

1 Julie Erickson, State Bar No. 293111 (julie@eko.law)
2 Elizabeth Kramer, State Bar No. 293129 (elizabeth@eko.law)
3 Kevin Osborne, State Bar No. 261367 (kevin@eko.law)
4 **Erickson Kramer Osborne LLP**
5 182 Howard Street
6 San Francisco, CA 94105
7 Phone: 415-635-0631
8 Fax: 415-599-8088

9 Yvette Golan (ygolan@tgfirm.com) *Pro Hac Vice pending*
10 **The Golan Law Firm PLLC**
11 529 14th Street NW, Suite 914
12 Washington, D.C. 20045
13 Phone: 866-298-4150
14 Fax: 928-4410-8250

15 Jason S. Rathod (jrathod@classlawdc.com) *Pro Hac Vice pending*
16 Mark D. Patronella (mpatronella@classlawdc.com) *Pro Hac Vice pending*
17 **Migliaccio & Rathod LLP**
18 412 H Street NE
19 Washington, D.C. 20002
20 Phone: 202-470-3520
21 Fax: 202-800-2730
22 *Attorneys for Plaintiff*

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
02/28/2023 at 04:26:48 PM
By: Angela Linhares,
Deputy Clerk

23 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
24 FOR THE COUNTY OF ALAMEDA
25 CIVIL UNLIMITED

26 PIYUSH YADAV,

27 Plaintiff

28 vs.

MINERAL FUSION NATURAL
BRANDS LLC

Defendant.

Case No.: **23CV028499**

COMPLAINT FOR INJUNCTIVE RELIEF
AND CIVIL PENALTIES AND DEMAND
FOR JURY TRIAL

(Cal. Health & Safety Code, section 25249.6 et
seq.)

COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES

1 Plaintiff Piyush Yadav (“Plaintiff”) brings this action against Defendant Mineral Fusion
2 Natural Brands LLC. (“Defendant”) to enjoin conduct in violation of California Health & Safety
3 Code, section 25249.6, for penalties recoverable under California Health & Safety Code, section
4 25249.7(b), and for other recovery specified herein. Plaintiff alleges upon information and belief,
5 except as to the investigation of his counsel, and the facts that are a matter of public record, as
6 follows:

7 **I. INTRODUCTION**

8 1. On its website and in retail stores, Defendant sells a loose powder cosmetic product
9 containing 17.3% of a known carcinogen, Titanium Dioxide (airborne, unbound particles of
10 respirable size) (hereafter “Listed TiO2”).

11 2. This Complaint seeks to redress Defendant’s ongoing failure to warn California
12 consumers that Defendant’s product exposes them to a known carcinogen, Listed TiO2.

13 3. To protect consumers and prevent this type of undisclosed exposure, California enacted
14 The Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”). Proposition
15 65, as codified in California Health & Safety Code, section 25249.5, et seq., states that no
16 businesses may “knowingly and intentionally expose any individual to a chemical known to the
17 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to
18 such individual.”

19 4. The State of California recognized that Listed TiO2 constituted a cancer risk and added
20 the chemical to the register of known carcinogens in 2011. Today, it remains listed as a cancer-
21 causing material on the “Proposition 65 List” maintained by the California Office of
22 Environmental Health Hazard Assessment.

23 5. One of Defendant’s products contains substantial quantities of Listed TiO2. Despite this,
24 Defendant knowingly markets and sells this product to individuals in California without
25 providing any warning of cancer risks.

1 **II. FACTUAL ALLEGATIONS**

2 6. Defendant is a supplier of cosmetic materials. The “Mineral Brush-on Sun Defense” (the
3 “Product”) has been sold by Defendant to individuals in California for years. The Product
4 contains Listed TiO2 and exposes users to Listed TiO2 when used as reasonably expected. (See
5 Product Label attached at Exhibits 1 & 2.)

6 7. The Product is a powder-based cosmetic intended for application directly to the
7 consumer’s face.

8 8. Defendant includes Titanium Dioxide in the Product’s lists of ingredients. See Exhibit 1.

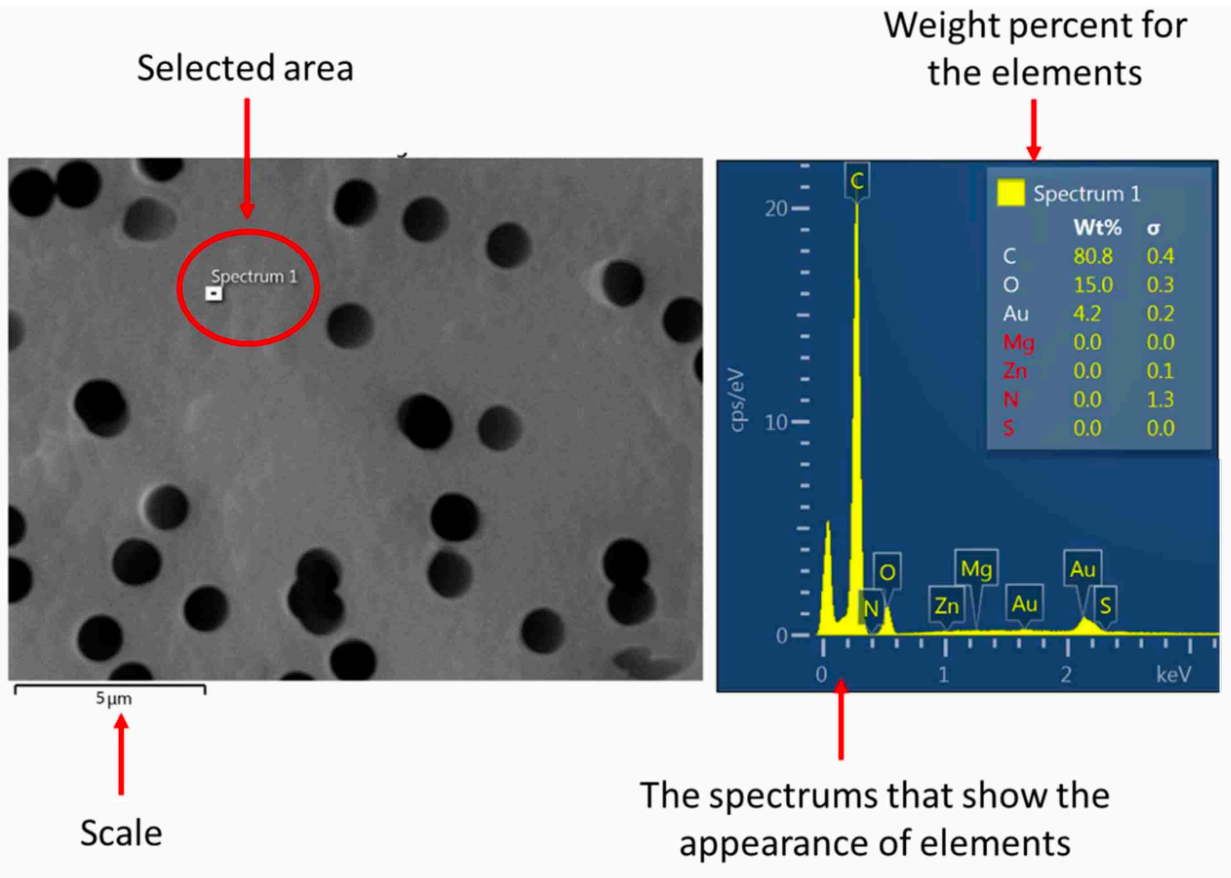
9 9. Titanium Dioxide makes up 17.3% of the Product. (See Exhibits 1 & 2.)

