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: janani@entornolaw.com Attorneys for Plaintiff Environmental Health Advocates, Inc.	ELECTRONICALLY FILED Superior Court of California, County of San Francisco 01/23/2023 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 <sup>C</sup> GC-23-604171			
11	ENVIRONMENTAL HEALTH ADVOCATES, INC.,			
12	Plaintiff,	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF		
13	V.	(Health & Safety Code § 25249.6 et seq.)		
14	W3LL PEOPLE, INC., a Delaware corporation; ULTA SALON, COSMETICS &			
15	FRAGRANCE, INC., a Delaware corporation; and DOES 1 through 100, inclusive,			
16	Defendants.			
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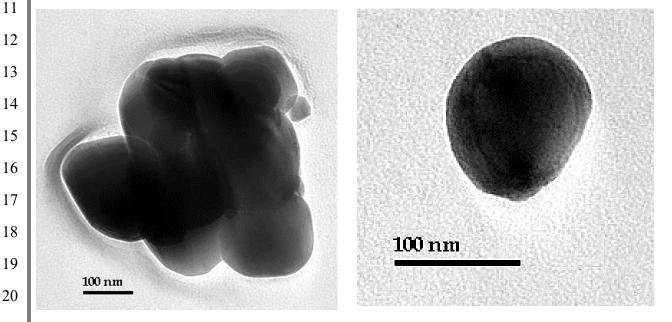
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## **INTRODUCTION**

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 powdered face makeup products including but not limited to the W3ll People Bio Powder Foundation ("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:



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.

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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.

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## 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.

Defendant W3LL PEOPLE, INC. ("WP") is a corporation organized and existing under
 the laws of Delaware. WP 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. WP manufactures,
 imports, sells, or distributes the Products in California and San Francisco County.

B. Defendant ULTA SALON, COSMETICS & FRAGRANCE, INC. ("USCF") is a
 corporation organized and existing under the laws of Delaware. USCF 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. USCF manufactures, imports, sells, or distributes the Products in California
 and San Francisco County.

9. 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.

1	10. At all times mentioned, Defendants were the agents, alter egos, servants, joint venturers,		
2	joint employers, or employees for each other. Defendants acted with the consent of the other Co-		
3	Defendants and acted within the course, purpose, and scope of their agency, service, or employment.		
4	All conduct was ratified by Defendants, and each of them.		
5	III.		
6	VENUE AND JURISDICTION		
7	11. California Constitution Article VI, Section 10 grants the Superior Court original		
8	jurisdiction in all cases except those given by statute to other trial courts. The Health and Safety Code		
9	statute upon which this action is based does not give jurisdiction to any other court. As such, this Court		
10	has jurisdiction.		
11	12. Venue is proper in San Francisco County Superior Court pursuant to Code of Civil		
12	Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this		
13	County. Defendants conducted and continue to conduct business in this County as it relates to Products.		
14	13. Defendants have sufficient minimum contacts in the State of California or otherwise		
15	purposefully avail themselves of the California market. Exercising jurisdiction over Defendants would		
16	be consistent with traditional notions of fair play and substantial justice.		
17	IV.		
18	CAUSES OF ACTION		
19	FIRST CAUSE OF ACTION		
20	(Violation of Proposition 65 – Against all Defendants)		
21	14. Plaintiff incorporates by reference each and every allegation contained above.		
22	15. Proposition 65 mandates that citizens be informed about exposures to chemicals that		
23	cause cancer, birth defects, and other reproductive harm.		
24	16. Defendants manufactured, imported, sold, and/or distributed Products containing TiO2		
25	in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and believes such		
26	violations have continued after receipt of the Notice (defined <i>infra</i> ) and will continue to occur into the		
27	future.		
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1 17. In manufacturing, importing, selling, and/or distributing Products, Defendants failed to 2 provide a clear and reasonable warning to consumers and individuals in California who may be exposed 3 to TiO2 through reasonably foreseeable use of the Products.

18. 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, 6 Defendants intend that consumers will use Products, exposing them to TiO2.

7 19. Defendants knew or should have known that the Products contained TiO2 and exposed 8 individuals to TiO2 in the way provided above. The Notice informed Defendants of the presence of 9 TiO2 in the Products. Likewise, media coverage concerning TiO2 and related chemicals in consumer 10 products provided constructive notice to Defendants.

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

12 21. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a 13 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff 14 provided the Notice to the various required public enforcement agencies along with a certificate of merit. 15 The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in 16 California of the health hazards associated with exposures to TiO2 contained in the Products.

17 22. The appropriate public enforcement agencies provided with the Notice failed to 18 commence and diligently prosecute a cause of action against Defendants.

19 23. Individuals exposed to TiO2 contained in Products through inhalation resulting from 20 reasonably foreseeable use of the Products have suffered and continue to suffer irreparable harm. There 21 is no other plain, speedy, or adequate remedy at law.

22 Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation 24. 23 of Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also 24 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.	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.	2. A preliminary and permanent injunction against Defendants 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.	4. Such other and further relief as may be just and proper.		
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11	Respectfully submitted:			
12	Dated: January 23, 2023 ENTORNO LAW, LLP			
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14		By:	Noam Blick	
15			Noam Glick	
16			Craig M. Nicholas Jake W. Schulte	
17			Janani Natarajan	
18			Attorneys for Plaintiff	
19			Environmental Health Advocates, Inc.	
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