

ENTORNO LAW, LLP

Noam Glick (SBN 251582)

Jake W. Schulte (SBN 293777)

Craig M. Nicholas (SBN 178444)

225 Broadway, Suite 1900

San Diego, California 92101

Tel: (619) 629-0527

Email: noam@entornolaw.com

Email: jake@entornolaw.com

Email: craig@entornolaw.com

Attorneys for Plaintiff

Environmental Health Advocates, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

ENVIRONMENTAL HEALTH ADVOCATES,
INC.,

Plaintiff,

v.

BHCOSMETICS, LLC, a Delaware limited
liability company, and DOES 1 through 100,
inclusive,

Defendants.

Case No.: **22CV008695**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

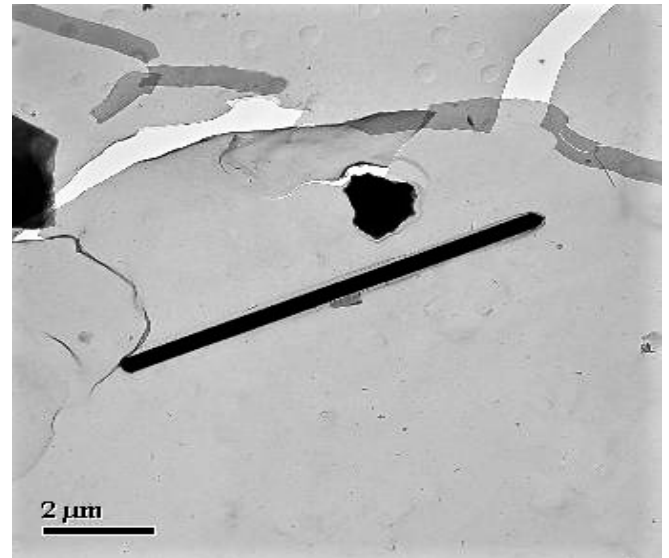
03/22/2022 at 09:22:56 AM

By: Cheryl Clark, Deputy Clerk

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 Defendant’s failure to inform the People of exposure to Titanium Dioxide (airborne, unbound particles of respirable size) (“TiO₂”), a known carcinogen. Defendant exposes consumers to TiO₂ by manufacturing, importing, selling, and/or distributing the Take Me Back to Brazil Palette (“Products”). Defendant knows and intends that customers will use Products containing TiO₂. Below are pictures of fibrous TiO₂ particles in Defendant’s 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 Titanium Dioxide (airborne, unbound particles of respirable size) (“TiO₂”) as a chemical known to cause cancer as early as September 2, 2011.

4. Defendant failed to sufficiently warn consumers and individuals in California about

1 potential exposure to TiO₂ in connection with Defendant’s manufacture, import, sale, or distribution of
2 Products. This is a violation of Proposition 65.

3 5. Plaintiff seeks injunctive relief compelling Defendant to sufficiently warn consumers in
4 California before exposing them to TiO₂ in Products. (Health & Safety Code, § 25249.7(a).) Plaintiff
5 also seeks civil penalties against Defendant for its violations of Proposition 65 along with attorney’s
6 fees and costs. (Health & Safety Code, § 25249.7(b).)

7 II.

8 PARTIES

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

13 7. Defendant BHCOSMETICS, LLC (“BHCosmetics”) is a limited liability company
14 organized and existing under the laws of Delaware. BHCosmetics is registered to do business in
15 California, and does business in the County of Alameda, within the meaning of Health and Safety Code,
16 section 25249.11. BHCosmetics manufactures, imports, sells, or distributes the Products in California
17 and Alameda County.

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

24 III.

25 VENUE AND JURISDICTION

26 9. California Constitution Article VI, Section 10 grants the Superior Court original
27 jurisdiction in all cases except those given by statute to other trial courts. The Health and Safety Code

28 ///

1 statute upon which this action is based does not give jurisdiction to any other court. As such, this Court
2 has jurisdiction.

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

6 11. Defendant has sufficient minimum contacts in the State of California or otherwise
7 purposefully avail itself of the California market. Exercising jurisdiction over Defendant would be
8 consistent with traditional notions of fair play and substantial justice.

9 **IV.**

10 **CAUSES OF ACTION**

11 **FIRST CAUSE OF ACTION**

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

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

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

16 14. Defendant manufactured, imported, sold, and/or distributed Products containing TiO₂
17 in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and believes such
18 violations have continued after receipt of the Notice (defined *infra*) and will continue to occur into the
19 future.

20 15. In manufacturing, importing, selling, and/or distributing Products, Defendant failed to
21 provide a clear and reasonable warning to consumers and individuals in California who may be exposed
22 to TiO₂ through reasonably foreseeable use of the Products.

23 16. Products expose individuals to TiO₂ through direct inhalation. This exposure is a
24 natural and foreseeable consequence of Defendant placing Products into the stream of commerce. As
25 such, Defendant intends that consumers will use Products, exposing them to TiO₂.

26 17. Defendants knew or should have known that the Products contained TiO₂ and exposed
27 individuals to TiO₂ in the way provided above. The Notice informed Defendant of the presence of
28 TiO₂ in the Products. Likewise, media coverage concerning TiO₂ and related chemicals in consumer

1 products provided constructive notice to Defendant.

2 18. Defendant's actions in this regard were deliberate and not accidental.

3 19. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a
4 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff
5 provided the Notice to the various required public enforcement agencies along with a certificate of merit.
6 The Notice alleged that Defendant violated Proposition 65 by failing to sufficiently warn consumers in
7 California of the health hazards associated with exposures to TiO₂ contained in the Products.

8 20. The appropriate public enforcement agencies provided with the Notice failed to
9 commence and diligently prosecute a cause of action against Defendant.

10 21. Individuals exposed to TiO₂ contained in Products through inhalation resulting from
11 reasonably foreseeable use of the Products have suffered and continue to suffer irreparable harm. There
12 is no other plain, speedy, or adequate remedy at law.

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

16 *[Rest of page intentionally left blank.]*
17
18
19
20
21
22
23
24
25
26
27
28

1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff prays for judgment against Defendant 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 Defendant 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.

10 Respectfully submitted:

11 Dated: March 22, 2022

ENTORNO LAW, LLP

12
13
14 By:



Noam Glick

Jake W. Schulte

Craig M. Nicholas

15
16
17 Attorneys for Plaintiff Environmental
18 Health Advocates, Inc.
19
20
21
22
23
24
25
26
27
28