10 10. Plaintiff’s testing has shown that the Titanium Dioxide particles in the Product constitute
11 Listed TiO2.

12 11. A sample of the Product was analyzed using a specialized microscope with an Energy
13 Dispersive X-ray Spectroscopy system. This equipment provided microscopic images of the
14 Product’s contents and identified the chemical composition of the sample, or “Spectrum.”

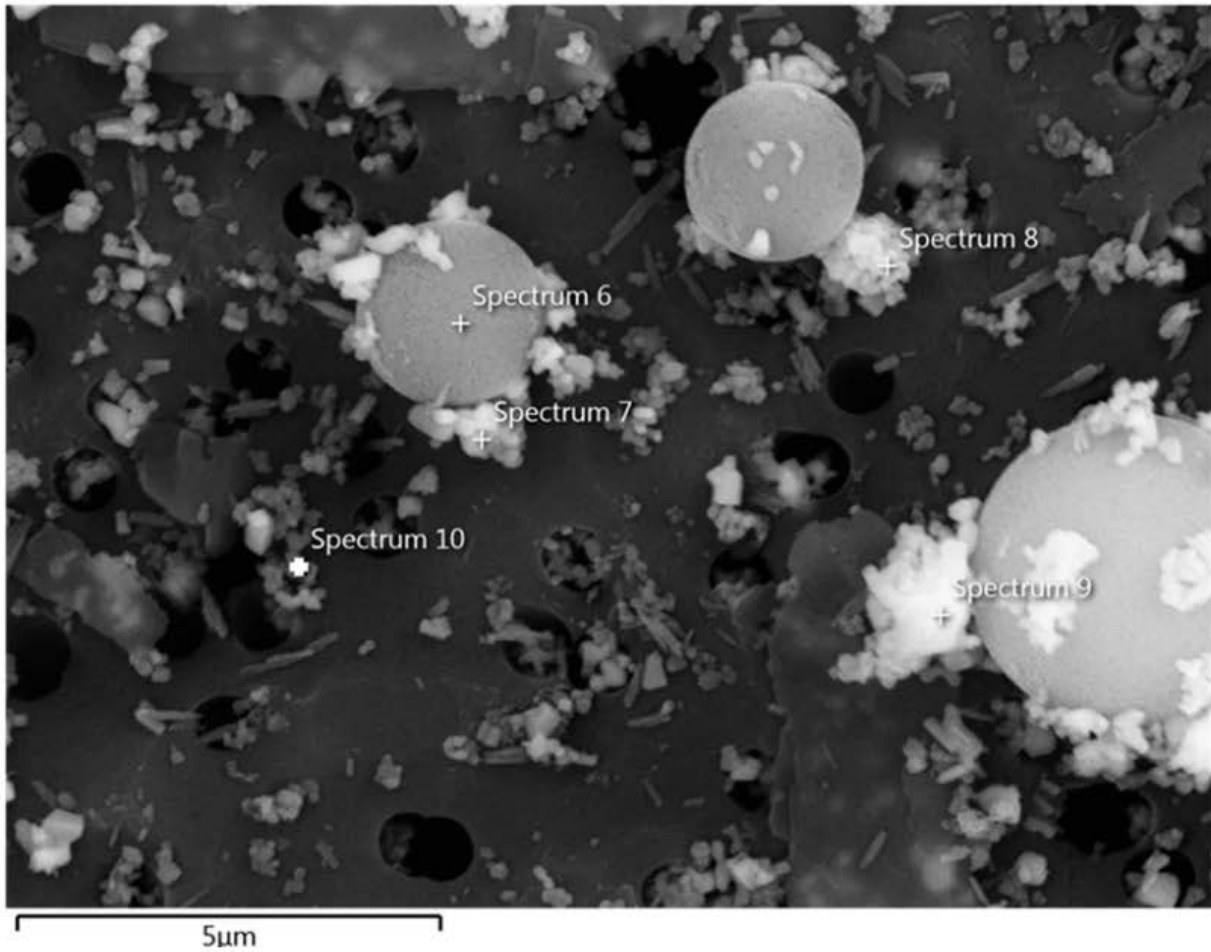
15 12. When analysis is done of the empty filter, a random spot (in the image below, “Spectrum
16 1”) was shown to be composed mostly of carbon, oxygen, and gold.

