Products.

18 21. The appropriate public enforcement agencies provided with the Notice failed to  
19 commence and diligently prosecute a cause of action against Defendants.

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

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

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1 **PRAYER FOR RELIEF**

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

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

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

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

9 4. Such other and further relief as may be just and proper.  
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11 Respectfully submitted:

12 Dated: May 3, 2022

**ENTORNO LAW, LLP**

13  
14 By:



15 Noam Glick

16 Craig M. Nicholas

17 Jake W. Schulte

18 Attorneys for Plaintiff

19 Environmental Health Advocates, Inc.  
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