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6 *Attorneys for Mercury Policy Project*

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Superior Court of California,  
County of San Francisco

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**CGC-26-635224**

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF SAN FRANCISCO**

10 MERCURY POLICY PROJECT, a Project of  
the Tides Center, a 501(c)(3) nonprofit  
11 corporation,

12 Plaintiff,

13 vs.

14 LUMINATI NATURALS; EDGAR FABIAN  
15 GARCIA; NATURA!BLEND; MY E STORE;  
16 AZHAR KHALIL; SKIN CUTICLES; AXA  
BEAUTY SHOP; DJIB88; DJIBRIL BA;  
17 CAKESOAP; EM JACKSON;  
JTSESENTIALBEAUTY; CHRIS THARPE;  
18 EVEBEAUTY; EVELYN USIFO-  
MATTHEWS; EVELYN OGBILIH; and DOES  
19 1-20, inclusive,

20 Defendants.  
21

Case No.

**COMPLAINT FOR INJUNCTIVE  
RELIEF AND CIVIL PENALTIES AND  
OTHER EQUITABLE RELIEF FOR  
VIOLATIONS OF PROPOSITION 65  
(HEALTH & SAF. CODE, § 25249.6 et  
seq.) AND CALIFORNIA'S UNFAIR  
COMPETITION LAW (BUS. & PROF.  
CODE, § 17200 et seq.)**

1 Plaintiff MERCURY POLICY PROJECT (hereinafter “MPP”) acting in the public interest,  
2 based on information and belief and investigation of counsel, hereby makes the following  
3 allegations.

#### 4 Introduction

5 1. Through MPP’s Proposition 65 claims alleged herein, MPP seeks to enjoin  
6 LUMINATI NATURALS; EDGAR FABIAN GARCIA; NATURA!BLEND; MY E STORE;  
7 AZHAR KHALIL; SKIN CUTICLES; AXA BEAUTY SHOP; DJIB88, DJIBRIL BA;  
8 CAKESOAP; EM JACKSON; JTSESSENTIALBEAUTY; CHRIS THARPE; EVEBEAUTY;  
9 EVELYN USIFO-MATTHEWS; EVELYN OGBILIH; and DOES 1-20, inclusive (hereinafter  
10 “Defendants”) to either (1) prevent the sale of skin-lightening, whitening, and/or brightening  
11 cosmetics containing 1 ppm or more mercury or mercury compounds (the “Products”) to  
12 consumers in California, including but not limited to Products: Crave Sparkling Glow Beauty  
13 Cream, Crema la Milagrosa, Face Fresh Gold Beauty Cream, Hi Glow Beauty Cream, White Gold  
14 Anti-Marks Cream, Jhalak Hand & Foot Beauty Cream, Deluxe Nadinola Skin Bleaching Cream,  
15 88 Total White Underarm Cream; or (2) comply with Proposition 65’s warning requirement by  
16 providing a clear and reasonable warning to consumers in California prior to their purchase and use  
17 of the Products. MPP also seeks civil penalties and any other appropriate relief under Proposition  
18 65.

19 2. Through MPP’s Unfair Competition Law claims alleged herein, MPP seeks to enjoin  
20 Defendants from engaging in unfair and unlawful business practices and false advertising, namely,  
21 selling the Products in violation of the California Sherman Food, Drug, and Cosmetic Law and the  
22 Federal Food, Drug, and Cosmetic Act. MPP also seeks an injunction and restitution under the  
23 Unfair Competition Law.

#### 24 Parties

25 3. MPP is a 501(c)(3) non-profit corporation dedicated to, among other causes,  
26 promoting policies to eliminate mercury use, reducing human exposure to mercury, and advancing  
27

1 safe consumer products that do not contain and are not contaminated by mercury or mercury  
2 compounds (collectively “Mercury”).

3 4. MPP efforts primarily focus on promoting policies to eliminate Mercury use, reduce  
4 the export and trafficking of Mercury, and significantly reduce Mercury exposures at the local,  
5 national, and international levels.

6 5. MPP has had to divert its very limited resources to investigate and counteract eBay’s  
7 unfair and unlawful business practices, which are inimical to MPP’s mission.

