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8 Environmental Health Advocates, Inc.

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

10 **IN AND FOR THE COUNTY OF ALAMEDA**

11 ENVIRONMENTAL HEALTH ADVOCATES,  
12 INC.,

13 Plaintiff,

14 v.

15 ULTA SALON COSMETICS &  
FRAGRANCE, INC., a Delaware corporation,  
and DOES 1 through 100, inclusive,

16 Defendants.  
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Case No.: **23CV026134**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

**ELECTRONICALLY FILED**

Superior Court of California,  
County of Alameda

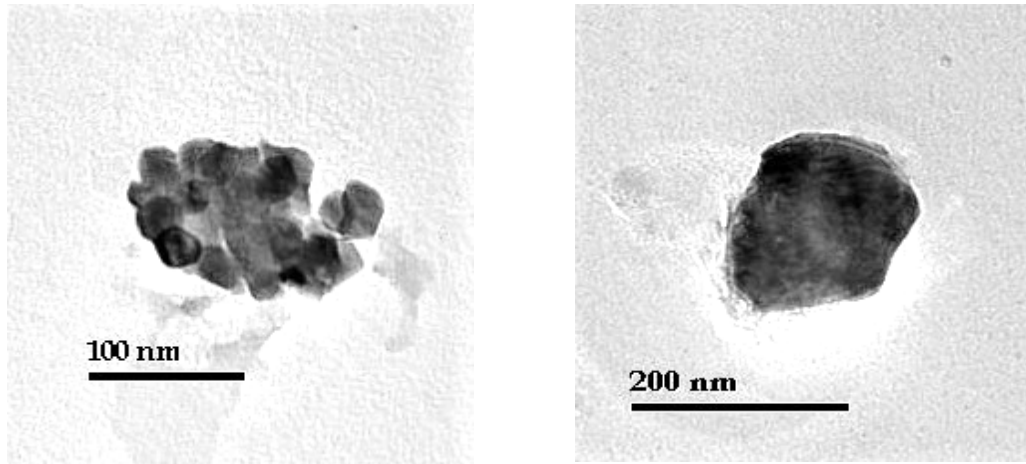
**01/23/2023 at 04:18:37 PM**

By: Angela Linhares,  
Deputy Clerk

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 Defendant’s failure to inform the People of exposure to Titanium Dioxide (airborne,  
6 unbound particles of respirable size) (“TiO<sub>2</sub>”), a known carcinogen. Defendant exposes consumers to  
7 TiO<sub>2</sub> by manufacturing, importing, selling, and/or distributing eyeshadow products including but not  
8 limited to the Ulta Eyeshadow Single Peek-A-Boo (“Products”). Defendant knows and intends that  
9 customers will use Products containing TiO<sub>2</sub>. Below are pictures of TiO<sub>2</sub> particles found in an exemplar  
10 of Defendant’s Products:



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

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

26 4. Defendant failed to sufficiently warn consumers and individuals in California about  
27 potential exposure to TiO<sub>2</sub> in connection with Defendant’s manufacture, import, sale, or distribution of  
28 Products. This is a violation of Proposition 65.



1 **III.**

2 **VENUE AND JURISDICTION**

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

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

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

13 **IV.**

14 **CAUSES OF ACTION**

15 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

8           19.       Defendant's actions in this regard were deliberate and not accidental.

9           20.       More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a  
10 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff  
11 provided the Notice to the various required public enforcement agencies along with a certificate of merit.  
12 The Notice alleged that Defendant violated Proposition 65 by failing to sufficiently warn consumers in  
13 California of the health hazards associated with exposures to TiO<sub>2</sub> contained in the Products.

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

16          22.       Individuals exposed to TiO<sub>2</sub> contained in Products through inhalation resulting from  
17 reasonably foreseeable use of the Products have suffered and continue to suffer irreparable harm. There  
18 is no other plain, speedy, or adequate remedy at law.

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

22       *[Rest of page intentionally left blank.]*  
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1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff prays for judgment against Defendant 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 Defendant 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.

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11 Respectfully submitted:

12 Dated: January 23, 2023

**ENTORNO LAW, LLP**

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14 By:   
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