EDS Analysis of Blank Filter Coated with Gold

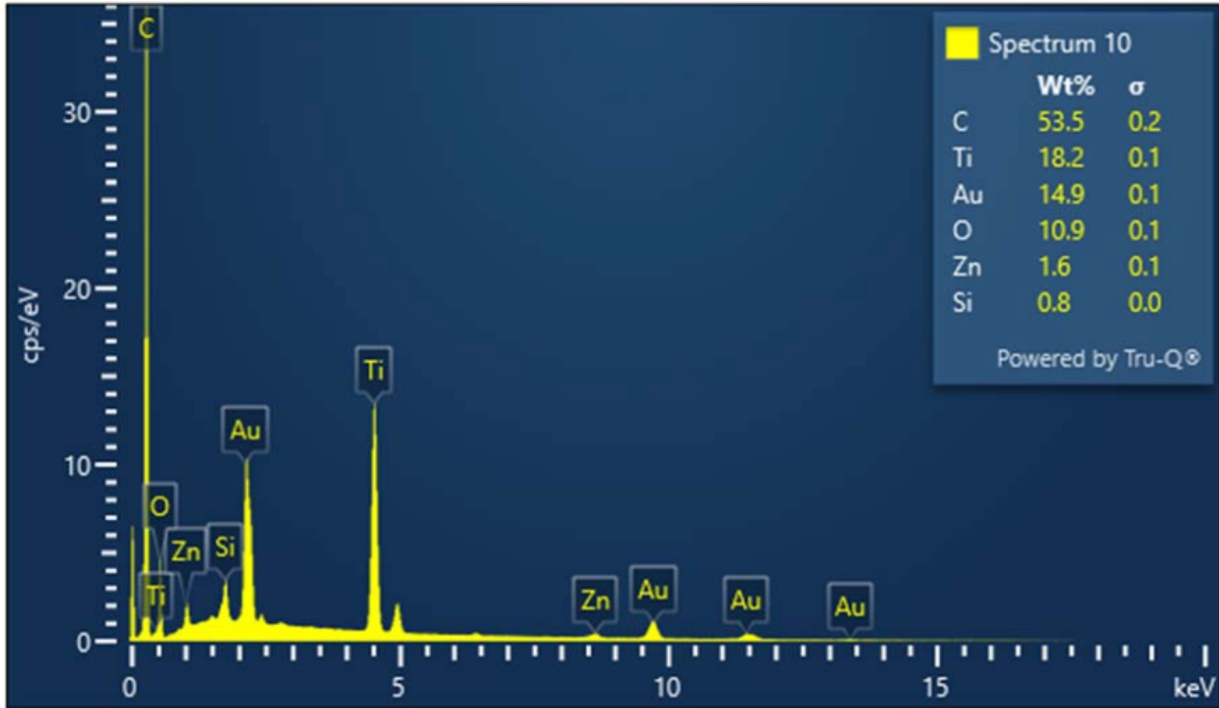


13. When Defendant's product was placed on the filter, the area identified as "Spectrum 10" was shown to be composed largely of the blank filter (carbon, oxygen, and gold), and a particle composed largely of Titanium and Oxygen:

Selected Areas for Analysis



1 Chemical Composition of Spectrum 10



15 14. The only ingredient containing Titanium in the Product, according to Defendant’s own
16 ingredient list, is Titanium Dioxide.

17 15. Moreover, the examination found the Titanium Dioxide particle to have a diameter
18 smaller than 4,000 to 10,000 nanometers, the accepted benchmarks for respirable size. (See
19 encircled areas in image *supra*, Selected Areas for Analysis.)

20 16. Defendant’s website confirms that the Titanium Dioxide used in its products is of
21 respirable size. (See, e.g., Mineral Fusion, FAQ, What are the benefits of mineral makeup over
22 traditional makeup, at <[https://www.mineralfusion.com/blogs/faq/19095843-what-are-the-
23 benefits-of-mineral-makeup-over-traditional-makeup](https://www.mineralfusion.com/blogs/faq/19095843-what-are-the-benefits-of-mineral-makeup-over-traditional-makeup)> (last viewed June 28, 2022), attached as
24 Exhibit 3.)

17. Existing, peer-reviewed, research demonstrates that such particles become airborne during the application of powder-based cosmetics.¹

18. Defendant’s instructions for product usage further ensure that its Listed TiO₂ becomes airborne. For example, Defendant’s website instructs users to “shake really well” and “[a]pply liberally.” (Mineral Fusion, Mineral SPF 30 Brush-On Sun Defense, at <<https://www.mineralfusion.com/products/mineral-spf-30-brush-on-sun-screen-powder?variant=30769713086546>> (last viewed August 16, 2022), attached as Exhibit 4.)



19. Defendant’s instructions for product usage also increased the exposure of Listed TiO₂ to California consumers. For example, Mineral Fusion instructed consumers to reapply the product every two hours. (See, e.g., Exhibit 4.)

20. Mineral Fusion’s Product contains 17.3% respirable titanium dioxide, leading to a daily exposure far above what has been shown to cause cancer. For example, one container of Defendant’s Product, has a net weight of 4 g (4000 mg), with a titanium dioxide concentration of

¹ See, e.g., Oh, H.-J., Han, T.T., Mainelis, G. (2020), Potential for Inhalation Exposure to Respirable TiO₂ from Eyebrow Powders, *Journal of Exposure Science and Environmental Epidemiology*, <https://doi.org/10.1038/s41370-020-00278-1>.

1 17.3%. Comparable translucent powdered sunscreen products advertise that they contain a 90-
2 day supply based on typical use.² Thus, based on an estimated 90 days of typical use, one
3 container leads to titanium dioxide exposure of 7.689 mg/day, vastly exceeding the “No
4 Significant Risk Level” (NSRL) of 0.044-0.3 mg/day.³

5 21. Because the Titanium Dioxide included in the Product was unbound, of a respirable size,
6 and becomes airborne during application, it constitutes Listed TiO₂.

7 22. Defendant nevertheless sold, and continues to sell, the Product in California without
8 warning consumers that they are being exposed to a carcinogen. Defendant’s failure to warn
9 violates Proposition 65 and creates serious health risks for the citizens of California.

10 **III. THE PARTIES**

11 23. Plaintiff Piyush Yadav is a resident of Alameda County, California.