8 6. Defendants have violated Proposition 65 while acting “in the course of doing  
9 business” within the meaning of Health and Safety Code section 25249.11. Defendants sell, import,  
10 ship, and/or distribute the Products in California.

11 7. Each of Defendants DOES 1-20 has violated Proposition 65 while acting “in the  
12 course of doing business” within the meaning of Health and Safety Code section 25249.11.  
13 Defendants DOES 1-20 sell, import, ship, and/or distribute, and/or take other actions to facility the  
14 bringing of the Products to consumers in California.

15 8. Defendants DOES 1-20 are sued under fictitious names because MPP does not know  
16 the true names and capacities of these defendants. MPP will request permission to amend this  
17 complaint or substitute DOE defendants to state their true names and capacities once their identities  
18 and capacities are ascertained.

19 **Jurisdiction, Venue, and Notice**

20 9. This Court has subject matter jurisdiction over this action under Health and Safety  
21 Code section 25249.7 and Business and Professions Code section 17204 because it is a court of  
22 competent jurisdiction. The Court also has subject matter jurisdiction under California Constitution,  
23 article VI, section 10, because this case does not present a cause of action given by statute to other  
24 trial courts.

25 10. This court has personal jurisdiction over Defendants because each of Defendants has  
26 sufficient minimum contacts with the State of California and/or otherwise purposefully avails itself

1 of the forum by doing business in the State of California so as to render the exercise of jurisdiction  
2 by the California courts consistent with traditional notions of fair play and substantial justice.

3 11. Venue is proper in the Superior Court of California, County of San Francisco, under  
4 Code of Civil Procedure sections 393 and 395 because this is a court of competent jurisdiction,  
5 MPP seeks civil penalties against Defendants, one or more instances of wrongful conduct occurred  
6 and continue to occur in the County of San Francisco, and/or Defendants conducted and continues  
7 to conduct business in the county with respect to the Products.

8 12. MPP has met the statutory requirements for notice to bring this action in the public  
9 interest under Health and Safety Code section 25249.7 and its implementing regulations.

10 13. MPP meets the standing requirements under Business and Professions Code sections  
11 17204 and 17535 to bring its Unfair Competition Law claim.

## 12 Statutory and Regulatory Background

### 13 **A. Proposition 65**

14 14. Proposition 65 (“**Prop. 65**”), enacted as the Safe Drinking Water and Toxic  
15 Enforcement Act by an overwhelming majority of voters in 1986, is “a remedial statute intended to  
16 protect the public.” (*People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 314.)

17 15. Proposition 65 declares it is the People’s right to be “informed about exposures to  
18 chemicals that cause cancer, birth defects, or other reproductive harm.” (Health & Saf. Code Div.  
19 20, Ch. 6.6 Note, § 1, subd. (b).)

20 16. Proposition 65 provides that:

21 No person in the course of doing business shall knowingly and intentionally  
22 expose any individual to a chemical known to the state to cause cancer or  
23 reproductive toxicity without first giving clear and reasonable warning to  
such individual, except as provided in section 25249.10.

24 (Health & Saf. Code, § 25249.6.)

25 17. To “expose any individual” includes exposures resulting from “a person’s  
26 acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer

1 good, or any exposure that results from receiving a consumer service.” (Cal. Code Regs., tit. 27,  
2 § 25602, subd. (b).)

3 18. To “knowingly” expose an individual, the person responsible for such exposure must  
4 have “knowledge of the fact that a discharge of, release of, or exposure to a chemical listed pursuant  
5 to section 25249.8(a) of the act is occurring” but does not need to have “knowledge that the  
6 discharge, release or exposure is unlawful.” (Cal. Code Regs., tit. 27, § 25102, subd. (n).) However,  
7 in some instances, “constructive “knowledge” can be sufficient to require a warning. (*Lee v.*  
8 *Amazon, Inc.*, (2022) 76 Cal.App.5th 200, 240.)

9 19. To provide a “clear and reasonable” warning for internet sales, the warning must  
10 include a clearly marked hyperlink of the word “WARNING” in bold typeface on the product  
11 display page, or by “otherwise prominently displaying the warning to the purchaser prior to  
12 completing the purchase.” (Cal. Code Regs., tit. 27, § 25602, subd. (b).) A warning is not  
13 “prominently displayed,” however, “if the purchaser must search for it in the general content of the  
14 website.” (*Id.*)

15 20. A sign or label used to provide consumer information about a product that is in a  
16 language other than English must also include a warning “provided in that language in addition to  
17 English.” (Cal. Code Regs., tit. 27, § 25602, subd. (d).)

