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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.

COSNOVA INC., a Delaware corporation,
ULTA BEAUTY, INC., a Delaware
corporation, ULTA BEAUTY CREDIT
SERVICES CORPORATION, a Delaware
corporation, ULTA SALON COSMETICS &
FRAGRANCE, INC., a Delaware corporation,
and DOES 1 through 100, inclusive,

Defendants.

ELECTRONICALLY FILED

Superior Court of California,

County of Alameda

03/22/2022 at 10:36:29 AM

By: Xian-xii Bowie, Deputy Clerk

Case No.: **22CV008722**

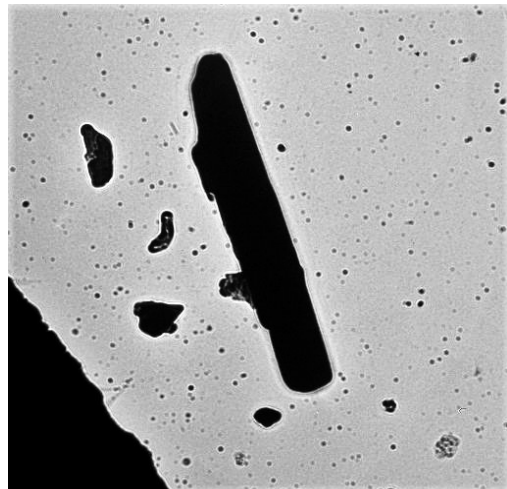
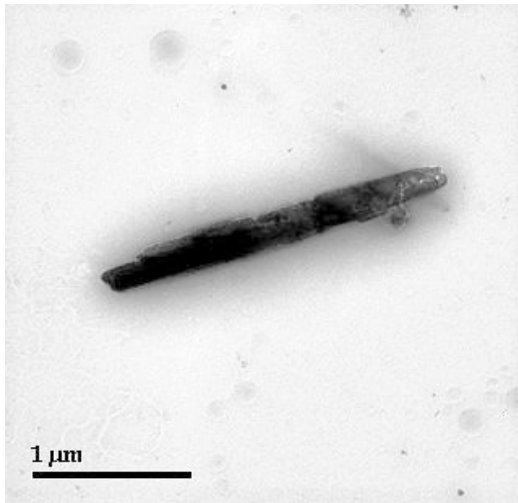
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(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 Titanium Dioxide (airborne, unbound particles of respirable size) (“TiO₂”) and Asbestos, two known carcinogens. Defendants expose consumers to TiO₂ and Asbestos by manufacturing, importing, selling, and/or distributing the Catrice Bronzer & Blush including but not limited to Catrice “California In A Box” Bronzer and Blush Palette (“Products”). Defendants know and intend that customers will use Products containing TiO₂ and Asbestos. Below are pictures of TiO₂ and Asbestos fibers, respectively, in Defendants’ Products:



2. California identified and listed TiO₂ as a chemical known to cause cancer as early as September 2, 2011.

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

4. 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.)

5. Defendants failed to sufficiently warn consumers and individuals in California about

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

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

7 II.

8 PARTIES

9 7. 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 8. Defendant COSNOVA INC. (“Cosnova”) is a corporation organized and existing under
14 the laws of Delaware. Cosnova is registered to do business in California, and does business in the County
15 of Alameda, within the meaning of Health and Safety Code, section 25249.11. Cosnova manufactures,
16 imports, sells, or distributes the Products in California and Alameda County.

17 9. Defendant ULTA BEAUTY, INC. (“UBI”) is a corporation organized and existing
18 under the laws of Delaware. UBI is registered to do business in California, and does business in the
19 County of Alameda, within the meaning of Health and Safety Code, section 25249.11. UBI
20 manufactures, imports, sells, or distributes the Products in California and Alameda County.

21 10. Defendant ULTA BEAUTY CREDIT SERVICES CORPORATION (“UBCSC”) is a
22 corporation organized and existing under the laws of Delaware. UBCSC is registered to do business in
23 California, and does business in the County of Alameda, within the meaning of Health and Safety Code,
24 section 25249.11. UBCSC manufactures, imports, sells, or distributes the Products in California and
25 Alameda County.

26 11. Defendant ULTA SALON COSMETICS & FRAGRANCE, INC. (“USCF”) is a
27 corporation organized and existing under the laws of Delaware. USCF is registered to do business in
28 California, and does business in the County of Alameda, within the meaning of Health and Safety Code,

1 section 25249.11. USCF manufactures, imports, sells, or distributes the Products in California and
2 Alameda County.

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

9 **III.**

10 **VENUE AND JURISDICTION**

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

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

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

21 **IV.**

22 **CAUSES OF ACTION**

23 **FIRST CAUSE OF ACTION**

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

25 16. Plaintiff incorporates by reference each and every allegation contained above.

26 17. Proposition 65 mandates that citizens be informed about exposures to chemicals that
27 cause cancer, birth defects, and other reproductive harm.
28

1 18. Defendants manufactured, imported, sold, and/or distributed Products containing TiO₂
2 and 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 analyzing a sample of Defendants' Products
10 in a manner consistent with the methodologies used by OEHHA to set the Proposition 65 limits.

11 19. 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 TiO₂ and Asbestos through reasonably foreseeable use of the Products.

14 20. Products expose individuals to TiO₂ and Asbestos through direct inhalation. This
15 exposure is a natural and foreseeable consequence of Defendants placing Products into the stream of
16 commerce. As such, Defendants intend that consumers will use Products, exposing them to TiO₂ and
17 Asbestos.

18 21. Defendants knew or should have known that the Products contained TiO₂ and Asbestos
19 and exposed individuals to TiO₂ and Asbestos in the way provided above. The Notice informed
20 Defendants of the presence of TiO₂ and Asbestos in the Products. Likewise, media coverage concerning
21 TiO₂ and Asbestos and related chemicals in consumer products provided constructive notice to
22 Defendants.

23 22. Defendants' actions in this regard were deliberate and not accidental.

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

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1 California of the health hazards associated with exposures to TiO₂ and Asbestos contained in the
2 Products.

3 24. The appropriate public enforcement agencies provided with the Notice failed to
4 commence and diligently prosecute a cause of action against Defendants.

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

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

11 **PRAYER FOR RELIEF**

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

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

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

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

19 4. Such other and further relief as may be just and proper.
20

21 Respectfully submitted:

22 Dated: March 22, 2022

ENTORNO LAW, LLP

23
24 By:



25 Noam Glick

Craig M. Nicholas

26 Jake W. Schulte

27 Attorneys for Plaintiff

28 Environmental Health Advocates, Inc.