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) 225 Broadway, Suite 1900 San Diego, California 92101 Tel: (619) 629-0527 Email: noam@entornolaw.com Email: jake@entornolaw.com Email: craig@entornolaw.com	ELECTRONICALLY FILED Superior Court of California, County of San Francisco 11/02/2022 Clerk of the Court BY: JEFFREY FLORES Deputy Clerk		
9	SUPERIOR COURT OF THE STATE OF CALIFORNIA			
10	IN AND FOR THE COUNTY OF SAN FRANCISCO CGC-22-602737			
10	ENVIRONMENTAL HEALTH ADVOCATES, INC.,	Case No.:		
11	Plaintiff,	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF		
13	V.	(Health & Safety Code § 25249.6 et seq.)		
14	KISS PRODUCTS, INC., a New York corporation, and DOES 1 through 100, inclusive,			
15	Defendants.			
16	Derendants.			
17				
18				
19				
20				
21 22				
22				
23				
25				
26				
27				
28				

5

6

7

8

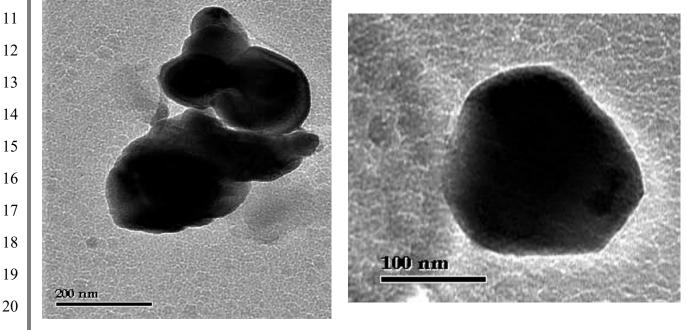
9

10

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 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.)

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

28

4.

Defendant failed to sufficiently warn consumers and individuals in California about

potential exposure to TiO2 in connection with Defendant manufacturing, importing, selling, or
 distributing 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).)

7

23

24

8

II.

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.

7. Defendant KISS PRODUCTS, INC. ("Kiss") is a corporation organized and existing
under the laws of New York. Kiss is registered to do business in California, and does business in the
County of San Francisco, within the meaning of Health and Safety Code, section 25249.11. Kiss
manufactures, imports, sells, or distributes the Products in California and San Francisco 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.

III.

VENUE AND JURISDICTION

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

1	10. Venue is proper in San Francisco County Superior Court pursuant to Code of Civil		
2	Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this		
3	County. Defendant has conducted and continues to conduct business in this County as it relates to		
4	Products.		
5	11. Defendant has sufficient minimum contacts in the State of California or otherwise		
6	purposefully avails itself of the California market. Exercising jurisdiction over Defendant would be		
7	consistent with traditional notions of fair play and substantial justice.		
8	IV.		
9	CAUSES OF ACTION		
10	FIRST CAUSE OF ACTION		
11	(Violation of Proposition 65 – Against all Defendants)		
12	12. Plaintiff incorporates by reference each and every allegation contained above.		
13	13. Proposition 65 mandates that citizens be informed about exposures to chemicals that		
14	cause cancer, birth defects, and other reproductive harm.		
15	14. Defendant manufactured, imported, sold, and/or distributed Products containing TiO2		
16	in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and believes such		
17	violations have continued after receipt of the Notice (defined <i>infra</i>) and will continue to occur into the		
18	future.		
19	15. In manufacturing, importing, selling, and/or distributing Products, Defendant failed to		
20	provide a clear and reasonable warning to consumers and individuals in California who may be exposed		
21	to TiO2 through reasonably foreseeable use of the Products.		
22	16. Products expose individuals to TiO2 through direct inhalation. This exposure is a natural		
23	and foreseeable consequence of Defendant placing Products into the stream of commerce. As such,		
24	Defendant intends that consumers will use Products, exposing them to TiO2.		
25	17. Defendant knew or should have known that the Products contained TiO2 and exposed		
26	individuals to TiO2 in the way provided above. The Notice informed Defendant of the presence of TiO2		
27	in the Products. Likewise, media coverage concerning TiO2 and related chemicals in consumer products		
28	provided constructive notice to Defendant.		

18.

Defendant's actions in this regard were deliberate and not accidental.

19. 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.

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).

15 [Rest of Page Intentionally Left Blank]

1	PRAYER FOR RELIEF			
2	Wherefore, Plaintiff prays for judgment against Defendants as follows:			
3	1.	1. Civil penalties in the amount of \$2,500 per day for each violation. Plaintiff alleges that		
4	damages tota	damages total a minimum of \$1,000,000;		
5	2.	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.	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	Respectfull	y submitted:		
12	Dated: Nov	ember 2, 2022	ENTORNO LAW, LLP	
13				
14		By:	Noon Slit	
15			Noam Glick Craig M. Nicholas	
16			Jake W. Schulte	
17			Attorneys for Plaintiff	
18			Environmental Health Advocates, Inc.	
19				
20				
21				
22				
23				
24				
25				
26				
27				
28				