18 21. Through its provisions, Proposition 65 allows consumers to make informed choices  
19 about the products they buy, including avoiding exposure to dangerous toxic chemicals.

20 22. Any person who, acting in the course of doing business, violates Proposition 65’s  
21 provisions is liable for civil penalties not to exceed \$2,500 per day for each violation, recoverable in  
22 a civil action. (Health & Saf. Code, § 25249.7, subd. (b).)

23 23. Proposition 65 provides that private parties are entitled to bring an action in the  
24 public interest to enforce its provisions. (Health & Saf. Code, § 25249.7, subd. (d).)

## 25 **B. Unfair Competition Law**

26 24. California’s Unfair Competition Law (“UCL”), Business and Professions Code  
27

1 section 17200 et seq., prohibits businesses from engaging in unfair or unlawful business practices,  
2 and unfair, deceptive, untrue, or misleading advertising.

3 25. The UCL provides the claims for injunctive relief from false or misleading  
4 advertising and statements shall be prosecuted exclusively in a court of competent jurisdiction by,  
5 *inter alia*, any person, association, or organization who has suffered injury in fact and has lost  
6 money or property as a result and meets the standing requirements of California Civil Procedure  
7 Code section 382. (Bus. & Prof. Code, § 172535.)

8 26. California Civil Procedure Code section 382, provides that “when the question is one  
9 of a common or general interest, or many persons, or when the parties are numerous, and it is  
10 impracticable to bring them all before the court, one or more may sue or defend for the benefit of  
11 all.”

### 12 **C. Private Attorney General**

13 27. Under Code of Civil Procedure section 1021.5, the court has discretion to award  
14 attorney fees under the private attorney general doctrine when an action results in the enforcement  
15 of an important right affecting the public interest, a significant benefit has been conferred on the  
16 general public or a broad class of persons, and the necessity and financial burden of private  
17 enforcement transcends the litigant’s personal interest in the case.

### 18 **General Allegations of Fact**

#### 19 **A. Each Defendant, acting in the course of doing businesses, exposed California** 20 **consumers to Mercury in the Products.**

21 28. Defendant LUMINATI NATURALS is a “person in the course of doing business” as  
22 the term is defined under Health and Safety Code section 25249.11, subdivision (a).

23 29. Defendant LUMINATI NATURALS sold Products in California, including through  
24 listing on eBay’s online global marketplace at <https://ebay.us/m/uvqVr3>.

25 30. Defendant EDGAR FABIAN GARCIA is a “person in the course of doing business”  
26 as the term is defined under Health and Safety Code section 25249.11, subdivision (a).

1 31. Defendant EDGAR FABIAN GARCIA sold Products in California, including  
2 through listing on eBay’s online global marketplace at <https://ebay.us/m/uvqVr3>.

3 32. Defendant NATURA!BLEND is a “person in the course of doing business” as the  
4 term is defined under Health and Safety Code section 25249.11, subdivision (a).

5 33. Defendant NATURA!BLEND sold Products in California, including through listing  
6 on eBay’s online global marketplace at <https://www.ebay.com/usr/natura!blend>.

7 34. Defendant MY E STORE is a “person in the course of doing business” as the term is  
8 defined under Health and Safety Code section 25249.11, subdivision (a).

9 35. Defendant MY E STORE sold Products in California, including through listing on  
10 eBay’s online global marketplace at <https://www.ebay.com/usr/natura!blend>.

11 36. Defendant AZHAR KHALIL is a “person in the course of doing business” as the  
12 term is defined under Health and Safety Code section 25249.11, subdivision (a).

13 37. Defendant AZHAR KHALIL sold Products in California, including through listing  
14 on eBay’s online global marketplace at <https://www.ebay.com/usr/natura!blend>.

15 38. Defendant SKIN CUTICLES is a “person in the course of doing business” as the  
16 term is defined under Health and Safety Code section 25249.11, subdivision (a).

17 39. Defendant SKIN CUTICLES sold Products in California, including through listing  
18 on eBay’s online global marketplace at <https://www.ebay.com/str/axabeautyshop>.

