

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  
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**ELECTRONICALLY  
FILED**

*Superior Court of California,  
County of San Francisco*

**11/15/2022  
Clerk of the Court**

**BY: JEFFREY FLORES  
Deputy Clerk**

7 Attorneys for Plaintiff  
Environmental Health Advocates, Inc.  
8

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

**CGC-22-602967**

11 ENVIRONMENTAL HEALTH ADVOCATES,  
INC.,

12 Plaintiff,

13 v.

14 ESTEE LAUDER INC., a Delaware  
corporation; SEPHORA USA, INC., a  
Michigan corporation; ROSS STORES, INC., a  
15 Delaware corporation; and DOES 1 through  
100, inclusive,  
16

17 Defendants.

Case No.:

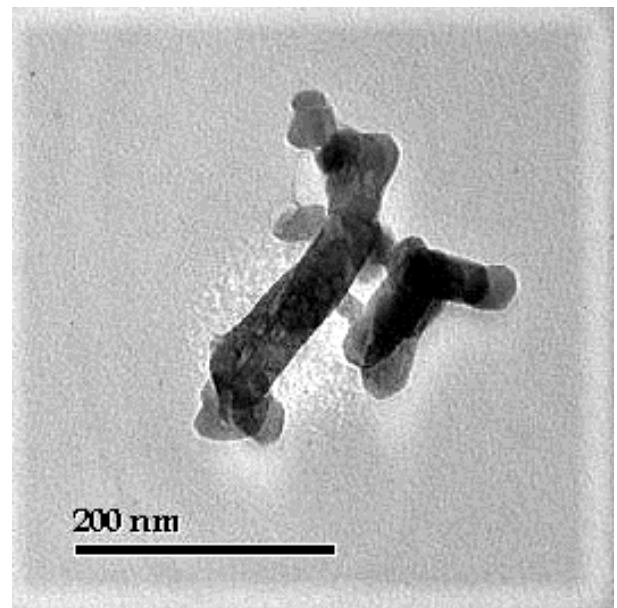
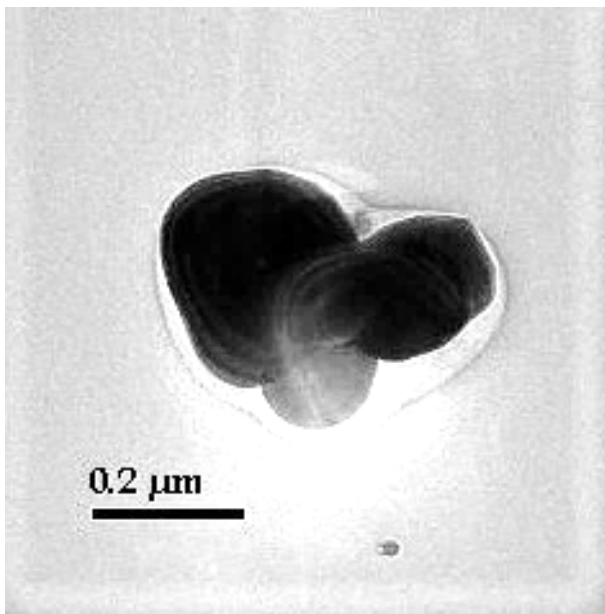
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

I.

**INTRODUCTION**

1  
2  
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) (“TiO<sub>2</sub>”), a known carcinogen. Defendants expose consumers to  
7 TiO<sub>2</sub> by manufacturing, importing, selling, and/or distributing powder foundation products including  
8 but not limited to the Estee Lauder Double Wear Stay-In-Place Matter Powder Foundation and Becca  
9 Shimmering Skin Perfector Pressed Powder Highlighter (“Products”). Defendants know and intend that  
10 customers will use Products containing TiO<sub>2</sub>. Below are pictures of TiO<sub>2</sub> particles found in an exemplar  
11 of Defendants’ Products:



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

27 3. California identified and listed Titanium Dioxide (airborne, unbound particles of  
28 respirable size) (“TiO<sub>2</sub>”) as a chemical known to cause cancer as early as September 2, 2011.



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

4 **III.**

5 **VENUE AND JURISDICTION**

6 11. 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 12. 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. Defendants conducted and continue to conduct business in this County as it relates to Products.

13 13. Defendants have sufficient minimum contacts in the State of California or otherwise  
14 purposefully avail themselves of the California market. Exercising jurisdiction over Defendants would  
15 be 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 Defendants)**

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

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

23 16. Defendants manufactured, imported, sold, and/or distributed Products containing TiO<sub>2</sub>  
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 17. In manufacturing, importing, selling, and/or distributing Products, Defendants failed to  
28 provide a clear and reasonable warning to consumers and individuals in California who may be exposed

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

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

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

9 20. Defendants' actions in this regard were deliberate and not accidental.

10 21. 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 Defendants violated Proposition 65 by failing to sufficiently warn consumers in  
14 California of the health hazards associated with exposures to TiO<sub>2</sub> contained in the Products.

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

17 23. Individuals exposed to TiO<sub>2</sub> 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 24. Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation  
21 of 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 Defendants 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 Defendants 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: November 15, 2022

**ENTORNO LAW, LLP**

7  
8 By:



9 Noam Glick

Craig M. Nicholas

10 Jake W. Schulte

11 Attorneys for Plaintiff

12 Environmental Health Advocates, Inc.