Superior Court of California County of Santa Cruz 1/23/2023 4:14 PM Clerk of the Court by Deputy, **Brittany Wist** 1 ENTORNO LAW, LLP Noam Glick (SBN 251582) 2 Jake W. Schulte (SBN 293777) Craig M. Nicholas (SBN 178444) 3 Janani Natarajan (SBN 346770) 225 Broadway, Suite 1900 San Diego, California 92101 Tel: (619) 629-0527 5 Email: noam@entornolaw.com Email: jake@entornolaw.com 6 Email: craig@entornolaw.com Email: janani@entornolaw.com 7 Attorneys for Plaintiff 8 Environmental Health Advocates, Inc. 9 SUPERIOR COURT OF THE STATE OF CALIFORNIA 10 IN AND FOR THE COUNTY OF SANTA CRUZ ENVIRONMENTAL HEALTH ADVOCATES, | Case No.: 23CV00193 11 INC., 12 COMPLAINT FOR CIVIL PENALTIES Plaintiff, AND INJUNCTIVE RELIEF 13 v. (Health & Safety Code § 25249.6 et seq.) 14 MERLE NORMAN COSMETICS, INC., a California corporation; and DOES 1 through 15 100, inclusive, 16 Defendants. 17 18 19 20 21 22 23 24 25 26 27 28

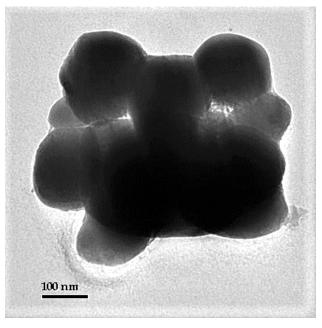
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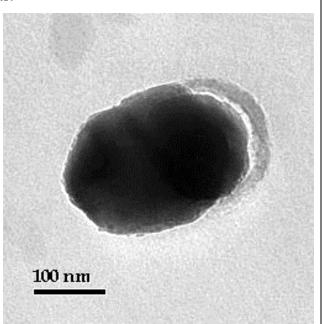
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I.

INTRODUCTION

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 Defendant's failure to inform the People of exposure to Titanium Dioxide (airborne, unbound particles of respirable size) ("TiO2"), a known carcinogen. Defendant exposes consumers to TiO2 by manufacturing, importing, selling, and/or distributing powdered face cosmetics products including but not limited to the Merle Norman Flawless Effect Pressed Powder ("Products"). Defendant knows and intends that customers will use Products containing TiO2. Below are pictures of TiO2 particles found in an exemplar of Defendant's Products:





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

- 4. Defendant failed to sufficiently warn consumers and individuals in California about potential exposure to TiO2 in connection with Defendant's manufacture, import, sale, or distribution of Products. This is a violation of Proposition 65.
- 5. Plaintiff seeks injunctive relief compelling Defendant 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 Defendant for its 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 MERLE NORMAN COSMETICS, INC. ("MNC") is a corporation organized and existing under the laws of California. MNC 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. MNC manufactures, imports, sells, or distributes the Products in California and Santa Cruz County.
- 8. Plaintiff does not know the true names and/or capacities, whether individual, partners, or corporate, of the defendants sued herein as DOES 1 through 100, inclusive, and for that reason sues said defendants under fictitious names. Plaintiff will seek leave to amend this Complaint when the true names and capacities of these defendants have been ascertained. Plaintiff is informed and believes and thereon alleges that these defendants are responsible in whole or in part for the remedies and penalties sought herein.
- 9. At all times mentioned, Defendants were the agents, alter egos, servants, joint venturers, joint employers, or employees for each other. Defendants acted with the consent of the other Co-Defendants and acted within the course, purpose, and scope of their agency, service, or employment. All conduct was ratified by Defendants, and each of them.

1	III.	
2	VENUE AND JURISDICTION	
3	10. California Constitution Article VI, Section 10 grants the Superior Court origin	nal
4	urisdiction in all cases except those given by statute to other trial courts. The Health and Safety Co	de
5	statute upon which this action is based does not give jurisdiction to any other court. As such, this Co	urt
6	nas jurisdiction.	
7	11. Venue is proper in Santa Cruz County Superior Court pursuant to Code of Ci	vil
8	Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in the	nis
9	County. Defendant conducted and continues to conduct business in this County as it relates to Produc	ts.
10	12. Defendant has sufficient minimum contacts in the State of California or otherw	ise
11	ourposefully avail itself of the California market. Exercising jurisdiction over Defendant would	be
12	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 the	ıat
19	cause cancer, birth defects, and other reproductive harm.	
20	15. Defendant manufactured, imported, sold, and/or distributed Products containing Tio	Э2
21	n violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and believes su	ch
22	violations have continued after receipt of the Notice (defined infra) and will continue to occur into	he
23	luture.	
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 expos	ed
26	to TiO2 through reasonably foreseeable use of the Products.	
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- Products expose individuals to TiO2 through direct inhalation. This exposure is a natural and foreseeable consequence of Defendant placing Products into the stream of commerce. As such, Defendant intends that consumers will use Products, exposing them to TiO2.
- Defendant knew or should have known that the Products contained TiO2 and exposed individuals to TiO2 in the way provided above. The Notice informed Defendant of the presence of TiO2 in the Products. Likewise, media coverage concerning TiO2 and related chemicals in consumer products provided constructive notice to Defendant.
 - Defendant's actions in this regard were deliberate and not accidental.
- More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff provided the Notice to the various required public enforcement agencies along with a certificate of merit. The Notice alleged that Defendant violated Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated with exposures to TiO2 contained in the Products.
- The appropriate public enforcement agencies provided with the Notice failed to commence and diligently prosecute a cause of action against Defendant.
- Individuals exposed to TiO2 contained in Products through inhalation resulting from reasonably foreseeable use of the Products have suffered and continue to suffer irreparable harm. There is no other plain, speedy, or adequate remedy at law.
- Defendant is liable for a maximum civil penalty of \$2,500 per day for each violation of Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also appropriate pursuant to Health and Safety Code, section 25249.7(a).
- [Rest of page intentionally left blank.]

1 PRAYER FOR RELIEF 2 Wherefore, Plaintiff prays for judgment against Defendant as follows: 3 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. 10 11 Respectfully submitted: 12 Dated: January 23, 2023 ENTORNO LAW, LLP 13 14 By: Noam Glick 15 Craig M. Nicholas 16 Jake W. Schulte 17 Janani Natarajan 18 Attorneys for Plaintiff Environmental Health Advocates, Inc. 19 20 21 22 23 24 25 26 27 28