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

16 **IN AND FOR THE COUNTY OF ALAMEDA**

17 ENVIRONMENTAL HEALTH ADVOCATES,
18 INC.,

19 Plaintiff,

20 v.

21 11247863 LTD., an United Kingdom limited
22 company; HB USA HOLDINGS, INC., a
23 Delaware corporation; and DOES 1 through
24 100, inclusive,

25 Defendants.

Case No.: **24CV066373**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

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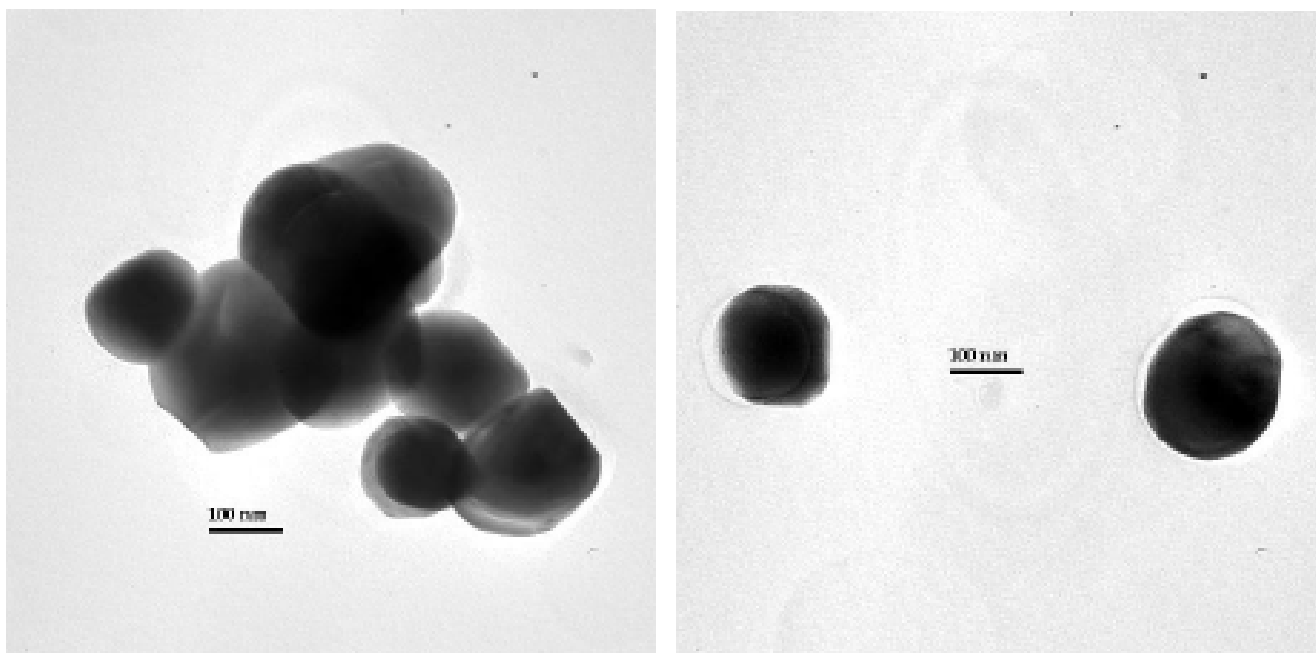
Superior Court of California,
County of Alameda

03/04/2024 at 04:59:27 PM

By: Milagros Cortez,
Deputy Clerk

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 Defendants' failure to inform the People of exposure to Titanium Dioxide (airborne,
5 unbound particles of respirable size) (“TiO₂”), a known carcinogen. Defendants expose consumers to
6 TiO₂ by manufacturing, importing, selling, and/or distributing powdered face makeup including, but
7 not limited to, Naughty Nude Eyeshadow Palette (“Products”). Defendants know and intend that
8 customers will use Products containing TiO₂. Below are pictures of TiO₂ particles found in an exemplar
9 of Defendants' 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.

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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 violations of Proposition 65 along with attorney's fees
7 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 11247863 LTD. 11247863 Ltd. is a limited company organized and existing
15 under the laws of England. 11247863 Ltd. is registered to do business in California, and does business
16 in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. 11247863
17 LTD manufactures, imports, sells, or distributes the Products in California and Alameda County.

18 8. Defendant HB USA HOLDINGS, INC. ("HB") is a corporation organized and existing
19 under the laws of Delaware. HB is registered to do business in California, and does business in the
20 County of Alameda, within the meaning of Health and Safety Code, section 25249.11. HB
21 manufactures, imports, sells, or distributes the Products in California and Alameda 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 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.**
VENUE AND JURISDICTION

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

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

13 13. Defendants have sufficient minimum contacts in the State of California or otherwise
 14 purposefully avail themselves of the California market. Exercising jurisdiction over Defendants would
 15 be consistent with traditional notions of fair play and substantial justice.

16 **IV.**
CAUSES OF ACTION

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

18 14. Plaintiff incorporates by reference each and every allegation contained above.

19 15. Proposition 65 mandates that citizens be informed about exposures to chemicals that
 20 cause cancer, birth defects, and other reproductive harm.
 21

22 16. Defendants manufactured, imported, sold, and/or distributed Products containing TiO2
 23 in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and believes such
 24 violations have continued after receipt of the Notice (defined *infra*) and will continue to occur into the
 25 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.

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 ways 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 direct inhalation resulting
20 from reasonably foreseeable use of the Products have suffered and continue to suffer irreparable harm.
21 There 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.
- 10

11 Respectfully submitted:

12 Dated: March 4, 2024

ENTORNO LAW, LLP

13
14 By: 
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16 Jake W. Schulte
17 Janani Natarajan

18 Attorneys for Plaintiff
19 Environmental Health Advocates, Inc.

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