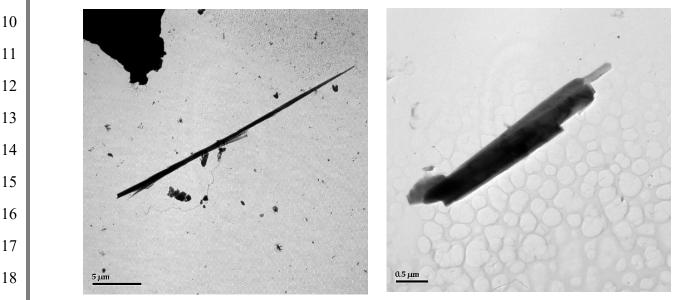
		ELECTRONICALLY FILED	
1	ENTORNO LAW, LLP	Superior Court of California,	
2	Noam Glick (SBN 251582) Jake W. Schulte (SBN 293777) Craig M. Nicholas (SBN 178444)	County of Alameda	
3	225 Broadway, Suite 1900 San Diego, California 92101	05/04/2022 at 01:17:28 PM By: Cheryl Clark, Deputy Clark	
4	Tel: (619) 629-0527 Email: noam@entornolaw.com	by, cheryr clairk, bepary cleirk	
5	Email: jake@entornolaw.com Email: craig@entornolaw.com		
6	Attorneys for Plaintiff		
7	Environmental Health Advocates, Inc.		
8	SUPERIOR COURT OF THE STATE OF CALIFORNIA		
9	IN AND FOR THE COUNTY OF ALAMEDA		
10	ENVIRONMENTAL HEALTH ADVOCATES, INC.,	Case No.: 22CV010828	
11	Plaintiff,	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF	
12	v.	(Health & Safety Code § 25249.6 et seq.)	
13	POP BEAUTY, INC., a Delaware corporation, WALGREEN CO., an Illinois corporation, and	(Treattin & Safety Code § 25249.0 et seq.)	
14	DOES 1 through 100, inclusive,		
15	Defendants.		
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INTRODUCTION

I.

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:



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.

26 4. Defendants failed to sufficiently warn consumers and individuals in California about
27 potential exposure to asbestos in connection with Defendants' manufacture, import, sale, or distribution
28 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 their 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 POP BEAUTY, INC. ("PBI") is a corporation organized and existing under
 the laws of Delaware. PBI 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. PBI manufactures, imports,
 sells, or distributes the Products in California and Alameda County.

8. Defendant WALGREEN CO. ("Walgreen") is a corporation organized and existing
under the laws of Illinois. Walgreen 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. Walgreen
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
thereon alleges that these defendants are responsible in whole or in part for the remedies and penalties
sought herein.

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

III.

VENUE AND JURISDICTION

statute upon which this action is based does not give jurisdiction to any other court. As such, this Court
 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 Proposition 65 mandates that citizens be informed about exposures to chemicals that 14. 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

provide a clear and reasonable warning to consumers and individuals in California who may be exposed
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.

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

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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
60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff
provided the Notice to the various required public enforcement agencies along with a certificate of merit.
The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in
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 to15 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).

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PRAYER FOR RELIEF

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;

1	3.	3. Reasonable attorney's fees and costs of suit; and	
2	4.	Such other and further relief as may be just and proper.	
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4	Respectfully	submitted:	
5	Dated: May	4, 2022	
6		ENTORNO LAW, LLP	
7		By: Noan Slich	
8		Noam Glick	
9		Craig M. Nicholas Jake W. Schulte	
10		Attorneys for Plaintiff	
11		Environmental Health Advocates, Inc.	
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