12 24. Plaintiff brings this action in the public interest as defined under California Health and
13 Safety Code, section 25249.7(d).

14 25. Defendant is a cosmetic supply company and a “person in the course of doing business”
15 within the meaning of California Health & Safety Code, section 25249.11(b). Defendant is a
16 corporation that maintains its principal place of business at 7250 Redwood Blvd., Suite 208, in
17 Novato, California.

18
19
20
21
22
23 ² See Brush on Block Translucent Mineral Powder Sunscreen SPF 30 (3.4 g) at
24 <<https://brushonblock.com/products/brush-on-block>> (last visited February 28, 2023)

25 ³ According to a 2016 study, the NSRL for titanium dioxide is 0.044 mg/day to 0.3 mg/day
26 (44 µg/day - 300 µg/day). (Chad M. Thompson, et al., *Development of linear and threshold no*
27 *significant risk levels for inhalation exposure to titanium dioxide using systematic review and*
28 *mode of action considerations*, 80 REGULATORY TOXICOLOGY AND PHARMACOLOGY, 60-70 (October 2016), at <<https://www.ncbi.nlm.nih.gov/pubmed/27233922>>.)

1 **IV. JURISDICTION AND VENUE**

2 26. This action is brought under California Health & Safety Code, section 25249.7(b) for
3 equitable non-monetary and monetary relief due to Defendant’s unfair, unlawful, and fraudulent
4 conduct.

5 27. Under Article VI, section 10 of the California Constitution, the superior court has
6 “original jurisdiction in all causes except those given by statute to other trial courts.” Since this
7 cause was not assigned by statute to any other trial courts, this Court has jurisdiction.

8 28. Defendant is based in California. Defendant intentionally avails itself to the California
9 market through its sale of the Product in California. The claims asserted herein also arise from
10 conduct occurring in California. Therefore, the Court has personal jurisdiction over the
11 Defendant.

12 29. Venue is proper in this Court because Defendant engages and performs business activities
13 in and throughout Alameda County. Plaintiff resides in Alameda County and the offending
14 product is sold in Alameda County.

15 **V. CAUSE OF ACTION**

16 **Violation of Proposition 65**

17 30. Proposition 65, as codified in the California Health & Safety Code, section 25249.6,
18 states that “[n]o person in the course of doing business shall knowingly and intentionally expose
19 any individual to a chemical known to the state to cause cancer or reproductive toxicity without
20 first giving clear and reasonable warning to such individual.”

21 31. “‘Knowingly’ refers only to knowledge of the fact that a discharge of, release of, or
22 exposure to a chemical listed pursuant to section 25249.8(a) of the Act is occurring. No
23 knowledge that the discharge, release or exposure is unlawful is required.” Cal. Code Regs., tit.
24 27, § 25102(i).

25 32. On December 2, 2020, Plaintiff served the required sixty-day notice (“60-Day Notice”) of
26 violation upon the California Attorney General, to the District Attorneys of every county in
27

1 California, to the City Attorneys of every California city with a population greater than 750,000
2 and to the Defendant. (See 60-Day Notice, attached as Exhibit 1.) The 60-Day Notice stated that
3 Defendant’s sale of the Product caused consumers in the State of California to be exposed to
4 Listed TiO2 and that Defendant failed to provide individuals a “clear and reasonable warning”
5 regarding the carcinogenic risks of the Product. Furthermore, the 60-Day Notice was
6 accompanied by the required certificate of merit in full compliance of California Health & Safety
7 Code, section 25249.7(d)(1).

8 33. On January 31, 2022, Plaintiff served a supplemental 60-Day Notice of violation upon
9 the California Attorney General, to the District Attorneys of every county in California, to the
10 City Attorneys of every California city with a population greater than 750,000 and to the
11 Defendant. (See 60-Day Supplemental Notice, attached as Exhibit 2.) The 60-Day Supplemental
12 Notice stated that Defendant’s sale of the Product caused consumers in the State of California to
13 be exposed to Listed TiO2 and that Defendant failed to provide individuals a “clear and
14 reasonable warning” regarding the carcinogenic risks of the Product. Furthermore, the 60-Day
15 Supplemental Notice was accompanied by the required certificate of merit in full compliance of
16 California Health & Safety Code, section 25249.7(d)(1).

17 34. Before sending the notices of alleged violations, Plaintiff investigated the Product, the
18 likelihood that the Product would cause users to suffer significant exposures to Listed TiO2, and
19 the corporate structure of the Defendant.

20 35. Defendant has offered the Product for sale and usage in violation of California Health &
21 Safety Code, section 25249.6. Defendant’s violations of California Health & Safety Code,
22 section 25249.6 have continued following Defendant’s receipt of Plaintiff’s 60-Day Notice and
23 60-Day Supplemental Notice. Such violations are therefore reasonably likely to continue absent
24 injunctive relief from this Court.

25 36. Despite their receipt of the 60-Day Notice and 60-Day Supplemental Notice, the
26 aforementioned public enforcement agencies have not commenced a Proposition 65 cause of
27 action against Defendant.

1 37. The Product offered for sale and use in California by the Defendant contains Listed TiO₂.

2 38. Defendant knew that the Product contains Titanium Dioxide. Defendant further knew, or
3 should have known, that the Titanium Dioxide particles in their powder-based products
4 constituted Listed TiO₂.

5 39. Despite this, Defendant did not provide a “clear and reasonable warning” to the
6 consumers of the Product. (See Exhibits 1 & 2.)

7 40. The Defendant’s failure to warn users that the Product exposes them to a listed
8 carcinogen has subjected residents of California to irreparable and ongoing harm. As a
9 consequence of Defendant’s violation of Proposition 65, California Health and Safety Code,
10 section 25249.7(a) authorizes the Court to grant injunctive relief.

11 41. California Health & Safety Code, section 25249.7(b) imposes upon the Defendant a civil
12 penalty of up to \$2,500 per day for each violation of Proposition 65.

