

ENTORNO LAW, LLP
Noam Glick (SBN 251582)
Craig M. Nicholas (SBN 178444)
Jake W. Schulte (SBN 293777)
Janani Natarajan (SBN 346770)
225 Broadway, Suite 1900
San Diego, California 92101
Tel: (619) 629-0527
Email: noam@entornolaw.com
Email: craig@entornolaw.com
Email: jake@entornolaw.com
Email: janani@entornolaw.com

Attorneys for Plaintiff
ENVIRONMENTAL HEALTH ADVOCATES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CRUZ

ENVIRONMENTAL HEALTH ADVOCATES,
INC.,

Plaintiff,

v.

CHANEL, INC., a New York corporation;
MACY'S, INC., a Delaware corporation; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 23CV00598

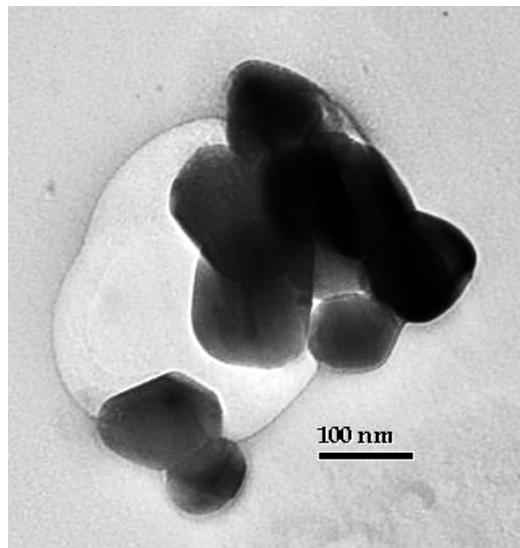
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

I.

INTRODUCTION

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3 1. This Complaint is a representative action brought by Environmental Health Advocates,
4 Inc. (“Plaintiff”) in the public interest of the citizens of the State of California (“the People”). Plaintiff
5 seeks to remedy Defendants’ failure to inform the People of exposure to Titanium Dioxide (airborne,
6 unbound particles of respirable size) (“TiO₂”), a known carcinogen. Defendants expose consumers to
7 TiO₂ by manufacturing, importing, selling, and/or distributing powdered face makeup including but not
8 limited to the Chanel 10 Flesh Longwear Powder Eyeshadow (“Products”). Defendants know and intend
9 that customers will use Products containing TiO₂. Below are pictures of TiO₂ particles found in an
10 exemplar of Defendants’ Products:



20 2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California
21 Health and Safety Code, section 25249.6 et seq. (“Proposition 65”), “[n]o person in the course of doing
22 business shall knowingly and intentionally expose any individual to a chemical known to the state to
23 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
24 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.

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

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

8 **II.**

9 **PARTIES**

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

14 7. Defendant CHANEL, INC. ("Chanel") is a corporation organized and existing under
15 the laws of New York. Chanel is registered to do business in California, and does business in the County
16 of Santa Cruz, within the meaning of Health and Safety Code, section 25249.11. Chanel manufactures,
17 imports, sells, or distributes the Products in California and Santa Cruz County.

18 8. Defendant MACY 'S, INC. ("Macy's") is a corporation organized and existing under
19 the laws of Delaware. MACY'S is registered to do business in California, and does business in the
20 County of Santa Cruz, within the meaning of Health and Safety Code, section 25249.11. MACY'S
21 manufactures, imports, sells, or distributes the Products in California and Santa Cruz County.

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

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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.

4 18. Products expose individuals to TiO2 through direct inhalation. This exposure is a natural
5 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.

11 20. 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 24. Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation
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. 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 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. Reasonable attorney’s fees and costs of suit; and

9 4. Such other and further relief as may be just and proper.

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11 Respectfully submitted:

12 Dated: March 14, 2023

ENTORNO LAW, LLP

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14 By: 
15 _____
Noam Glick

16 Craig M. Nicholas
17 Jake W. Schulte
18 Janani Natarajan

19 Attorneys for Plaintiff
20 Environmental Health Advocates, Inc.
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