

1 **ENTORNO LAW, LLP**  
Noam Glick (SBN 251582)  
2 Jake W. Schulte (SBN 293777)  
Craig M. Nicholas (SBN 178444)  
3 225 Broadway, Suite 1900  
San Diego, California 92101  
4 Tel: (619) 629-0527  
Email: noam@entornolaw.com  
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.,

11 Plaintiff,

12 v.

13 SEED BEAUTY, LLC, a California limited  
liability company, ULTA BEAUTY, INC., a  
14 Delaware corporation, ULTA BEAUTY  
CREDIT SERVICES CORPORATION, a  
15 Delaware corporation, ULTA SALON  
COSMETICS & FRAGRANCE, INC., a  
16 Delaware corporation, and DOES 1 through  
100, inclusive,

17 Defendants.  
18

**ELECTRONICALLY FILED**

Superior Court of California,  
County of Alameda

**05/04/2022 at 01:23:52 PM**

By: Cheryl Clark, Deputy Clerk

Case No.: **22CV010833**

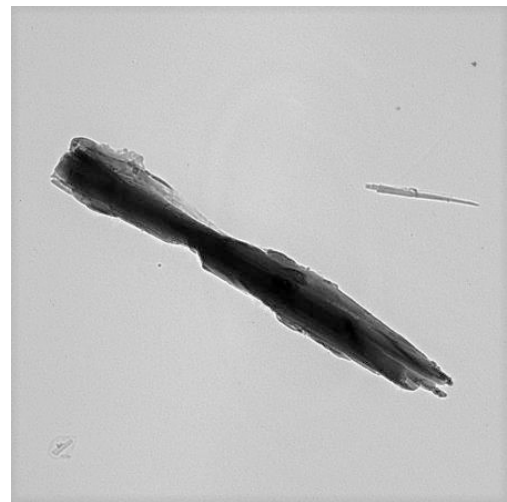
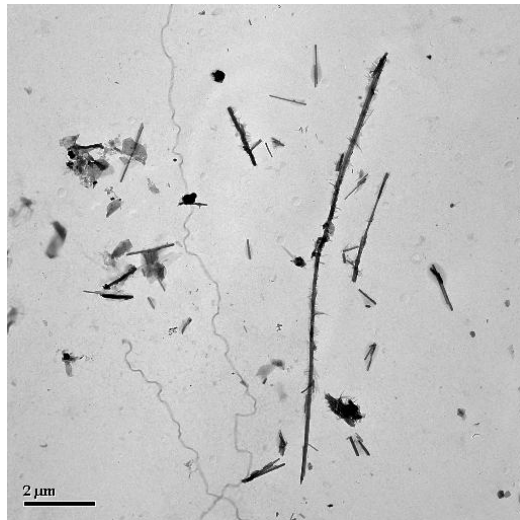
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(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, ColourPop Exes and Oh’s Pressed Powder Eyeshadow Palette (“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 occur into the future. Plaintiff's expert utilized a methodology to detect asbestos, as that chemical is  
2 defined by Proposition 65, in the Products that meets and/or is more stringent than the methodology  
3 ordinarily used by OEHHA to detect asbestos. A comparison to the micron scale proves that the fibers  
4 observed in this product of the mineral tremolite were long enough and wide enough to be counted by  
5 any asbestos counting criteria, including phase or polarized light microscopy. Further, asbestiform  
6 tremolite was observed and counted by Plaintiff's expert in analyzing a sample of Defendants' Products  
7 in a manner consistent with the methodologies used by OEHHA to set the Proposition 65 limits.

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

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

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

18 21. Defendants' actions in this regard were deliberate and not accidental.

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

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

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

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

4 **PRAYER FOR RELIEF**

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

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

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

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

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

13  
14 Respectfully submitted:

15 Dated: May 4, 2022

16 **ENTORNO LAW, LLP**

17 By:



18 Noam Glick

19 Craig M. Nicholas

20 Jake W. Schulte

21 Attorneys for Plaintiff

22 Environmental Health Advocates, Inc.  
23  
24  
25  
26  
27  
28