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Environmental Health Advocates, Inc.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

CGC-22-599678

ENVIRONMENTAL HEALTH ADVOCATES,
INC.,

Plaintiff,

v.

BUTH-NA-BODHAIGE, INC. dba "THE
BODY SHOP", a Virginia corporation, and
DOES 1 through 100, inclusive,

Defendant.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

ELECTRONICALLY

FILED

Superior Court of California,
County of San Francisco

05/18/2022

Clerk of the Court

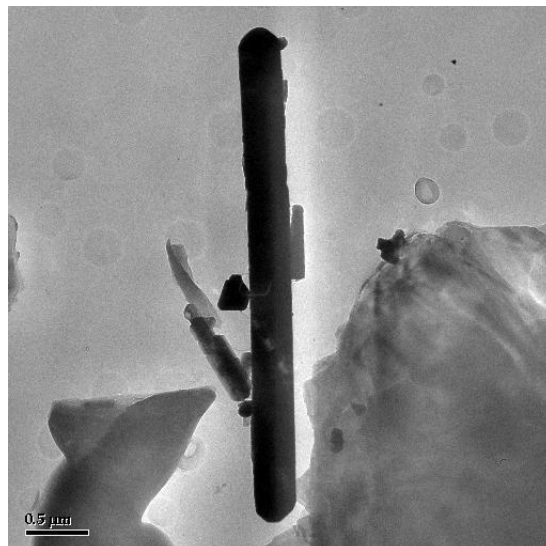
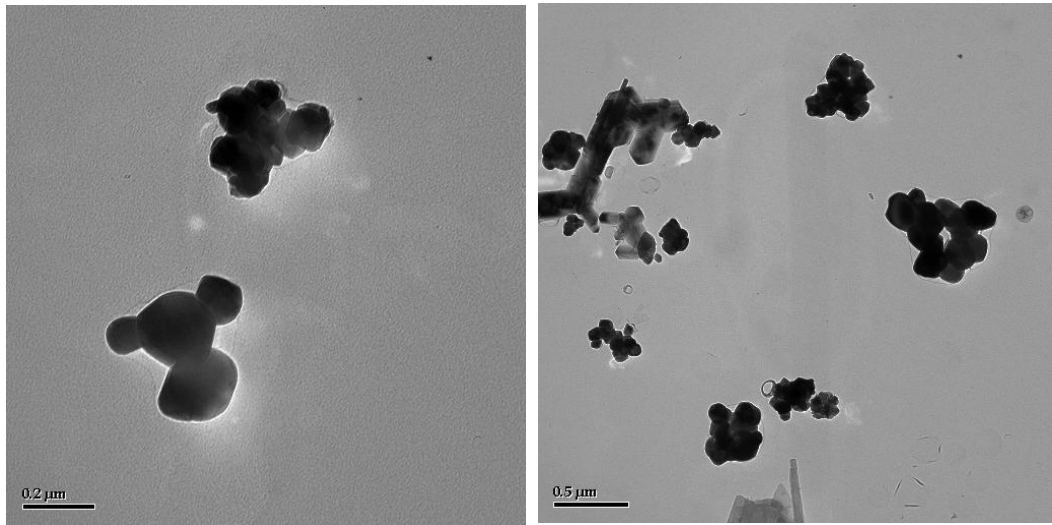
BY: LAURA SIMMONS

Deputy Clerk

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 Defendant’s failure to inform the People of exposure to Titanium Dioxide (airborne, unbound particles of respirable size) (“TiO₂”), a known carcinogen. Defendant exposes consumers to TiO₂ by manufacturing, importing, selling, and/or distributing eyeshadow products including, but not limited to, The Body Shop Own Your Naturals Eyeshadow Palette (“Products”). Defendant knows and intends that customers will use Products containing TiO₂. Below are pictures of TiO₂ particles found in an exemplar of Defendant’s 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 Titanium Dioxide (airborne, unbound particles of respirable size) (“TiO₂”) as a chemical known to cause cancer as early as September 2, 2011.