19 40. Defendant AXA BEAUTY SHOP is a “person in the course of doing business” as  
20 the term is defined under Health and Safety Code section 25249.11, subdivision (a).

21 41. Defendant AXA BEAUTY SHOP sold Products in California, including through  
22 listing on eBay’s online global marketplace at <https://www.ebay.com/str/axabeautyshop>.

23 42. Defendant DJIB88 is a “person in the course of doing business” as the term is  
24 defined under Health and Safety Code section 25249.11, subdivision (a).

25 43. Defendant DJIB88 sold Products in California, including through listing on eBay’s  
26 online global marketplace at <https://www.ebay.com/usr/djib88>.



1 57. Defendant EVELYN USIFO-MATTHEWS sold Products in California, including  
2 through listing on eBay’s online global marketplace at <https://www.ebay.com/str/evebeauty>.

3 58. Defendant EVELYN OGBILIH is a “person in the course of doing business” as the  
4 term is defined under Health and Safety Code section 25249.11, subdivision (a).

5 59. Defendant EVELYN OGBILIH sold Products in California, including through listing  
6 on eBay’s online global marketplace at <https://www.ebay.com/str/evebeauty>.

7 60. Through their own online storefronts, wholesale distributions, and/or sales through  
8 online marketplaces such as eBay, Inc., each Defendant reaches millions of potential online  
9 customers of the Products in California.

10 61. Since at least 2022, each Defendants sold, imported, shipped, and/or distributed the  
11 Products in California.

12 **B. Defendants knowingly and intentionally exposed, and continue to expose, consumers of**  
13 **the Products in California to Mercury.**

14 62. The dangers of the Products are well known and multiple health and safety agencies  
15 across the globe have regularly issued health alerts, announced investigation into, and warned  
16 consumers not to use the Products, including those sold by Defendants, because of the risk of  
17 exposure to dangerously high levels of Mercury.

18 63. Defendants knew that the Products offered for sale and/or distribution contain  
19 Mercury.

20 64. Testing has shown that the Products Defendants sold into California contain  
21 significantly high levels of Mercury, far in excess of the allowable limit under the Federal Food,  
22 Drug and Cosmetic Act, 21 USCS §§ 301 et seq.

23 **C. Exposure to Mercury from the Products is reasonably foreseeable and ongoing.**

24 65. The California Office of Environmental Health Hazards Assessment (“OEHHA”)  
25 identified and listed “mercury and mercury compounds” as chemicals known to the State of  
26 California to cause birth defects and other reproductive harm under Proposition 65 on July 1, 1990.

1 Mercury became subject to the “clear and reasonable warning” requirement under Proposition 65 on  
2 July 1, 1991. (Health & Saf. Code, §§ 25249.8, 25249.10, subd. (b); Cal. Code Regs., tit. 27,  
3 § 27001, subd. (c).)

4 66. Mercury is broadly known to be an intentionally added ingredient in products  
5 claiming skin lightening, whitening, or brightening effects.

6 67. Mercury is an effective skin lightener because it penetrates deep into the skin where  
7 it interacts with cells known as melanocytes, which produce the pigment known as melanin, a  
8 chemical that darkens the skin. Mercury replaces a critical enzyme in melanocyte cells, which shuts  
9 off the production of melanin and causes the skin to lighten. Mercury is also a well-known,  
10 effective anti-bacterial for the treatment of acne.

11 68. Mercury generally exists in three forms: elemental mercury, inorganic mercury  
12 compounds, and organic mercury. Mercury is toxic to humans in all forms. The most commonly  
13 used active ingredient in skin lightening creams is inorganic mercury because it can be readily and  
14 easily absorbed into cosmetic creams.

15 69. The reasonably foreseeable use of the Products causes consumers in the State of  
16 California, and members of their households, to be exposed to Mercury through three primary  
17 routes: ingestion, inhalation, or dermal absorption.

18 70. Ingestion occurs post-application of the Products as a result of normal hand-to-mouth  
19 behavior, such as eating or preparing food.

20 71. Inhalation occurs when Mercury vaporizes from the Products.

21 72. Dermal absorption occurs with each reasonably foreseeable application of a Product  
22 to a user’s skin. The Products are designed and marketed specifically for direct contact with skin.

