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Environmental Health Advocates, Inc.

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

9 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

**CGC-22-599495**

10 ENVIRONMENTAL HEALTH ADVOCATES,  
11 INC.,

12 Plaintiff,

13 v.

14 PROFUSION COSMETICS CORP., a  
California corporation, ROSS STORES, INC., a  
15 Delaware corporation, and DOES 1 through  
100, inclusive,

16 Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

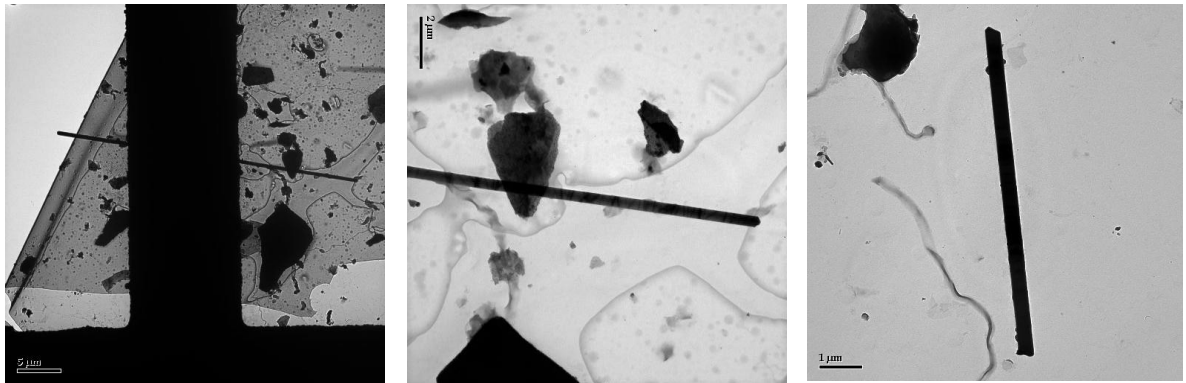
ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**05/04/2022**  
Clerk of the Court  
BY: KAREN VALDES  
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 Defendants’ failure to inform the People of exposure to Titanium Dioxide (airborne, unbound particles of respirable size) (“TiO2”), a known carcinogen. Defendants expose consumers to TiO2 by manufacturing, importing, selling, and/or distributing highlighter including but not limited to the Profusion Complete Highlighting Kit (“Products”). Defendants know and intend that customers will use Products containing TiO2. Below are pictures of TiO2 particles in 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 Titanium Dioxide (airborne, unbound particles of respirable size) (“TiO2”) as a chemical known to cause cancer as early as September 2, 2011.

4. Defendants failed to sufficiently warn consumers and individuals in California about potential exposure to TiO2 in connection with Defendants’ manufacture, import, sale, or distribution 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 TiO2 in Products. (Health & Safety Code, § 25249.7(a).) Plaintiff

1 also seeks civil penalties against Defendants for their violations of Proposition 65 along with attorney’s  
2 fees and costs. (Health & Safety Code, § 25249.7(b).)

3 **II.**

4 **PARTIES**

5 6. Plaintiff ENVIRONMENTAL HEALTH ADVOCATES, INC. (“Plaintiff”) is a  
6 corporation in the State of California dedicated to protecting the health of California citizens through  
7 the elimination or reduction of toxic exposure from consumer products. It brings this action in the public  
8 interest pursuant to Health and Safety Code, section 25249.7.

9 7. Defendant PROFUSION COSMETICS CORP. (“PCC”) is a corporation organized and  
10 existing under the laws of California. PCC is registered to do business in California, and does business  
11 in the County of San Francisco, within the meaning of Health and Safety Code, section 25249.11. PCC  
12 manufactures, imports, sells, or distributes the Products in California and San Francisco County.

13 8. Defendant ROSS STORES, INC. (“RSI”) is a corporation organized and existing under  
14 the laws of Delaware. RSI is registered to do business in California, and does business in the County of  
15 San Francisco, within the meaning of Health and Safety Code, section 25249.11. RSI manufactures,  
16 imports, sells, or distributes the Products in California and San Francisco County.

17 9. Plaintiff does not know the true names and/or capacities, whether individual, partners,  
18 or corporate, of the defendants sued herein as DOES 1 through 100, inclusive, and for that reason sues  
19 said defendants under fictitious names. Plaintiff will seek leave to amend this Complaint when the true  
20 names and capacities of these defendants have been ascertained. Plaintiff is informed and believes and  
21 thereon alleges that these defendants are responsible in whole or in part for the remedies and penalties  
22 sought herein.

23 **III.**

24 **VENUE AND JURISDICTION**

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

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

4 12. Defendants have sufficient minimum contacts in the State of California or otherwise  
5 purposefully avail themselves of the California market. Exercising jurisdiction over Defendants would  
6 be consistent with traditional notions of fair play and substantial justice.

7 **IV.**

8 **CAUSES OF ACTION**

9 **FIRST CAUSE OF ACTION**

10 **(Violation of Proposition 65 – Against all Defendants)**

11 13. Plaintiff incorporates by reference each and every allegation contained above.

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

14 15. Defendants manufactured, imported, sold, and/or distributed Products containing TiO<sub>2</sub>  
15 in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and believes such  
16 violations have continued after receipt of the Notice (defined *infra*) and will continue to occur into the  
17 future.

18 16. In manufacturing, importing, selling, and/or distributing Products, Defendants failed to  
19 provide a clear and reasonable warning to consumers and individuals in California who may be exposed  
20 to TiO<sub>2</sub> through reasonably foreseeable use of the Products.

21 17. Products expose individuals to TiO<sub>2</sub> through direct inhalation. This exposure is a natural  
22 and foreseeable consequence of Defendants placing Products into the stream of commerce. As such,  
23 Defendants intend that consumers will use Products, exposing them to TiO<sub>2</sub>.

24 18. Defendants knew or should have known that the Products contained TiO<sub>2</sub> and exposed  
25 individuals to TiO<sub>2</sub> in the way provided above. The Notice informed Defendants of the presence of  
26 TiO<sub>2</sub> in the Products. Likewise, media coverage concerning TiO<sub>2</sub> and related chemicals in consumer  
27 products provided constructive notice to Defendants.

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



