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ENVIRONMENTAL HEALTH ADVOCATES, INC.

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County of Santa Cruz
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Karen Broughton



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

10 **IN AND FOR THE COUNTY OF SANTA CRUZ**

11 ENVIRONMENTAL HEALTH ADVOCATES,
INC.,

12 Plaintiff,

13 v.

14 STILA STYLES, LLC., a Delaware limited
liability company; MARSHALLS OF MA,
15 INC., a Massachusetts limited liability
company; MARSHALLS OF CA, LLC, a
16 Virginia corporation; and DOES 1 through 100,
inclusive,

17 Defendants.
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Case No.: 23CV00295

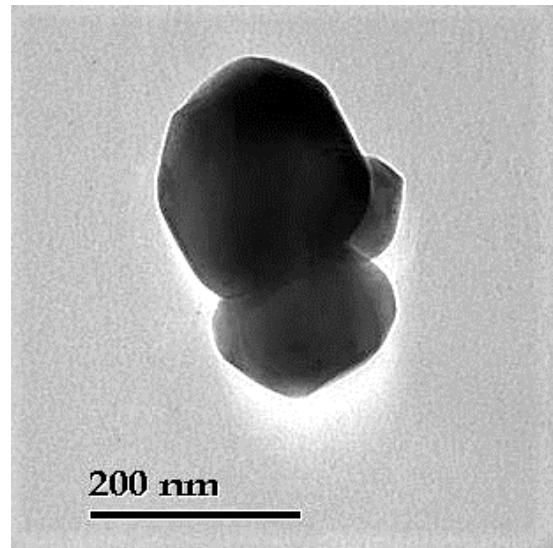
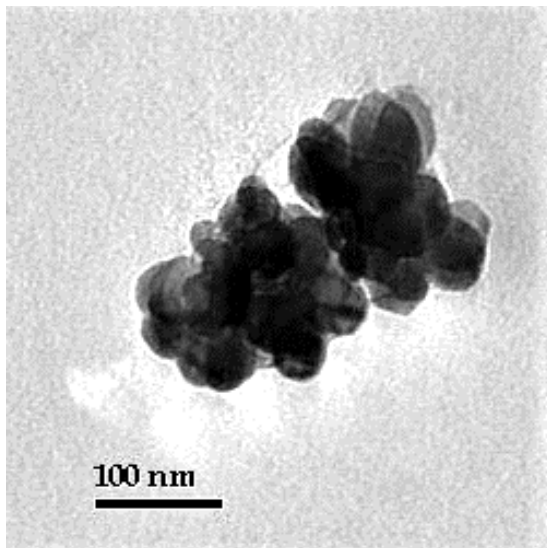
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

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 eyeshadow products including but not
8 limited to the Stila Eyeshadow in Kitten (“Products”). Defendants know and intend that customers will
9 use Products containing TiO2. Below are pictures of TiO2 particles found in an exemplar of Defendants’
10 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.

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1 4. Defendants failed to sufficiently warn consumers and individuals in California about
2 potential exposure to TiO2 in connection with Defendants’ manufacture, import, sale, or distribution of
3 Products. This is a violation of Proposition 65.

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

8 **II.**

9 **PARTIES**

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

14 7. Defendant STILA STYLES, LLC (“SS”) is a limited liability company organized and
15 existing under the laws of Delaware. SS is registered to do business in California, and does business in
16 the County of Santa Cruz, within the meaning of Health and Safety Code, section 25249.11. SS
17 manufactures, imports, sells, or distributes the Products in California and Santa Cruz County.

18 8. Defendant MARSHALLS OF MA, INC. (“MOM”) is a corporation organized and
19 existing under the laws of Massachusetts. MOM is registered to do business in California, and does
20 business in the County of Santa Cruz, within the meaning of Health and Safety Code, section 25249.11.
21 MOM manufactures, imports, sells, or distributes the Products in California and Santa Cruz County.

22 9. Defendant MARSHALLS OF CA, LLC (“MOC”) is a limited liability company
23 organized and existing under the laws of Virginia. MOC is registered to do business in California, and
24 does business in the County of Santa Cruz, within the meaning of Health and Safety Code, section
25 25249.11. MOC manufactures, imports, sells, or distributes the Products in California and Santa Cruz
26 County.

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

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

7 18. In manufacturing, importing, selling, and/or distributing Products, Defendants failed to
8 provide a clear and reasonable warning to consumers and individuals in California who may be exposed
9 to TiO₂ through reasonably foreseeable use of the Products.

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

13 20. Defendants knew or should have known that the Products contained TiO₂ and exposed
14 individuals to TiO₂ in the way provided above. The Notice informed Defendants of the presence of
15 TiO₂ in the Products. Likewise, media coverage concerning TiO₂ and related chemicals in consumer
16 products provided constructive notice to Defendants.

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

18 22. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a
19 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff
20 provided the Notice to the various required public enforcement agencies along with a certificate of merit.
21 The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in
22 California of the health hazards associated with exposures to TiO₂ contained in the Products.

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

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

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