23 73. The exposure of a Product user’s household members is foreseeable because use of  
24 the Products results in contamination of household air and surfaces, and household members come  
25 into direct contact with the skin of the primary user of the Products.

26 74. The exposure to Mercury occurs and continues to occur in residences where the  
27

1 Products are used, and in locations in which the Products are disposed, as a result of consumers  
2 purchasing the Products from Defendants.

3 75. Each reasonably foreseeable use of the Products—whether by ingestion, inhalation,  
4 or dermal absorption—results in continuing and ongoing exposure to Mercury because Mercury has  
5 a half-life of two months in the human body, and of decades in the brain.

6 76. Additionally, each of the Products is multi-use, resulting in multiple exposures--and  
7 therefore multiple Proposition 65 violations--from each unit of the Product.

8 77. The Food and Drug Administration (“**FDA**”) has warned against the use of Mercury  
9 in cosmetics since 1974 due to ease of exposure and bioaccumulation:

10 It is well known that mercury compounds are readily absorbed through the  
11 unbroken skin as well as through the lungs by inhalation and by intestinal  
12 absorption after ingestion. Mercury is absorbed from topical application and  
13 is accumulated in the body, giving rise to numerous adverse effects. . . .  
14 Cosmetic preparations containing mercury compounds are often applied with  
15 regularity and frequency for prolonged periods. Such chronic use of mercury-  
16 containing skin-bleaching preparations has resulted in the accumulation of  
17 mercury in the body and the occurrence of severe reactions.

18 (21 C.F.R. § 700.13(b) (1974).)

19 78. The California Sherman Food, Drug, and Cosmetic Law (“**Sherman Law**”)  
20 considers any cosmetic containing Mercury to be adulterated and prohibits the sale and/or  
21 distribution of adulterated cosmetics in California. (Health & Saf. Code, §§ 111670, 111700.) The  
22 Sherman Law imposes criminal liability without fault, reflecting the public policy of protecting the  
23 public from dangerous products placed on the market, irrespective of negligence in their  
24 manufacture.

25 79. The Federal Food, Drug, and Cosmetic Act (“**FD&C**”), and its implementing  
26 regulations, considers any cosmetic containing Mercury in amounts greater than 1 part per million  
27 to be adulterated and prohibits the introduction, delivery, and receipt of adulterated cosmetics in  
28 interstate commerce nationwide. (21 U.S.C. §§ 331 et seq.; 21 C.F.R. § 700.13(d)(2) (1974).)



1 86. Defendants have violated and continue to violate California Code of Regulations,  
2 title 27, section 25602, subd. (b) because neither Defendants, nor anyone else, ever provided a  
3 Proposition 65 warning in any non-English language used on the labels for the Products which  
4 caused exposures in California as a result of Defendants' business activities.

5 **Second Cause of Action**

6 **(Violation of Bus. & Prof. Code, § 17200 et seq.)**

7 87. MPP realleges and incorporates each and every allegation contained in the preceding  
8 paragraphs as though fully set forth herein.

9 88. Defendants have violated Business and Professions Code section 17200 et seq. by  
10 engaging in business practices that constitute unfair competition.

11 89. Defendants have engaged in business acts and practices that are "unlawful" because  
12 the Products are adulterated and/or misbranded cosmetics as defined in the Sherman Law and the  
13 FD&C and Defendants held, offered for sale, sold, proffered delivery, offered for distribution,  
14 and/or distributed the Products in California in violation of the Sherman Law and the FD&C.

15 90. Defendants engaged in false or misleading advertising and statements because  
16 Defendants publicly disseminated untrue or misleading statements and advertising regarding the  
17 safety of the Products. Defendants knew that these statements and advertising were untrue or  
18 misleading because the Products contain Mercury.

19 91. Defendants engaged in false advertising because Defendants did not state the  
20 Products contain Mercury, including on the labels or packaging of the Products.

21 92. As a direct and proximate result of Defendants' violations of the UCL, Plaintiff  
22 suffered injury in fact because it was forced to divert limited organizational resources away from its  
23 core mission and has incurred significant costs associated with investigating the Defendants  
24 violations.

25 93. As a direct and proximate result of Defendants' violations of the UCL, important  
26 public interest rights have been harmed.

