

1 **ENTORNO LAW, LLP**

Noam Glick (SBN 251582)

2 Jake W. Schulte (SBN 293777)

Craig M. Nicholas (SBN 178444)

3 225 Broadway, Suite 1900

San Diego, California 92101

4 Tel: (619) 629-0527

Email: noam@entornolaw.com

5 Email: jake@entornolaw.com

Email: craig@entornolaw.com

7 Attorneys for Plaintiff

Environmental Health Advocates, Inc.

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

9 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

10 ENVIRONMENTAL HEALTH ADVOCATES,  
11 INC.,

12 Plaintiff,

13 v.

14 SEPHORA USA, INC., a Michigan  
corporation, and DOES 1 through 100,  
inclusive,

15 Defendants.  
16

Case No.:

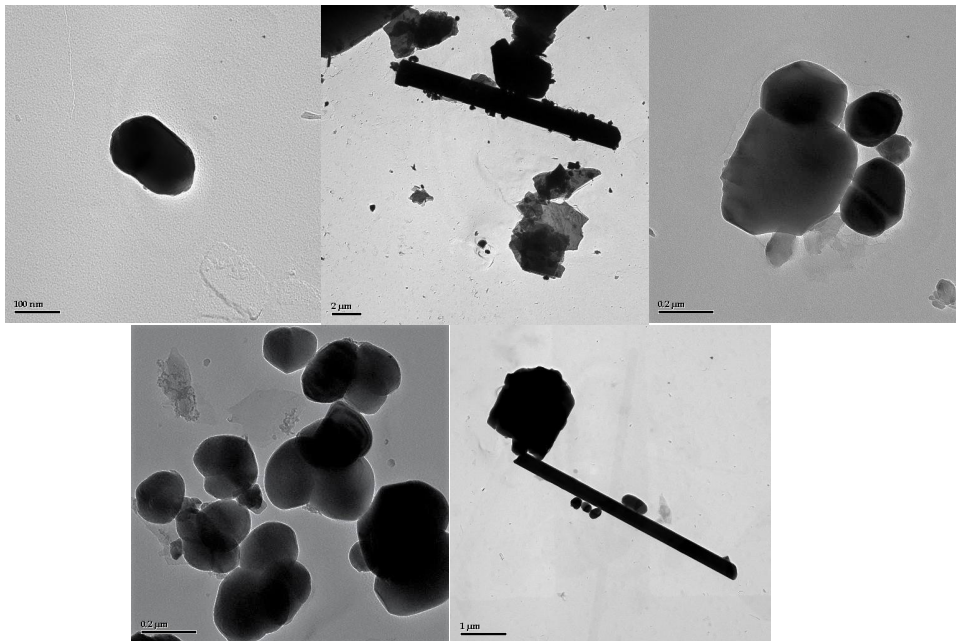
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

(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 Defendant’s failure to inform the People of exposure to Titanium Dioxide (airborne, unbound particles of respirable size) (“TiO<sub>2</sub>”), a known carcinogen. Defendant exposes consumers to TiO<sub>2</sub> by manufacturing, importing, selling, and/or distributing makeup palettes including, but not limited to, the Sephora Pocket Palette (“Products”). Defendant knows and intends that customers will use Products containing TiO<sub>2</sub>. Below are pictures of TiO<sub>2</sub> particles 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.

4. Defendant failed to sufficiently warn consumers and individuals in California about

1 potential exposure to TiO<sub>2</sub> in connection with Defendant's manufacture, import, sale, or distribution of  
2 Products. This is a violation of Proposition 65.

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

## 7 II.

### 8 PARTIES

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

13 7. Defendant SEPHORA USA, INC. ("SUI") is a corporation organized and existing under  
14 the laws of Michigan. SUI is registered to do business in California, and does business in the County of  
15 San Francisco, within the meaning of Health and Safety Code, section 25249.11. SUI manufactures,  
16 imports, sells, or distributes the Products in California and San Francisco County.

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

## 23 III.

### 24 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.

10. Venue is proper in San Francisco 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.

11. 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)**

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

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

14. Defendant manufactured, imported, sold, and/or distributed Products containing TiO<sub>2</sub> 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.

15. 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 TiO<sub>2</sub> through reasonably foreseeable use of the Products.

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

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

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

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

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

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

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

## PRAYER FOR RELIEF

Wherefore, Plaintiff prays for judgment against Defendant as follows:

1. Civil penalties in the amount of \$2,500 per day for each violation. Plaintiff alleges that damages total a minimum of \$1,000,000;

2. A preliminary and permanent injunction against Defendant from manufacturing, importing, selling, and/or distributing Products in California without providing a clear and reasonable warning as required by Proposition 65 and related Regulations;

3. Reasonable attorney's fees and costs of suit; and

*[Rest of page intentionally left blank.]*

1           4.       Such other and further relief as may be just and proper.

2   Respectfully submitted:

3   Dated: May 4, 2022

**ENTORNO LAW, LLP**

4  
5           By:



6           Noam Glick

7           Craig M. Nicholas

8           Jake W. Schulte

9           Attorneys for Plaintiff

10          Environmental Health Advocates, Inc.