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County of Alameda

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **IN AND FOR THE COUNTY OF ALAMEDA**

10 ENVIRONMENTAL HEALTH ADVOCATES,
11 INC.,

Plaintiff,

12 v.

13 POP BEAUTY, INC., a Delaware corporation,
14 WALGREEN CO., an Illinois corporation, and
DOES 1 through 100, inclusive,

15 Defendants.

Case No.: 22CV010828

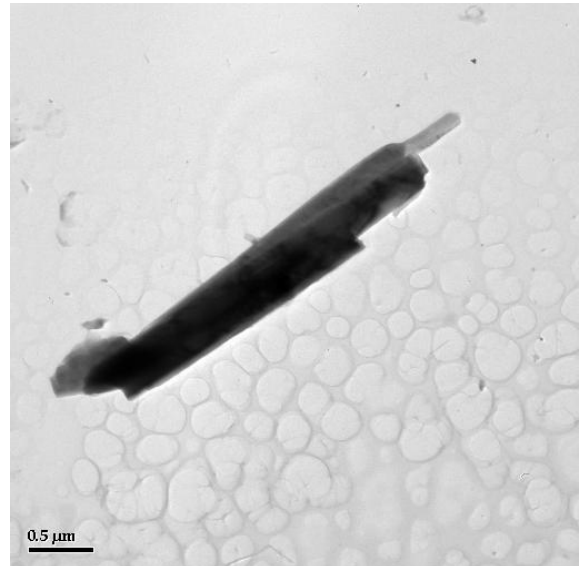
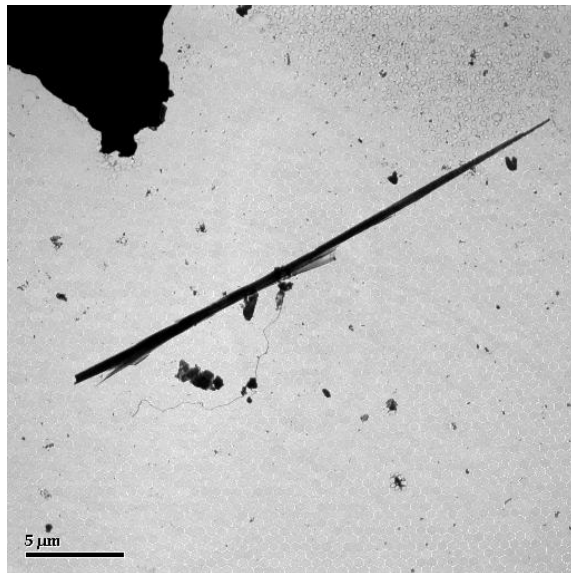
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(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 eyeshadow products including, but not limited to, POP Beauty Bright Up Your Life Eyeshadow (“Products”). Defendants know and intend that customers will use Products containing asbestos. Below are pictures of asbestos fibers 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.

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

3 11. 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. Defendants conducted and continue to conduct business in this County as it relates to Products.

6 12. Defendants have sufficient minimum contacts in the State of California or otherwise
7 purposefully avail themselves of the California market. Exercising jurisdiction over Defendants would
8 be 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 13. Plaintiff incorporates by reference each and every allegation contained above.

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

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

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

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

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

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

9 20. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a
10 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff
11 provided the Notice to the various required public enforcement agencies along with a certificate of merit.
12 The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in
13 California of the health hazards associated with exposures to asbestos contained in the Products.

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

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

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

22 **PRAYER FOR RELIEF**

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

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

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