4. Defendant failed to sufficiently warn consumers and individuals in California about potential exposure to TiO₂ in connection with Defendant’s manufacture, import, sale, or distribution of Products. This is a violation of Proposition 65.

5. Plaintiff seeks injunctive relief compelling Defendant to sufficiently warn consumers in California before exposing them to TiO₂ in Products. (Health & Safety Code, § 25249.7(a).) Plaintiff also seeks civil penalties against Defendant for its 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 BUTH-NA-BODHAIGE INC. dba “THE BODY SHOP” (“BNB”) is a corporation organized and existing under the laws of Virginia. BNB is registered to do business in California, and does business in the County of San Francisco, within the meaning of Health and Safety Code, section 25249.11. BNB manufactures, imports, sells, or distributes the Products in California and San Francisco County.

8. Plaintiff does not know the true names and/or capacities, whether individual, partners, or corporate, of the Defendant sued herein as DOES 1 through 100, inclusive, and for that reason sues said Defendant under fictitious names. Plaintiff will seek leave to amend this Complaint when the true

1 names and capacities of these Defendant have been ascertained. Plaintiff is informed and believes and
2 thereon alleges that these Defendant are responsible in whole or in part for the remedies and penalties
3 sought herein.

4 **III.**

5 **VENUE AND JURISDICTION**

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

10 10. Venue is proper in San Francisco County Superior Court pursuant to Code of Civil
11 Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this
12 County. Defendant conducted and continues to conduct business in this County as it relates to Products.

13 11. Defendant has sufficient minimum contacts in the State of California or otherwise
14 purposefully avails itself of the California market. Exercising jurisdiction over Defendant would be
15 consistent with traditional notions of fair play and substantial justice.

16 **IV.**

17 **CAUSES OF ACTION**

18 **FIRST CAUSE OF ACTION**

19 **(Violation of Proposition 65 – Against all Defendant)**

20 12. Plaintiff incorporates by reference each and every allegation contained above.

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

23 14. Defendant manufactured, imported, sold, and/or distributed Products containing TiO₂
24 in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and believes such
25 violations have continued after receipt of the Notice (defined *infra*) and will continue to occur into the
26 future.

27 15. In manufacturing, importing, selling, and/or distributing Products, Defendant failed to
28 provide a clear and reasonable warning to consumers and individuals in California who may be exposed

1 to TiO2 through reasonably foreseeable use of the Products.

2 16. Products expose individuals to TiO2 through direct inhalation. This exposure is a natural
3 and foreseeable consequence of Defendant placing Products into the stream of commerce. As such,
4 Defendant intends that consumers will use Products, exposing them to TiO2.

5 17. Defendant knew or should have known that the Products contained TiO2 and exposed
6 individuals to TiO2 in the way provided above. The Notice informed Defendant of the presence of TiO2
7 in the Products. Likewise, media coverage concerning TiO2 and related chemicals in consumer products
8 provided constructive notice to Defendant.

9 18. Defendant's actions in this regard were deliberate and not accidental.

10 19. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a
11 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff
12 provided the Notice to the various required public enforcement agencies along with a certificate of merit.
13 The Notice alleged that Defendant violated Proposition 65 by failing to sufficiently warn consumers in
14 California of the health hazards associated with exposures to TiO2 contained in the Products.

15 20. The appropriate public enforcement agencies provided with the Notice failed to
16 commence and diligently prosecute a cause of action against Defendant.

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

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

23 **PRAYER FOR RELIEF**

24 Wherefore, Plaintiff prays for judgment against Defendant as follows:

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

27 2. A preliminary and permanent injunction against Defendant from manufacturing,
28 importing, selling, and/or distributing Products in California without providing a clear and reasonable

1 warning as required by Proposition 65 and related Regulations;

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

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

4
5 Respectfully submitted:

6 Dated: May 18, 2022

ENTORNO LAW, LLP

7
8 By:



9 Noam Glick

Craig M. Nicholas

10 Jake W. Schulte

11
12 Attorneys for Plaintiff

13 Environmental Health Advocates, Inc.