13 42. Plaintiff has engaged in good-faith efforts to resolve the claims alleged herein prior to the
14 filing of this Complaint. Plaintiff is commencing this action more than sixty (60) days from the
15 date that Plaintiff gave notice of the alleged violations to Defendant, and the public prosecutors
16 referenced *supra*.

1 **VI. PRAYER FOR RELIEF**

2 Plaintiff prays for relief and judgment against Defendant as follows:

- 3 A. For an order, pursuant to California Health & Safety Code, section 25249.7(a), enjoining
4 Defendant, its affiliates, successors, transferees, assignees, and the officers, directors, partners,
5 agents, and employees thereof, and all other persons acting or claiming to act on its behalf or in
6 concert with it, from manufacturing, distributing, or offering the Product for sale or use in
7 California without providing warnings of cancer risks;
- 8 B. For civil penalties against Defendant, pursuant to California Health & Safety Code,
9 section 25249.7(b), in the amount of \$2,500 per day for each violation alleged above;
- 10 C. For an award of attorneys' fees, costs, and expenses as authorized by applicable law; and
- 11 D. For such other and further relief as this Court may deem just and proper.

12 **VII. DEMAND FOR JURY TRIAL**

13 Plaintiff demands a trial by jury on all issues so triable.

14
15 Dated this 28th day of February, 2023.

Erickson Kramer Osborne, LLP

16
17 

18 Kevin Osborne
19 Julie Erickson
20 Elizabeth Kramer
21 Attorneys for Plaintiff Piyush Yadav
22
23
24
25
26
27
28

Exhibit 1

SIXTY DAY NOTICE OF VIOLATION

*California Safe Drinking Water and Toxic Enforcement Act of 1986
(Cal. Health & Safety Code § 25249.5, et seq.) (“*Proposition 65*”)*

DATE: 12/2/2020

TO: Mineral Fusion Natural Brands LLC
California Attorney General’s Office;
District Attorney’s Office for 58 Counties; and
City Attorneys for Los Angeles, Sacramento, San Diego, San Jose, and San Francisco

FROM: Piyush Yadav

RE: Titanium Dioxide (airborne, unbound particles or respirable size) in Certain Loose Powder Cosmetic Products

I. INTRODUCTION

My name is Piyush Yadav. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items.

I have identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at Cal. Health & Safety Code § 25249.6 *et seq.*, with respect to the products identified below in Exhibit A. These violations by have occurred and continue to occur because the alleged violator, Mineral Fusion Natural Brands LLC (Mineral Fusion), failed to provide required clear and reasonable warnings with these products.

Please allow this letter to serve as notice of these violations to Mineral Fusion and the appropriate public enforcement agencies. Pursuant to Cal. Health & Safety Code § 25249.7(d), I intend to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

II. GENERAL PROPOSITION 65 INFORMATION

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment’s (“OEHHA”) Proposition 65 Implementation Office at (916) 445-6900 or visit their website at <http://oehha.ca.gov/proposition-65>. I have enclosed with this letter a copy of a summary of Proposition 65 prepared by the Office of Environmental Health Hazard Assessment.

III. LISTED CHEMICAL

The violations involve exposure to the chemical Titanium Dioxide (airborne, unbound particles of respirable size). Effective September 2, 2011, the State of California officially listed Titanium dioxide (airborne, unbound particles of respirable size) as a chemical known to cause cancer.

IV. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

Mineral Fusion knowingly and intentionally exposed and continues to knowingly and intentionally expose consumers within the State of California to Titanium Dioxide (airborne, unbound particles of respirable size). The warning prong of Proposition 65 states that “[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...” *Cal. Health & Safety Code § 25249.6*.

The specific types of products that are causing consumer exposures in violation of Proposition 65, and that are covered by this Notice, are listed in Exhibit A below. All products within the type covered by this Notice shall be referred to hereinafter as the “Products.” Ongoing violations have occurred every day since at least the dates stated in Exhibit A, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. Mineral Fusion violated Proposition 65 because it failed to provide persons using these Products with appropriate warnings that they are being exposed to these chemicals, including by failing to have a warning on product labels for Products sold in California and failing to have a warning on the webpages where the Products are sold to purchasers in California.

Through the act of buying, acquiring and using any and all of the Products, California citizens are exposed to Titanium Dioxide (airborne, unbound particles of respirable size) when used in a standard manner, including as indicated on the product labels. The route of exposure to this chemical has been and continues to be inhalation. Inhalation of the listed chemical occurs when the Products are applied to the skin and face as directed, which releases respirable-sized particles of titanium dioxide into the air. No clear and reasonable warning is provided with the Products regarding the carcinogenic hazards of airborne titanium dioxide.

V. CONTACT INFORMATION

Please direct all questions concerning this notice to me through my counsel’s office at the following address:

Elizabeth Kramer
Erickson Kramer Osborne LLP
182 Howard St.
San Francisco, CA 94105
Telephone: (415) 635-0631
Email: elizabeth@eko.law

VI. RESOLUTION OF NOTICED CLAIMS

Based on the allegations set forth in this Notice, I intend to file a citizen enforcement lawsuit against Mineral Fusion unless it agrees in a binding written instrument to: (1) reformulate the identified products so as to eliminate further exposure to the identified chemicals, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned exposures to the identified chemicals, as well as expensive and time-consuming litigation.

If Mineral Fusion is interested in resolving this dispute without resorting to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section V above. It should be noted that neither my counsel nor I can: (1) finalize any settlement until after the 60-day notice period has expired; or (2) speak for the Attorney General or any district or city attorney who received this Notice. Therefore, while reaching an agreement with me will resolve my claims, such agreement may not satisfy public enforcement officials.

