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Per local Rule, This case is assigned to Judge Maier, Clare, for all purposes.

**SUMMONS ISSUED**

Attorneys for Plaintiff  
Environmental Health Advocates, Inc.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

ENVIRONMENTAL HEALTH ADVOCATES,  
INC.,

Plaintiff,

v.

HARD CANDY INC., a California corporation;  
HARD CANDY L.L.C., a Delaware limited  
liability company; WALMART INC., a  
Delaware corporation, and DOES 1 through  
100, inclusive,

Defendants.

Case No.: C22-02657

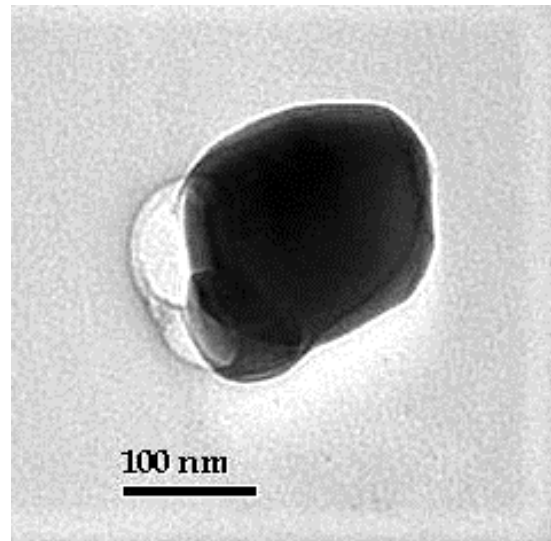
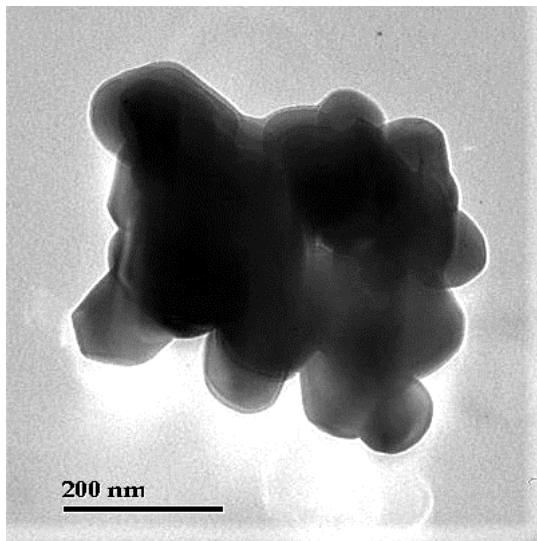
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

I.

**INTRODUCTION**

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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 eyeshadow products including but not  
8 limited to the Hard Candy Look Pro! Eyeshadow Palette (“Products”). Defendants know and intend 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 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) (“TiO<sub>2</sub>”) 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 TiO<sub>2</sub> 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 HARD CANDY INC. (“HCI”) is a corporation organized and existing under  
13 the laws of California. HCI is registered to do business in California, and does business in the County  
14 of Contra Costa, within the meaning of Health and Safety Code, section 25249.11. HCI manufactures,  
15 imports, sells, or distributes the Products in California and Contra Costa County.

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

20 9. Defendant WALMART INC. (“Walmart”) is a corporation organized and existing under  
21 the laws of Delaware. Walmart is registered to do business in California, and does business in the County  
22 of Contra Costa, within the meaning of Health and Safety Code, section 25249.11. Walmart  
23 manufactures, imports, sells, or distributes the Products in California and Contra Costa County.

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

1 sought herein.

2 11. At all times mentioned, Defendants were the agents, alter egos, servants, joint venturers,  
3 joint employers, or employees for each other. Defendants acted with the consent of the other Co-  
4 Defendants and acted within the course, purpose, and scope of their agency, service, or employment.  
5 All conduct was ratified by Defendants, and each of them.

6 **III.**

7 **VENUE AND JURISDICTION**

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

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

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

18 **IV.**

19 **CAUSES OF ACTION**

20 **FIRST CAUSE OF ACTION**

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

22 15. Plaintiff incorporates by reference each and every allegation contained above.

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

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

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

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

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

11 21. Defendants' actions in this regard were deliberate and not accidental.

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

17 23. The appropriate public enforcement agencies provided with the Notice failed to  
18 commence and diligently prosecute a cause of action against Defendants.

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

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

25 **PRAYER FOR RELIEF**

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

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

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

4           3.       Reasonable attorney’s fees and costs of suit; and

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

6  
7 Respectfully submitted:

8 Dated: December 14, 2022

**ENTORNO LAW, LLP**

9  
10 By:   
11 \_\_\_\_\_  
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14 Jake W. Schulte

15 Attorneys for Plaintiff  
16 Environmental Health Advocates, Inc.  
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