

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.

Per local Rule, This case is assigned to
Judge Douglas, Danielle K, for all purposes.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA **SUMMONS ISSUED**

ENVIRONMENTAL HEALTH ADVOCATES,
INC.,

Plaintiff,

v.

ALIMA COSMETICS, INC., an Oregon
corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: C23-01048

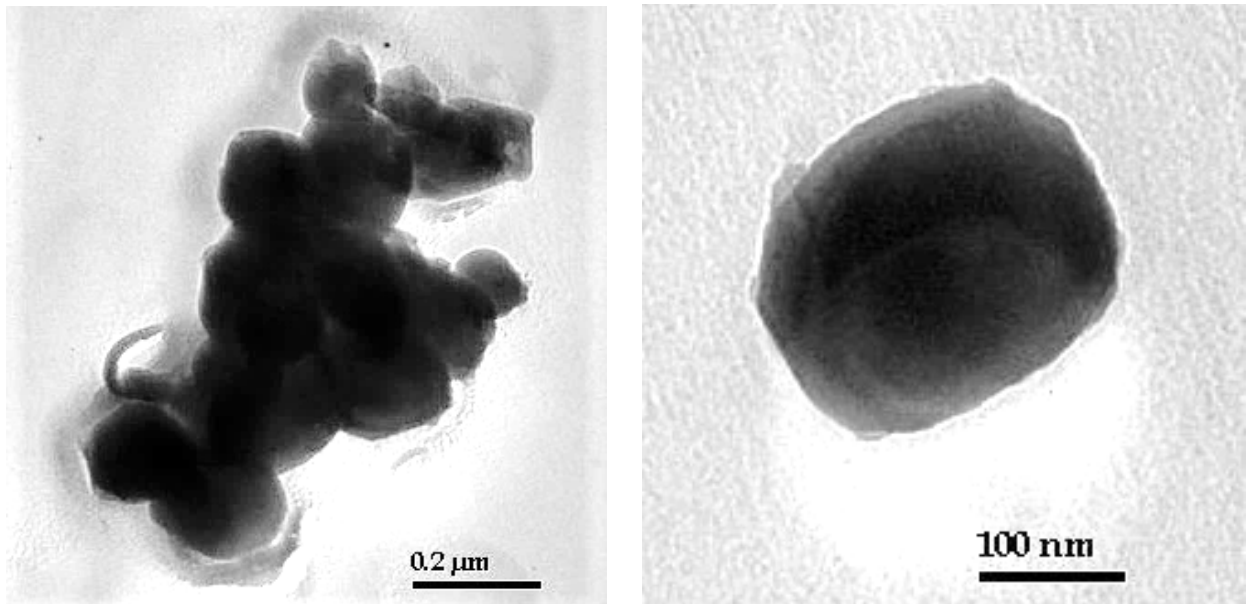
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(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 Defendant’s failure to inform the People of exposure to Titanium Dioxide (airborne,
6 unbound particles of respirable size) (“TiO2”), a known carcinogen. Defendant exposes consumers to
7 TiO2 by manufacturing, importing, selling, and/or distributing powdered face makeup products
8 including but not limited to the Alima Pure Bronzer (“Products”). Defendant knows and intends that
9 customers will use Products containing TiO2. Below are pictures of TiO2 particles found in an exemplar
10 of Defendant’s Products:



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

1 Products. This is a violation of Proposition 65.

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

6 **II.**

7 **PARTIES**

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

12 7. Defendant ALIMA COSMETICS, INC. (“Alima”) is a corporation organized and
13 existing under the laws of Oregon. Alima is registered to do business in California, and does business
14 in the County of Contra Costa, within the meaning of Health and Safety Code, section 25249.11. Alima
15 manufactures, imports, sells, or distributes the Products in California and Contra Costa County.

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

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

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III.

VENUE AND JURISDICTION

10. 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.

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

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

IV.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(Violation of Proposition 65 – Against all Defendants)

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

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

15. Defendant manufactured, imported, sold, and/or distributed Products containing TiO₂ in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and believes such violations have continued after receipt of the Notice (defined *infra*) and will continue to occur into the future.

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

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

4 18. Defendant knew or should have known that the Products contained TiO₂ and exposed
5 individuals to TiO₂ in the way provided above. The Notice informed Defendant of the presence of TiO₂
6 in the Products. Likewise, media coverage concerning TiO₂ and related chemicals in consumer products
7 provided constructive notice to Defendant.

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

9 20. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a
10 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff
11 provided the Notice to the various required public enforcement agencies along with a certificate of merit.
12 The Notice alleged that Defendant violated Proposition 65 by failing to sufficiently warn consumers in
13 California of the health hazards associated with exposures to TiO₂ contained in the Products.

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

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

19 23. Defendant is liable for a maximum civil penalty of \$2,500 per day for each violation of
20 Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also
21 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.

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11 Respectfully submitted:

12 Dated: May 2, 2023

ENTORNO LAW, LLP

13
14 By: 

15 _____
16 Noam Glick
17 Craig M. Nicholas
18 Jake W. Schulte
19 Janani Natarajan

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21 Attorneys for Plaintiff
22 Environmental Health Advocates, Inc.
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