VII. VIOLATING PRODUCTS (EXHIBIT A)

Mineral SPF 30 Brush-On Sun Defense (17.3% titanium dioxide)

Further, it is this citizen's position that Mineral Fusion is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

Mineral SPF 30 Brush-On Sun Defense



NEW COSMETICS NAILS SKIN + BODY HAIR ABOUT US



MINERAL SPF 30 BRUSH-ON SUN DEFENSE



\$24.99

★★★★☆ 64 Reviews

You could earn 250 loyalty points

IN STOCK

QTY 1



ADD TO BAG

PRODUCT DETAILS



APPLICATION



OUR FORMULA



Active Ingredients Purpose

Titanium Dioxide 17.3%

Zinc Oxide 20.0% Sunscreen

Inactive ingredients: Mica, Silica, Nylon-12, Caprylic/Capric Triglyceride, Tocopherol, Capryloyl Glycine, Undecylenoyl Glycine, Alaria Esculenta (Sea Kelp) Extract, Retinyl Palmitate, Iron Oxides.

Exhibit 2

SIXTY DAY NOTICE OF VIOLATION

*California Safe Drinking Water and Toxic Enforcement Act of 1986
(Cal. Health & Safety Code § 25249.5, et seq.) (“Proposition 65”)*

DATE: 1/31/2022

TO: Mineral Fusion Natural Brands LLC
California Attorney General’s Office;
District Attorney’s Office for 58 Counties; and
City Attorneys for Los Angeles, Sacramento, San Diego, San Jose, and San Francisco

FROM: Piyush Yadav

RE: Supplemental Proposition 65 Notice (December 2020 AG Notice No. 2020-03301):
Titanium Dioxide (airborne, unbound particles of respirable size) in Certain Loose Powder Cosmetic Products

I. INTRODUCTION

My name is Piyush Yadav. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items.

I have identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at Cal. Health & Safety Code § 25249.6 *et seq.*, with respect to the products identified below in Exhibit A. These violations by have occurred and continue to occur because the alleged violator, Mineral Fusion Natural Brands LLC (Mineral Fusion), failed to provide required clear and reasonable warnings with these products.

Please allow this letter to serve as notice of these violations to Mineral Fusion and the appropriate public enforcement agencies. Pursuant to Cal. Health & Safety Code § 25249.7(d), I intend to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

II. GENERAL PROPOSITION 65 INFORMATION

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment’s (“OEHHA”) Proposition 65 Implementation Office at (916) 445-6900 or visit their website at <http://oehha.ca.gov/proposition-65>. I have enclosed with this letter a copy of a summary of Proposition 65 prepared by the Office of Environmental Health Hazard Assessment.

III. LISTED CHEMICAL

The violations involve exposure to the chemical Titanium Dioxide (airborne, unbound particles of respirable size). Effective September 2, 2011, the State of California officially listed Titanium dioxide

(airborne, unbound particles of respirable size) as a chemical known to cause cancer.

IV. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

Mineral Fusion knowingly and intentionally exposed and continues to knowingly and intentionally expose consumers within the State of California to Titanium Dioxide (airborne, unbound particles of respirable size). The warning prong of Proposition 65 states that “[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...” *Cal. Health & Safety Code § 25249.6*.

The specific types of products that are causing consumer exposures in violation of Proposition 65, and that are covered by this Notice, are listed in Exhibit A below. All products within the type covered by this Notice shall be referred to hereinafter as the “Products.” Ongoing violations have occurred every day since at least the dates stated in Exhibit A, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. Mineral Fusion violated Proposition 65 because it failed to provide persons using these Products with appropriate warnings that they are being exposed to these chemicals, including by failing to have a warning on product labels for Products sold in California and failing to have a warning on the webpages where the Products are sold to purchasers in California.

Through the act of buying, acquiring and using any and all of the Products, California citizens are exposed to Titanium Dioxide (airborne, unbound particles of respirable size) when used in a standard manner, including as indicated on the product labels. The route of exposure to this chemical has been and continues to be inhalation. Inhalation of the listed chemical occurs when the Products are applied to the skin and face as directed, which releases respirable-sized particles of titanium dioxide into the air. No clear and reasonable warning is provided with the Products regarding the carcinogenic hazards of airborne titanium dioxide.

V. CONTACT INFORMATION

Please direct all questions concerning this notice to me through my counsel’s office at the following address:

Elizabeth Kramer
Erickson Kramer Osborne LLP
44 Tehama Street
San Francisco, CA 94105
Telephone: (415) 635-0631
Email: elizabeth@eko.law

VI. RESOLUTION OF NOTICED CLAIMS

Based on the allegations set forth in this Notice, I intend to file a citizen enforcement lawsuit against Mineral Fusion unless it agrees in a binding written instrument to: (1) reformulate the identified products so as to eliminate further exposure to the identified chemicals, or provide appropriate warnings on the labels of these products; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above products in the last three years. Such a resolution will prevent further unwarned exposures to the identified chemicals, as well as expensive and time-consuming litigation.

If Mineral Fusion is interested in resolving this dispute without resorting to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section V above. It should be noted that neither my counsel nor I can: (1) finalize any settlement until after the 60-day notice period has expired; or (2) speak for the Attorney General or any district or city attorney who received this Notice. Therefore, while reaching an agreement with me will resolve my claims, such agreement may not satisfy public enforcement officials.

VII. VIOLATING PRODUCTS (EXHIBIT A)

Mineral SPF 30 Brush-On Sun Defense (17.3% titanium dioxide)

Further, it is this citizen's position that Mineral Fusion is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

Mineral SPF 30 Brush-On Sun Defense



NEW COSMETICS NAILS SKIN + BODY HAIR ABOUT US



MINERAL SPF 30 BRUSH-ON SUN DEFENSE



\$24.99

★★★★☆ 64 Reviews

You could earn 250 loyalty points

IN STOCK

QTY 1 | ADD TO BAG

PRODUCT DETAILS +

APPLICATION +

OUR FORMULA -

Active Ingredients Purpose

Titanium Dioxide 17.3%

Zinc Oxide 20.0% Sunscreen

Inactive ingredients: Mica, Silica, Nylon-12, Caprylic/Capric Triglyceride, Tocopherol, Capryloyl Glycine, Undecylenoyl Glycine, Alaria Esculenta (Sea Kelp) Extract, Retinyl Palmitate, Iron Oxides.

