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Per local Rule, This case is assigned to  
Judge Weil, Edward G, for all purposes.

Attorneys for Plaintiff  
Environmental Health Advocates, Inc.

**SUMMONS ISSUED**

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF CONTRA COSTA**

ENVIRONMENTAL HEALTH ADVOCATES,  
INC.,

Case No.: C22-01697

Plaintiff,

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

v.

(Health & Safety Code § 25249.6 et seq.)

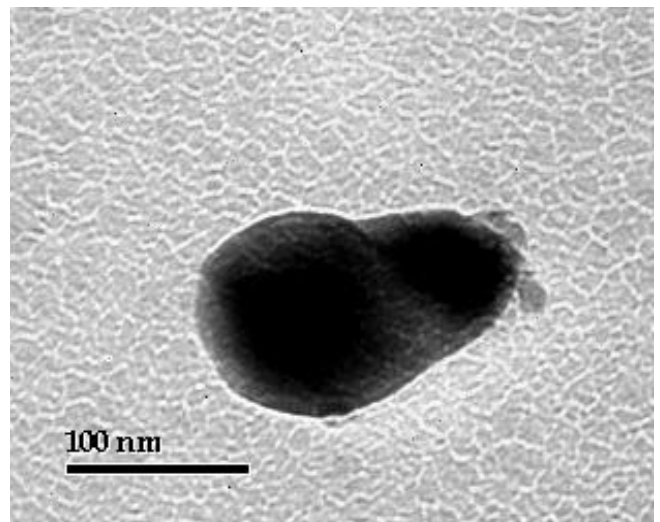
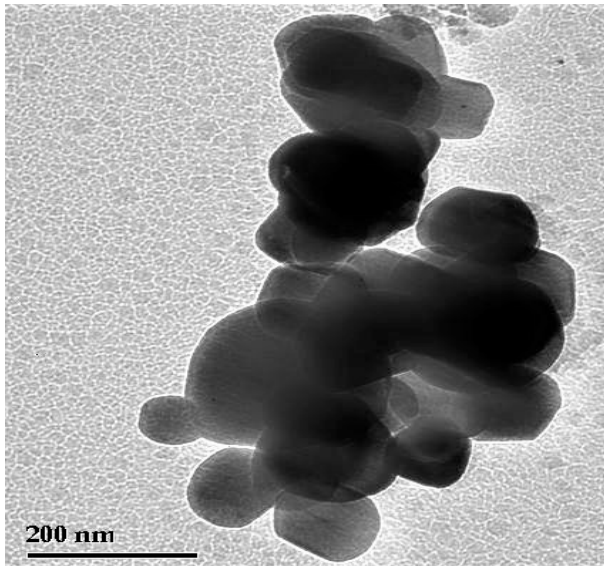
LARKLY, LLC, a Georgia limited liability  
company; NORDSTROM, INC., a Washington  
corporation; and DOES 1 through 100,  
inclusive,

Defendants.

I.

**INTRODUCTION**

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3 1. This Complaint is a representative action brought by Environmental Health Advocates,  
4 Inc. (“Plaintiff”) in the public interest of the citizens of the State of California (“the People”). Plaintiff  
5 seeks to remedy Defendants’ failure to inform the People of exposure to Titanium Dioxide (airborne,  
6 unbound particles of respirable size) (“TiO2”), a known carcinogen. Defendants expose consumers to  
7 TiO2 by manufacturing, importing, selling, and/or distributing sunscreen products including, but not  
8 limited to, the Larkly SPF 30 Mineral Powder Sunscreen (“Products”). Defendants know and intend that  
9 customers will use Products containing TiO2. Below are pictures of TiO2 particles found in an exemplar  
10 of Defendants’ Products:



20 2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California  
21 Health and Safety Code, section 25249.6 et seq. (“Proposition 65”), “[n]o person in the course of doing  
22 business shall knowingly and intentionally expose any individual to a chemical known to the state to  
23 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such  
24 individual. . . .” (Health & Safety Code, § 25249.6.)

25 3. California identified and listed Titanium Dioxide (airborne, unbound particles of  
26 respirable size) (“TiO2”) as a chemical known to cause cancer as early as September 2, 2011.

27 4. Defendants failed to sufficiently warn consumers and individuals in California about  
28 potential exposure to TiO2 in connection with Defendants’ manufacture, import, sale, or distribution of

1 Products. This is a violation of Proposition 65.

2 5. Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers  
3 in California before exposing them to TiO<sub>2</sub> in Products. (Health & Safety Code, § 25249.7(a).) Plaintiff  
4 also seeks civil penalties against Defendants for their violations of Proposition 65 along with attorney’s  
5 fees and costs. (Health & Safety Code, § 25249.7(b).)

6 **II.**

7 **PARTIES**

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

12 7. Defendant LARKLY, LLC (“Larkly”) is limited liability company organized and  
13 existing under the laws of Georgia. Larkly is registered to do business in California, and does business  
14 in the County of Contra Costa, within the meaning of Health and Safety Code, section 25249.11. Larkly  
15 manufactures, imports, sells, or distributes the Products in California and Contra Costa County.

16 8. Defendant NORDSTROM, INC. (“Nordstrom”) is a corporation organized and existing  
17 under the laws of Washington. Nordstrom is registered to do business in California, and does business  
18 in the County of Contra Costa, within the meaning of Health and Safety Code, section 25249.11.  
19 Nordstrom manufactures, imports, sells, or distributes the Products in California and Contra Costa  
20 County.

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

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**III.**

**VENUE AND JURISDICTION**

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

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

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

**IV.**

**CAUSES OF ACTION**

**FIRST CAUSE OF ACTION**

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

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

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

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

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 TiO<sub>2</sub> through reasonably foreseeable use of the Products.

17. Products expose individuals to TiO<sub>2</sub> through direct inhalation. This exposure is a natural and foreseeable consequence of Defendants placing Products into the stream of commerce. As such,

1 Defendants intend that consumers will use Products, exposing them to TiO2.

2 18. Defendants knew or should have known that the Products contained TiO2 and exposed  
3 individuals to TiO2 in the way provided above. The Notice informed Defendants of the presence of  
4 TiO2 in the Products. Likewise, media coverage concerning TiO2 and related chemicals in consumer  
5 products provided constructive notice to Defendants.

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

7 20. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a  
8 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff  
9 provided the Notice to the various required public enforcement agencies along with a certificate of merit.  
10 The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in  
11 California of the health hazards associated with exposures to TiO2 contained in the Products.

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

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

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

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1 **PRAYER FOR RELIEF**

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

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

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


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

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

10  
11 Respectfully submitted:

12 Dated: August 15, 2022

**ENTORNO LAW, LLP**

13  
14 By:   
15 \_\_\_\_\_  
16 Noam Glick  
17 Craig M. Nicholas  
18 Jake W. Schulte

19 Attorneys for Plaintiff  
20 Environmental Health Advocates, Inc.