

**ELECTRONICALLY FILED**

Superior Court of California,  
County of Alameda

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF ALAMEDA**

ENVIRONMENTAL HEALTH ADVOCATES,  
INC.,

Plaintiff,

v.

JOHNSON PUBLISHING COMPANY, LLC,  
an Illinois limited liability company, J  
PUBLICATION COMPANY LLC, an Illinois  
limited liability company; FASHION FAIR,  
LLC, a Delaware limited liability company; and  
DOES 1 through 100, inclusive,

Defendants.

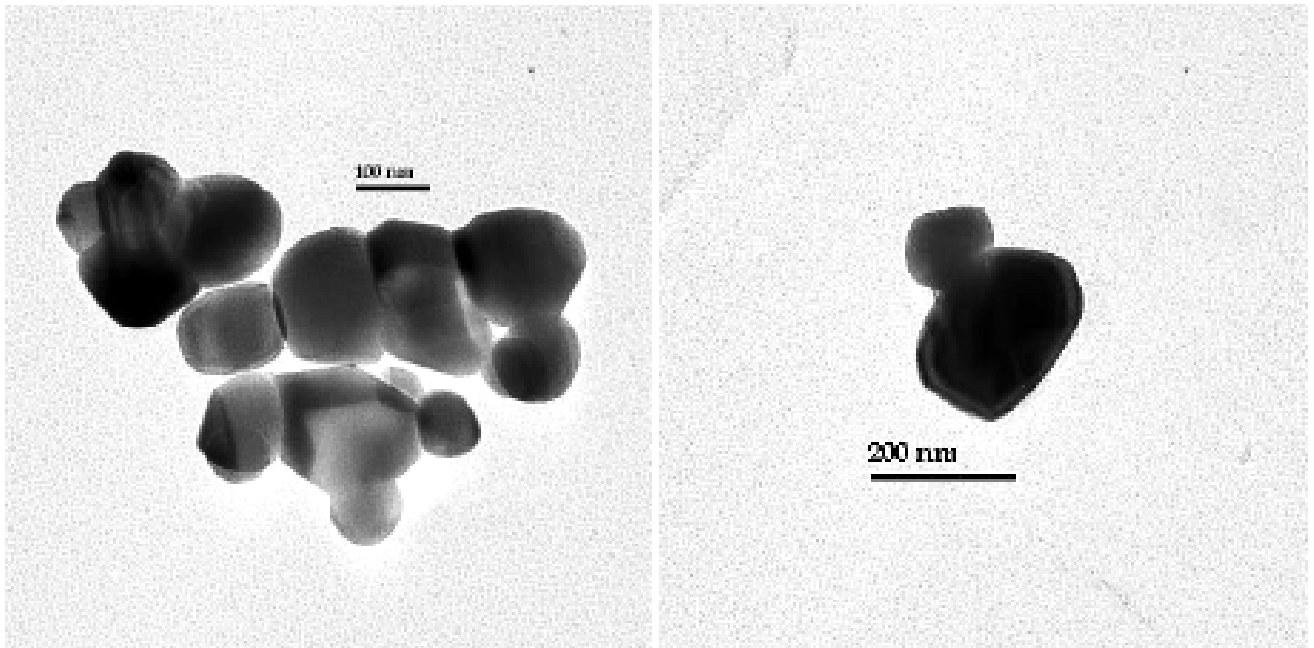
Case No.: **23CV056446**

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

**I.**  
**INTRODUCTION**

1. This Complaint is a representative action brought by Environmental Health Advocates, Inc. (“Plaintiff”) in the public interest of the citizens of the State of California (“the People”). Plaintiff seeks to remedy Defendants’ failure to inform the People of exposure to Titanium Dioxide (airborne, unbound particles of respirable size) (“TiO<sub>2</sub>”), a known carcinogen. Defendants expose consumers to TiO<sub>2</sub> by manufacturing, importing, selling, and/or distributing powdered face makeup including, but not limited to, FF Set It Loose Powder – Cognac Queen (“Products”). Defendants know and intend that customers will use Products containing TiO<sub>2</sub>. Below are pictures of TiO<sub>2</sub> particles found in an exemplar of Defendants’ 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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4. Defendants failed to sufficiently warn consumers and individuals in California about potential exposure to TiO<sub>2</sub> in connection with Defendants' manufacture, import, sale, or distribution of Products. This is a violation of Proposition 65.

5. Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers in California before exposing them to TiO<sub>2</sub> in Products. (Health & Safety Code, § 25249.7(a).) Plaintiff also seeks civil penalties against Defendants for violations of Proposition 65 along with attorney's fees and costs. (Health & Safety Code, § 25249.7(b).)

## II. PARTIES

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

7. Defendant JOHNSON PUBLISHING COMPANY, LLC ("Johnson") is a limited liability company organized and existing under the laws of Illinois. Johnson is registered to do business in California, and does business in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. Johnson manufactures, imports, sells, or distributes the Products in California and Alameda County.

8. Defendant J PUBLICATION COMPANY LLC ("J Publication") is a limited liability company organized and existing under the laws of Illinois. J Publication is registered to do business in California, and does business in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. J Publication manufactures, imports, sells, or distributes the Products in California and Alameda County.

9. Defendant FASHION FAIR, LLC ("Fashion") is a limited liability company organized and existing under the laws of Delaware. Fashion is registered to do business in California, and does business in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. Fashion manufactures, imports, sells, or distributes the Products in California and Alameda County.

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

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

### III. VENUE AND JURISDICTION

12. 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.

13. Venue is proper in Alameda 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.

14. Defendants have sufficient minimum contacts in the State of California or otherwise purposefully avail themselves of the California market. Exercising jurisdiction over Defendants 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)**

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

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

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

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

8           19. Products expose individuals to TiO2 through direct inhalation. This exposure is a natural  
9 and foreseeable consequence of Defendants placing Products into the stream of commerce. As such,  
10 Defendants intend that consumers will use Products, exposing them to TiO2.

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

15           21. Defendants' actions in this regard were deliberate and not accidental.

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

21           23. The appropriate public enforcement agencies provided with the Notice failed to  
22 commence and diligently prosecute a cause of action against Defendants.

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

26           25. Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation  
27 of Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also  
28 appropriate pursuant to Health and Safety Code, section 25249.7(a).

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: December 12, 2023

**ENTORNO LAW, LLP**

13  
14 By:



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