1 2 3 4 5 6 7 8	ENTORNO LAW, LLP Noam Glick (SBN 251582) Jake W. Schulte (SBN 293777) Craig M. Nicholas (SBN 178444) Janani Natarajan (SBN 346770) 225 Broadway, Suite 1900 San Diego, California 92101 Tel: (619) 629-0527 Email: noam@entornolaw.com Email: jake@entornolaw.com Email: craig@entornolaw.com Email: craig@entornolaw.com Email: janani@entornolaw.com	ELECTRONICALLY FILED Superior Court of California County of Santa Cruz 2/3/2023 10:15 AM Clerk of the Court by Deputy, Karen Broughton	
8 9	ENVIRONMENTAL HEALTH ADVOCATES, INC. SUPERIOR COURT OF THE STATE OF CALIFORNIA		
10	IN AND FOR THE COUNTY OF SANTA CRUZ		
11	ENVIRONMENTAL HEALTH ADVOCATES,	23CV00295 Case No.:	
12	INC., Plaintiff,	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF	
13 14	v. STILA STYLES, LLC., a Delaware limited	(Health & Safety Code § 25249.6 et seq.)	
14	liability company; MARSHALLS OF MA, INC., a Massachusetts limited liability company; MARSHALLS OF CA, LLC, a		
16 17	Virginia corporation; and DOES 1 through 100, inclusive,		
17 18	Defendants.		
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

## **INTRODUCTION**

I.

1. This Complaint is a representative action brought by Environmental Health Advocates, Inc. ("Plaintiff") in the public interest of the citizens of the State of California ("the People"). Plaintiff seeks to remedy Defendants' failure to inform the People of exposure to Titanium Dioxide (airborne, unbound particles of respirable size) ("TiO2"), a known carcinogen. Defendants expose consumers to TiO2 by manufacturing, importing, selling, and/or distributing eyeshadow products including but not limited to the Stila Eyeshadow in Kitten ("Products"). Defendants know and intend that customers will use Products containing TiO2. Below are pictures of TiO2 particles found in an exemplar of Defendants' Products:

<u>то nm</u>

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

27 ///

28 ///

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

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

#### II.

#### PARTIES

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

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

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

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

27 ///

8

9

28 ///

1 10. Plaintiff does not know the true names and/or capacities, whether individual, partners, 2 or corporate, of the defendants sued herein as DOES 1 through 100, inclusive, and for that reason sues 3 said defendants under fictitious names. Plaintiff will seek leave to amend this Complaint when the true 4 names and capacities of these defendants have been ascertained. Plaintiff is informed and believes and 5 thereon alleges that these defendants are responsible in whole or in part for the remedies and penalties 6 sought herein.

7 11. At all times mentioned, Defendants were the agents, alter egos, servants, joint venturers,
8 joint employers, or employees for each other. Defendants acted with the consent of the other Co9 Defendants and acted within the course, purpose, and scope of their agency, service, or employment.
10 All conduct was ratified by Defendants, and each of them.

11

12

23

24

25

26

27

28

///

#### III.

#### **VENUE AND JURISDICTION**

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

17 13. Venue is proper in Santa Cruz County Superior Court pursuant to Code of Civil
18 Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this
19 County. Defendants conducted and continue to conduct business in this County as it relates to Products.
20 14. Defendants have sufficient minimum contacts in the State of California or otherwise
21 purposefully avail themselves of the California market. Exercising jurisdiction over Defendants would
22 be consistent with traditional notions of fair play and substantial justice.

#### IV.

# CAUSES OF ACTION

## FIRST CAUSE OF ACTION

## (Violation of Proposition 65 – Against all Defendants)

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

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
 and foreseeable consequence of Defendants placing Products into the stream of commerce. As such,
 Defendants intend that consumers will use Products, exposing them to TiO2.

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

24

23. The appropriate public enforcement agencies provided with the Notice failed to 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.

28 ///

1	25. Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation			
2	of Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also			
3	appropriate pursuant to Health and Safety Code, section 25249.7(a).			
4		PRAYER F	OR RELIEF	
5	Wherefore, Plaintiff prays for judgment against Defendants as follows:			
6	1.	1. Civil penalties in the amount of \$2,500 per day for each violation. Plaintiff alleges that		
7	damages total a minimum of \$1,000,000;			
8	2. A preliminary and permanent injunction against Defendants from manufacturing,			
9	importing, selling, and/or distributing Products in California without providing a clear and reasonable			
10	warning as required by Proposition 65 and related Regulations;			
11	3.	Reasonable attorney's fees and costs of suit; and		
12	4.	Such other and further relief as may	y be just and proper.	
13				
14	Respectfully	submitted:		
15	Dated: Febru	ary 3, 2023	ENTORNO LAW, LLP	
16			Noam Slich	
17		By:	Nace Click	
18				
19			Craig M. Nicholas Jake W. Schulte	
20			Janani Natarajan	
21			Attorneys for Plaintiff Environmental Health Advocates, Inc.	
22			Environmental meatin / Kivoeates, me.	
23				
24				
25 26				
26 27				
27 28				
28				