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14 Environmental Health Advocates, Inc.

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **IN AND FOR THE COUNTY OF SANTA CRUZ**

17 23CV01496

18 ENVIRONMENTAL HEALTH ADVOCATES,
19 INC.,

20 Plaintiff,

21 v.

22 SIGMA ENTERPRISES, LLC, a California
23 limited liability company; and DOES 1 through
24 100, inclusive,

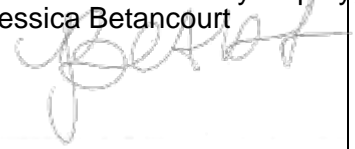
25 Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

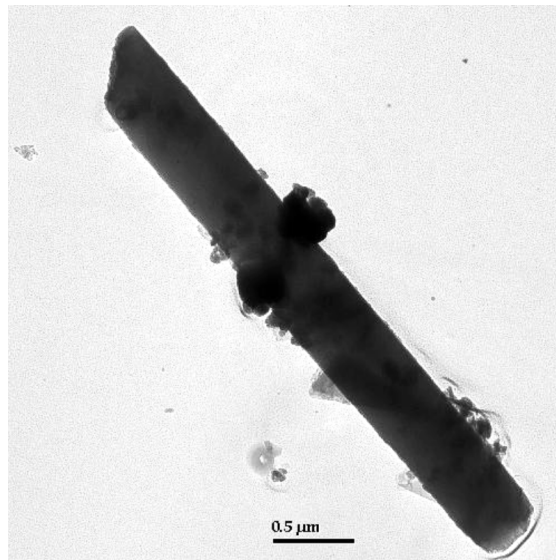
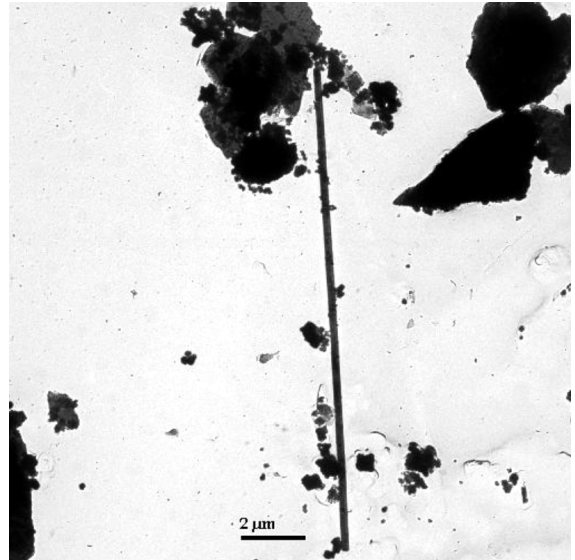
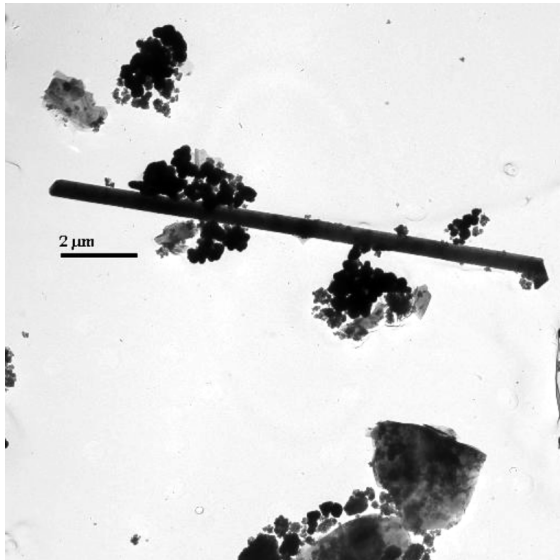
(Health & Safety Code § 25249.6 et seq.)

ELECTRONICALLY FILED
Superior Court of California
County of Santa Cruz
6/27/2023 4:13 PM
Clerk of the Court by Deputy,
Jessica Betancourt



I.
INTRODUCTION

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



1 thereon alleges that these defendants are responsible in whole or in part for the remedies and penalties
2 sought herein.

3 9. At all times mentioned, Defendants were the agents, alter egos, servants, joint venturers,
4 joint employers, or employees for each other. Defendants acted with the consent of the other Co-
5 Defendants and acted within the course, purpose, and scope of their agency, service, or employment.
6 All conduct was ratified by Defendants, and each of them.

7 **III.**
8 **VENUE AND JURISDICTION**

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

13 11. Venue is proper in Santa Cruz County Superior Court pursuant to Code of Civil
14 Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this
15 County. Defendant conducted and continues to conduct business in this County as it relates to Products.

16 12. Defendant has sufficient minimum contacts in the State of California or otherwise
17 purposefully avails itself of the California market. Exercising jurisdiction over Defendant would be
18 consistent with traditional notions of fair play and substantial justice.

19 **IV.**
20 **CAUSES OF ACTION**

21 **FIRST CAUSE OF ACTION**
22 **(Violation of Proposition 65 – Against all Defendants)**

23 13. Plaintiff incorporates by reference each and every allegation contained above.

24 14. Proposition 65 mandates that citizens be informed about exposures to chemicals that
25 cause cancer, birth defects, and other reproductive harm.

26 15. Defendant manufactured, imported, sold, and/or distributed Products containing TiO₂
27 in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and believes such
28

1 violations have continued after receipt of the Notice (defined *infra*) and will continue to occur into the
2 future.

3 16. In manufacturing, importing, selling, and/or distributing Products, Defendant failed to
4 provide a clear and reasonable warning to consumers and individuals in California who may be exposed
5 to TiO₂ through reasonably foreseeable use of the Products.

6 17. Products expose individuals to TiO₂ through direct inhalation. This exposure is a natural
7 and foreseeable consequence of Defendant placing Products into the stream of commerce. As such,
8 Defendant intends that consumers will use Products, exposing them to TiO₂.

9 18. Defendant knew or should have known that the Products contained TiO₂ and exposed
10 individuals to TiO₂ in the ways provided above. The Notice informed Defendant of the presence of
11 TiO₂ in the Products. Likewise, media coverage concerning TiO₂ and related chemicals in consumer
12 products provided constructive notice to Defendant.

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

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

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

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

24 23. Defendant is liable for a maximum civil penalty of \$2,500 per day for each violation of
25 Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also
26 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 Defendant 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 Respectfully submitted:

11 Dated: June 27, 2023

ENTORNO LAW, LLP

12 By: 
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16 Janani Natarajan

17 Attorneys for Plaintiff
18 Environmental Health Advocates, Inc.
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