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

10 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

CGC-22-602737

11 ENVIRONMENTAL HEALTH ADVOCATES,
INC.,

12 Plaintiff,

13 v.

14 KISS PRODUCTS, INC., a New York
corporation, and DOES 1 through 100,
inclusive,
15

16 Defendants.
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Case No.:

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

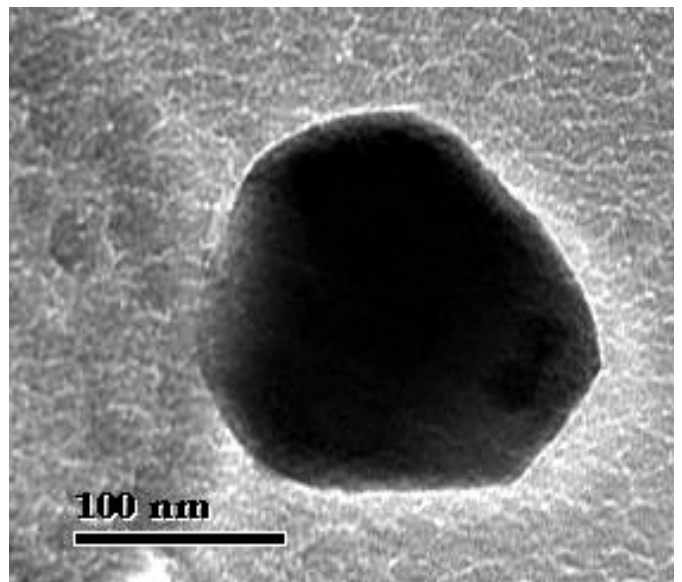
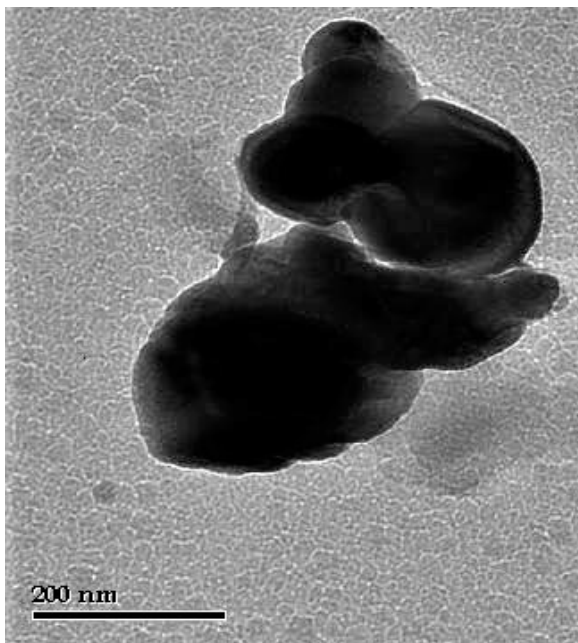
**ELECTRONICALLY
FILED**
*Superior Court of California,
County of San Francisco*

11/02/2022
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

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 makeup products including but not limited to RK by Kiss Go Brow (“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

1 potential exposure to TiO₂ in connection with Defendant manufacturing, importing, selling, or
2 distributing Products. This is a violation of Proposition 65.

3 5. Plaintiff seeks injunctive relief compelling Defendant to sufficiently warn consumers in
4 California before exposing them to TiO₂ in Products. (Health & Safety Code, § 25249.7(a).) Plaintiff
5 also seeks civil penalties against Defendant for its 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 KISS PRODUCTS, INC. ("Kiss") is a corporation organized and existing
14 under the laws of New York. Kiss is registered to do business in California, and does business in the
15 County of San Francisco, within the meaning of Health and Safety Code, section 25249.11. Kiss
16 manufactures, imports, sells, or distributes the Products in California and San Francisco County.

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

23 **III.**

24 **VENUE AND JURISDICTION**

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

1 18. Defendant’s actions in this regard were deliberate and not accidental.

2 19. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a
3 60-Day Notice of Violation (“Notice”) as required by and in compliance with Proposition 65. Plaintiff
4 provided the Notice to the various required public enforcement agencies along with a certificate of merit.
5 The Notice alleged that Defendant violated Proposition 65 by failing to sufficiently warn consumers in
6 California of the health hazards associated with exposures to TiO₂ contained in the Products.

7 20. The appropriate public enforcement agencies provided with the Notice failed to
8 commence and diligently prosecute a cause of action against Defendant.

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

12 22. Defendant is liable for a maximum civil penalty of \$2,500 per day for each violation of
13 Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also
14 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 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: November 2, 2022

ENTORNO LAW, LLP

13
14 By: 

15 Noam Glick
16 Craig M. Nicholas
17 Jake W. Schulte

18 Attorneys for Plaintiff
19 Environmental Health Advocates, Inc.