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2023 AUG -1 P 8:33

KATE BIEKER
CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA
BY: [Signature] DEPUTY CLERK

1 **ENTORNO LAW, LLP**
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13 Attorneys for Plaintiff
14 Environmental Health Advocates, Inc.

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **IN AND FOR THE COUNTY OF CONTRA COSTA**

17 ENVIRONMENTAL HEALTH ADVOCATES,
18 INC.,

19 Plaintiff,

20 v.

21 KARA BEAUTY, INC., a California
22 corporation; T.J. MAXX OF CA, LLC, a
23 Virginia limited liability company; and DOES 1
24 through 100, inclusive,

25 Defendants.

Case No.: N22-2241

26 **JOINT STIPULATION AND ~~PROPOSED~~ ORDER ALLOWING PLAINTIFF TO FILE FIRST AMENDED COMPLAINT**

27 Assigned for All Purposes to:
28 Hon. Clare Maier, Dept. 36

Action Filed: November 16, 2022
Trial Date: None set.

1 Plaintiff Environmental Health Advocates, Inc. ("Plaintiff"), and Defendants Kara Beauty, Inc.
2 and T.J. Maxx of CA, LLC (collectively referred to as the "Parties") file this joint stipulation:

3 WHEREAS, on or around November 16, 2022, Plaintiff filed its Complaint for Civil Penalties
4 and Injunctive Relief against Defendants (the "Complaint").

5 WHEREAS, Defendant Kara Beauty, Inc. filed its Answer to the Complaint on or around
6 January 24, 2023.

7 WHEREAS, Defendant T.J. Maxx of CA, LLC filed its Answer to the Complaint on or around
8 January 26, 2023.

9 WHEREAS, Plaintiff served an amended notice of violation of Proposition 65 on Defendants on
10 or around April 24, 2023 correcting the product category at issue.

11 WHEREAS, the First Amended Complaint corrects the product category at issue in the amended
12 notice of violation.

13 A redlined version of Plaintiff's proposed First Amended Complaint is attached hereto as
14 **Exhibit A**. A final, clean version of Plaintiff's proposed First Amended Complaint is attached hereto
15 as **Exhibit B**.

16 THEREFORE, the Parties hereby stipulate as follows:

17 1. Plaintiff should be granted leave to file a First Amended Complaint, a copy of which is
18 attached hereto as **Exhibit B**.

19 2. Defendants' Answers to the Complaint shall be deemed their Answers to the First
20 Amended Complaint.


21 *[Signatures on the following page.]*
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Respectfully submitted:

Dated: July 20, 2023

ENTORNO LAW, LLP



By:

Jake W. Schulte
Craig M. Nicholas
Noam Glick
Janani Natarajan

Attorneys for Plaintiff
Environmental Health Advocates, Inc.

Dated: July 18, 2023

**GREENBERG GLUSKER FIELDS
CLAMAN & MATCHTINGER LLP**

By:

/s/ Sherry E. Jackman
Sherry E. Jackman
Sedina L. Banks

Attorneys for Defendants
Kara Beauty, Inc.

Dated: July 18, 2023

NORTON ROSE FULLBRIGHT US LLP

By:

/s/ Eva Yang
Eva Yang
Lauren Shoor

Attorneys for Defendants
T.J. Maxx of CA, LLC

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~~PROPOSED~~ ORDER

Pursuant to this Joint Stipulation and good cause appearing therefore,

IT IS HEREBY ORDERED that Plaintiff Environmental Health Advocates, Inc. is granted leave to file a First Amended Complaint, a copy of which is attached hereto as **Exhibit B**. Defendants' Answers to the Complaint shall be deemed their Answers to the First Amended Complaint.

Dated: 7-31-23



JUDGE OF THE SUPERIOR COURT
CLARE M. MAIER

EXHIBIT A

EXHIBIT B

1 **ENTORNO LAW, LLP**
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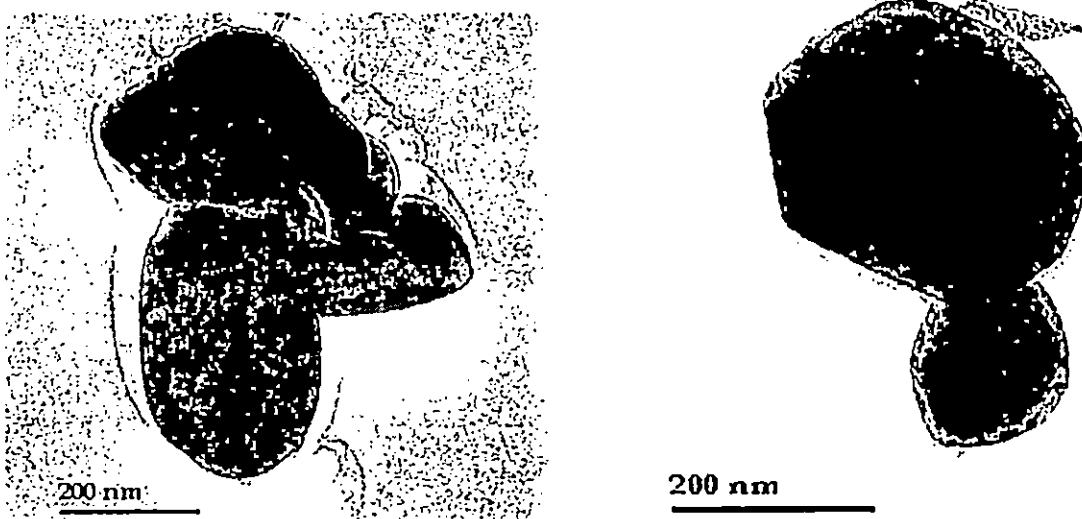
**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF**

(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) ("TiO2"), a known carcinogen. Defendants expose consumers to
7 TiO2 by manufacturing, importing, selling, and/or distributing powdered face makeup eyeshadow
8 products including but not limited to the Kara Beauty With You Shadow Palette ("Products").
9 Defendants know and intend that customers will use Products containing TiO2. Below are pictures of
10 TiO2 particles found in an exemplar of



20 Defendants' Products:

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

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

28 4. Defendants failed to sufficiently warn consumers and individuals in California about

1 potential exposure to TiO2 in connection with Defendants' manufacture, import, sale, or distribution of
2 Products. This is a violation of Proposition 65.