CERTIFICATE OF MERIT

California Health and Safety Code Section 25249.7(d)

I, Elizabeth Kramer, hereby declare:

1. This Certificate of Merit accompanies the attached 1/31/2022, Supplemental sixty-day Notice of Violation (“Notice”) in which it is alleged that the parties identified in the Notice have violated California Health and Safety Code § 25249.6, by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party, Piyush Yadav.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposures to the listed chemical that is the subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff’s case can be established, and the information did not prove that the alleged Violator will be able to establish any of the affirmative defenses set forth in the statute;
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health and Safety Code § 25249.7(h)(2), *i.e.*, (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: 1/31/2022

/s/ Elizabeth Kramer
Elizabeth Kramer
Attorney for Piyush Yadav

PROOF OF SERVICE PURSUANT TO 27 CCR § 25903

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am over the age of 18 years, and not a party to the within action. My business address is 44 Tehama Street, San Francisco, CA. I am a resident or employed in the county where the mailing occurred.

On 1/31/2022, I served the following documents:

SUPPLEMENTAL SIXTY DAY NOTICE OF VIOLATION CAL. HEALTH & SAFETY CODE § 25249.5 *ET SEQ.*;
PROPOSITION 65: A SUMMARY;
CERTIFICATE OF MERIT

on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery as indicated below:

Counsel for the company to whom the Notice is addressed (served electronically by agreement);
City and District Attorneys listed in Attached Service List (First Class Mail).

Also on 1/31/2022, I transmitted via electronic mail the above-listed documents to the electronic mail addresses of the City and/or District Attorneys who have specifically authorized e-mail service and the authorization appears on the Attorney General's website. (See Attached Electronic Service List.)

Also on 1/31/2022, I served the California Attorney General (via website Portal) by uploading a true and correct copy thereof as a PDF file via the California Attorney General's website. Also on 1/31/2022, I also served the California Attorney General a true and correct copy of the CERTIFICATE OF MERIT ATTACHMENTS.

Dated: 1/31/2022

Respectfully Submitted,

/s/ Elizabeth Kramer
Elizabeth Kramer
Attorney for Piyush Yadav

SERVICE LIST

District Attorney,
ALPINE COUNTY
P.O. Box 248
Markleeville, CA 96120

District Attorney,
AMADOR COUNTY
708 Court Street, #202
Jackson, CA 95642
District Attorney,

BUTTE COUNTY
25 County Center Drive
Administration Building
Oroville, CA 95965

District Attorney,
COLUSA COUNTY
346 5th Street, Suite 101
Colusa, CA 95932

District Attorney,
DEL NORTE COUNTY
450 H Street, Room 171
Crescent City, CA 95531

District Attorney,
EL DORADO COUNTY
778 Pacific Street
Placerville, CA 95667

District Attorney,
FRESNO COUNTY
2220 Tulare Street, Suite 1000
Fresno, CA 93721

District Attorney,
GLENN COUNTY
P.O. Box 430
Willows, CA 95988

District Attorney,
HUMBOLDT COUNTY
825 5th Street
Eureka, CA 95501

District Attorney,
IMPERIAL COUNTY
940 West Main Street, Suite 102
El Centro, CA 92243

District Attorney,
KERN COUNTY
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney,
KINGS COUNTY
1400 West Lacey Blvd.
Hanford, CA 93230

District Attorney,
LAKE COUNTY
255 N. Forbes Street
Lakeport, CA 95453

District Attorney,
LOS ANGELES COUNTY
211 W. Temple Street, Suite 1200
Los Angeles, CA 90012

District Attorney,
MADERA COUNTY
209 West Yosemite Avenue
Madera, CA 93637

District Attorney,
MARIN COUNTY
3501 Civic Center Drive, Room 130
San Rafael, CA 94903

District Attorney,
MARIPOSA COUNTY
P.O. Box 730
Mariposa, CA 95338

District Attorney,
MENDOCINO COUNTY
P.O. Box 1000
Ukiah, CA 95482

District Attorney,
MERCED COUNTY
550 West Main Street
Merced, CA 95340

District Attorney
MODOC COUNTY
204 S. Court Street, Room 202
Alturas, CA 96101

District Attorney,
MONO COUNTY
P.O. Box 2053
Mammoth Lakes, CA 93546

District Attorney,
NEVADA COUNTY
201 Commercial Street
Nevada City, CA 95959

District Attorney,
ORANGE COUNTY
401 Civic Center Drive W
Santa Ana, CA 92701

District Attorney,
PLACER COUNTY
10810 Justice Center Drive
Roseville, CA 95678

District Attorney,
PLUMAS COUNTY
520 Main Street, Room 404
Quincy, CA 95971

District Attorney,
SAN BENITO COUNTY
419 4th Street
Hollister, CA 95023

District Attorney,
SAN BERNADINO COUNTY
303 W. Third Street
San Bernardino, CA 92415

SERVICE LIST (Cont'd)

District Attorney,
SAN MATEO COUNTY
400 County Center,
Third Floor
Redwood City, CA 94063

District Attorney,
SHASTA COUNTY
1355 West Street
Redding, CA 96001

District Attorney,
SIERRA COUNTY
100 Courthouse Square
Downieville, CA 95936

District Attorney,
SISKIYOU COUNTY
P.O. Box 986
Yreka, CA 96097

District Attorney,
SOLANO COUNTY
675 Texas Street, Suite 4500
Fairfield, CA 94533

District Attorney,
STANISLAUS COUNTY
832 12th Street, Suite 300
Modesto, CA 95353

District Attorney,
SUTTER COUNTY
446 Second Street, Suite 102
Yuba City, CA 95991

District Attorney,
TEHAMA COUNTY
P.O. Box 519
Red Bluff, CA 96080

District Attorney,
TRINITY COUNTY
P.O. Box 310
Weaverville, CA 96093

District Attorney,
TUOLUMNE COUNTY
423 No. Washington Street
Sonora, CA 95370

District Attorney,
YUBA COUNTY
215 Fifth Street, Suite 152
Marysville, CA 95901

Los Angeles City Attorney
200 N Main St, Suite 1800
Los Angeles, CA 90012

Sacramento City Attorney
915 I Street
Sacramento, CA 95814

San Diego City Attorney
1200 Third Ave #1620
San Diego, CA 92101

San Francisco City Attorney
1 Dr Carlton B Doodlett PL
San Francisco, CA 94102

San Jose City Attorney
200 E. Santa Clara St., 16th Floor
San Jose, CA 95113

Office of the California
Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Oakland, CA 94612

