

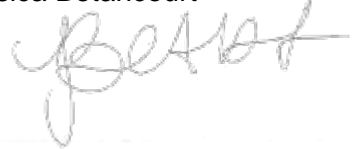
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County of Santa Cruz  
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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

17 ENVIRONMENTAL HEALTH ADVOCATES,  
18 INC.,

19 Plaintiff,

20 v.

21 SMASHBOX BEAUTY COSMETICS, INC., a  
22 California corporation and DOES 1 through  
23 100, inclusive,

24 Defendants.

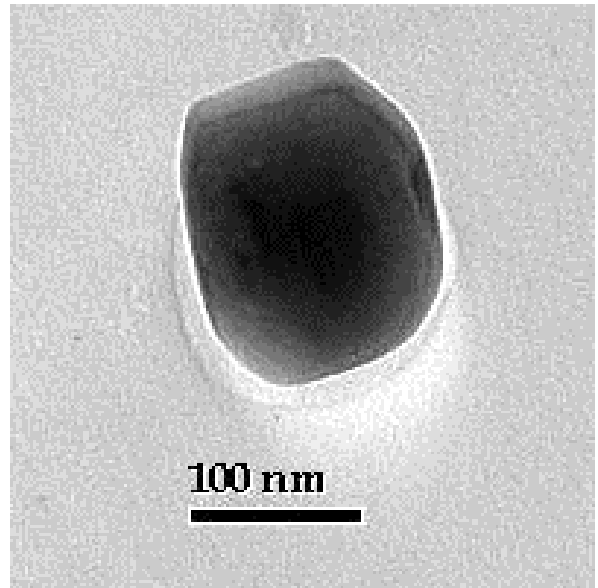
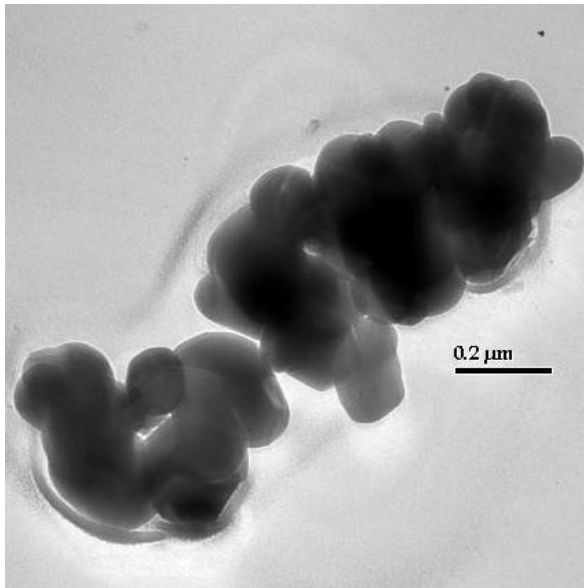
Case No.: 23CV01495

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

**I.**  
**INTRODUCTION**

1  
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) (“TiO<sub>2</sub>”), a known carcinogen. Defendant exposes consumers to  
6 TiO<sub>2</sub> by manufacturing, importing, selling, and/or distributing powdered face makeup including, but  
7 not limited to, Smashbox Cali Contour - Shape, Bronze, & Glow Palette (“Products”). Defendant knows  
8 and intends that customers will use Products containing TiO<sub>2</sub>. Below are pictures of TiO<sub>2</sub> particles  
9 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.)

3.       California identified and listed Titanium Dioxide (airborne, unbound particles of  
respirable size) (“TiO<sub>2</sub>”) as a chemical known to cause cancer as early as September 2, 2011.

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1 4. Defendant failed to sufficiently warn consumers and individuals in California about  
2 potential exposure to TiO<sub>2</sub> in connection with Defendant's manufacture, import, sale, or distribution of  
3 Products. This is a violation of Proposition 65.

4 5. Plaintiff seeks injunctive relief compelling Defendant to sufficiently warn consumers in  
5 California before exposing them to TiO<sub>2</sub> in Products. (Health & Safety Code, § 25249.7(a).) Plaintiff  
6 also seeks civil penalties against Defendant for its 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 Smashbox Beauty Cosmetics, Inc. ("Smashbox") is a corporation organized  
15 and existing under the laws of California. Smashbox is registered to do business in California, and does  
16 business in the County of Santa Cruz, within the meaning of Health and Safety Code, section 25249.11.  
17 Smashbox manufactures, imports, sells, or distributes the Products in California and Santa Cruz County.

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

24 **III.**  
**VENUE AND JURISDICTION**

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

1 10. Venue is proper in Santa Cruz 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 conducted and continues to conduct business in this County as it relates to Products.

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

7 **IV.**  
8 **CAUSES OF ACTION**

9 **FIRST CAUSE OF ACTION**

10 **(Violation of Proposition 65 – Against all Defendants)**

11 12. Plaintiff incorporates by reference each and every allegation contained above.

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

14 14. Defendant manufactured, imported, sold, and/or distributed Products containing TiO<sub>2</sub>  
15 in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and believes such  
16 violations have continued after receipt of the Notice (defined *infra*) and will continue to occur into the  
17 future.

18 15. In manufacturing, importing, selling, and/or distributing Products, Defendant failed to  
19 provide a clear and reasonable warning to consumers and individuals in California who may be exposed  
20 to TiO<sub>2</sub> through reasonably foreseeable use of the Products.

21 16. Products expose individuals to TiO<sub>2</sub> through direct inhalation. This exposure is a natural  
22 and foreseeable consequence of Defendant placing Products into the stream of commerce. As such,  
23 Defendant intends that consumers will use Products, exposing them to TiO<sub>2</sub>.

24 17. Defendant knew or should have known that the Products contained TiO<sub>2</sub> and exposed  
25 individuals to TiO<sub>2</sub> in the ways provided above. The Notice informed Defendant of the presence of  
26 TiO<sub>2</sub> in the Products. Likewise, media coverage concerning TiO<sub>2</sub> and related chemicals in consumer  
27 products provided constructive notice to Defendant.

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

1           19.     More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a  
2 60-Day Notice of Violation (“Notice”) as required by and in compliance with Proposition 65. Plaintiff  
3 provided the Notice to the various required public enforcement agencies along with a certificate of merit.  
4 The Notice alleged that Defendant violated Proposition 65 by failing to sufficiently warn consumers in  
5 California of the health hazards associated with exposures to TiO<sub>2</sub> contained in the Products.

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

8           21.     Individuals exposed to TiO<sub>2</sub> contained in Products through direct inhalation resulting  
9 from reasonably foreseeable use of the Products have suffered and continue to suffer irreparable harm.  
10 There is no other plain, speedy, or adequate remedy at law.

11           22.     Defendant is liable for a maximum civil penalty of \$2,500 per day for each violation of  
12 Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also  
13 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  
11 Respectfully submitted:

12 Dated: June 27, 2023

**ENTORNO LAW, LLP**

13  
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