3 5. Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers
4 in California before exposing them to TiO2 in Products. (Health & Safety Code, § 25249.7(a).) Plaintiff
5 also seeks civil penalties against Defendants for their violations of Proposition 65 along with attorney's
6 fees and costs. (Health & Safety Code, § 25249.7(b).)

7 **II.**

8 **PARTIES**

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

13 7. Defendant KARA BEAUTY, INC. ("KB") is a corporation organized and existing
14 under the laws of California. KB is registered to do business in California, and does business in the
15 County of Contra Costa, within the meaning of Health and Safety Code, section 25249.11. KB
16 manufactures, imports, sells, or distributes the Products in California and Contra Costa County.

17 8. Defendant T.J. MAXX OF CA, LLC ("TJX") is a limited liability company organized
18 and existing under the laws of Virginia. TJX is registered to do business in California, and does business
19 in the County of Contra Costa, within the meaning of Health and Safety Code, section 25249.11. TJX
20 manufactures, imports, sells, or distributes the Products in California and Contra Costa 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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2 III.

3 VENUE AND JURISDICTION

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

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

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

14 IV.

15 CAUSES OF ACTION

16 FIRST CAUSE OF ACTION

17 (Violation of Proposition 65 – Against all Defendants)

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

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

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

25 16. In manufacturing, importing, selling, and/or distributing Products, Defendants failed to
26 provide a clear and reasonable warning to consumers and individuals in California who may be exposed
27 to TiO₂ through reasonably foreseeable use of the Products.
28

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

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

8 19. Defendants' 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 Defendants violated Proposition 65 by failing to sufficiently warn consumers in
13 California of the health hazards associated with exposures to TiO₂ 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 Defendants.

16 22. Individuals exposed to TiO₂ 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. Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation
20 of 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).

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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: July 20, 2023

ENTORNO LAW, LLP

13
14 By: 
15 _____
16 Noam Glick

17 Craig M. Nicholas
18 Jake W. Schulte
19 Janani Natarajan

20 Attorneys for Plaintiff
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EXHIBIT B

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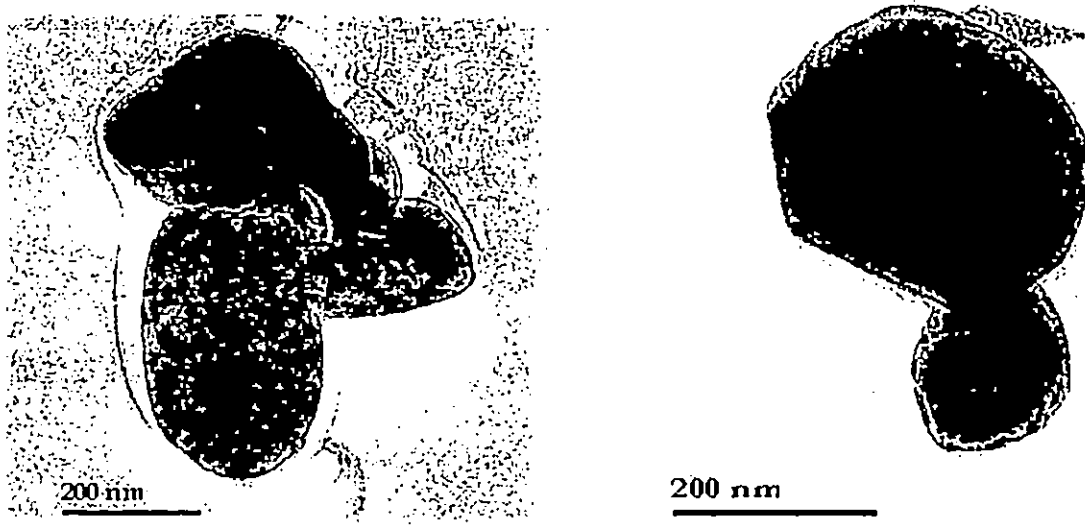
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7 TiO2 by manufacturing, importing, selling, and/or distributing powdered face makeup including but not
8 limited to the Kara Beauty With You Shadow Palette ("Products"). Defendants know and intend that
9 customers will use Products containing TiO2. Below are pictures of TiO2 particles found in an exemplar
10 of Defendants' Products:



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7 PARTIES

8 6. Plaintiff ENVIRONMENTAL HEALTH ADVOCATES, INC. ("Plaintiff") is a
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15. Defendants manufactured, imported, sold, and/or distributed Products containing TiO₂ 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.

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PRAYER FOR RELIEF

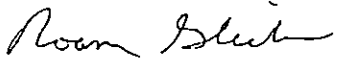
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3. Reasonable attorney's fees and costs of suit; and
4. Such other and further relief as may be just and proper.

Respectfully submitted:

Dated: July 20, 2023

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