ELECTRONIC SERVICE LIST

Nancy O'Malley
ALAMEDA COUNTY
District Attorney
CEPDProp65@acgov.org

Barbara Yook
CALAVERAS COUNTY
District Attorney
Prop65Env@co.calaveras.ca.us

Stacey Grassini
CONTRA COSTA COUNTY
Deputy District Attorney
sgrassini@contracostada.org

Thomas L. Hardy
District Attorney
INYO COUNTY
inyoda@inyocounty.us

Michelle Latimer
LASSEN COUNTY
Program Coordinator
mlatimer@co.lassen.ca.us

Dije Ndreu
MONTEREY COUNTY
Deputy District Attorney
Prop65DA@co.monterey.ca.us

Gary Lieberstein
NAPA COUNTY
District Attorney
CEPD@countyofnapa.org

Paul E. Zellerbach
RIVERSIDE COUNTY
District Attorney
Prop65@rivcoda.org

Anne Marie Schubert
SACRAMENTO COUNTY
District Attorney
Prop65@sacda.org

Mark Ankcorn
SAN DIEGO COUNTY
Deputy District Attorney
CityAttyProp65@sandiego.gov

Gregory Alker
SAN FRANCISCO COUNTY
Assistant District Attorney
gregory.alker@sfgov.org

Tori Verber Salazar
SAN JOAQUIN COUNTY
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth
SAN LUIS OBISPO COUNTY
Deputy District Attorney
edobroth@co.slo.ca.us

Christopher Dalbey
SANTA BARBARA COUNTY
Deputy District Attorney
DAProp65@co.santa-barbara.ca.us

Yen Dang
SANTA CLARA COUNTY
Supervising Deputy District Attorney
EPU@da.sccgov.org

Jeffrey S. Rosell
SANTA CRUZ COUNTY
District Attorney
Prop65DA@santacruzcounty.us

Stephan R. Passalacqua
SONOMA COUNTY
District Attorney
jbarnes@sonoma-county.org

Phillip J. Cline
TULARE COUNTY
District Attorney
Prop65@co.tulare.ca.us

Gregory D. Totten
VENTURA COUNTY
District Attorney
daspecialops@ventura.org

Jeffery W. Reisig
YOLO COUNTY
District Attorney
cfepd@yolocounty.org

Exhibit 3

FAQ

[PREVIOUS](#)

[NEXT](#)

What are the benefits of mineral makeup over traditional makeup?

Mineral makeup is comprised of micronized minerals, so it actually sits on the surface of the skin and isn't absorbed into it. Therefore, mineral makeup will not clog pores or get a cakey look in lines or creases. Mineral Fusion is a better choice than traditional makeup because it is not only non-comedogenic, but the formulations are pharmaceutical-grade, free of parabens, chemical dyes and perfumes, and are healthy and effective for all skin types. Minerals often used in mineral makeup include micronized Titanium Dioxide (which acts as a natural sunscreen), Iron Oxides (which give color

to the makeup), Zinc Oxide (a natural sunscreen and soothes skin). Mineral Fusion does not contain talc. Talc is the #1 ingredient in many traditional makeup formulations and is used as a filler - unfortunately it can clog pores and make fine lines look worse, the longer it is on the skin. Mineral Fusion makeup lays on the surface of the skin and allows your skin to breathe and function normally. It's better to wear it than no makeup at all.

[PREVIOUS](#)

[NEXT](#)

Exhibit 4

Home > Mineral SPF 30 Brush-On Sun Defense < Home



MINERAL SPF 30 BRUSH-ON SUN DEFENSE
\$24.99



★★★★☆ 107 Reviews

You could earn 125 loyalty points

IN STOCK

One-time purchase \$24.99

Subscribe & save 10% \$22.49

[Subscription details](#)

QTY 1



IN STOCK

PRODUCT DETAILS



APPLICATION



Shake, sweep, and go. Apply liberally 15 minutes before sun exposure and reapply every two hours. Pro tip: First-time use? Shake really well to activate, then buff on for max coverage. We recommend using water-resistant sunscreen if swimming or sweating.

OUR FORMULA



OUR VALUES



★★★★☆ 107 Reviews, 2 Q&As

Write A Review

Ask A Question

REVIEWS QUESTIONS



Reginamary R. Verified Reviewer

06/01/20



Q: I have an allergy to a specific ingredient. Do you have a list of the ingredients for this spf powder? Thank You! I am very interested.

Answers (1)



Store Owner

06/05/20



A: Thank you for your inquiry! Please see below for the full ingredients list for our Mineral SPF 30 Brush-On Sun Defense.

Active Ingredients Purpose

Titanium Dioxide 17.3%

Zinc Oxide 20.0% Sunscreen

Inactive ingredients: Mica, Silica, Nylon-12, Caprylic/Capric Triglyceride, Tocopherol, Capryloyl Glycine, Undecylenoyl Glycine, Alaria Esculenta (Sea Kelp) Extract, Retinyl Palmitate, Iron Oxides.

Was This Answer Helpful? 2 0



LURN Verified Reviewer

01/05/20



Q: I just purchased and cannot seem to figure out how to use. Can anyone

advise on use? Thank you.

Answers (1)



Store Owner

01/16/20

A: Hi there, and thank you for shopping with Mineral Fusion. Our Brush On SPF 30 is a great sun block solution! Simply remove the brown lid, slide down the clear protective plastic. This will free up the bristles of the brush, then shake the brush upside-down and sweep over desired areas! Once done, slide the clear protective plastic back up over the brush bristles and place brown lid back on. Enjoy!

Was This Answer Helpful? 9 2

YOU MAY ALSO LIKE



Nail Polish Remover

\$11.99



Pressed Powder Foundation

\$32.99



Sheer Moisturizer

\$9.99



