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Per local Rule, This case is assigned to Judge Devine, John P, for all purposes.

SUMMONS ISSUED

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8 Attorneys for Plaintiff
Environmental Health Advocates, Inc.

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF CONTRA COSTA**
C22-02685

11 ENVIRONMENTAL HEALTH ADVOCATES,
INC.,

Case No.:

12 Plaintiff,

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

13 v.

(Health & Safety Code § 25249.6 et seq.)

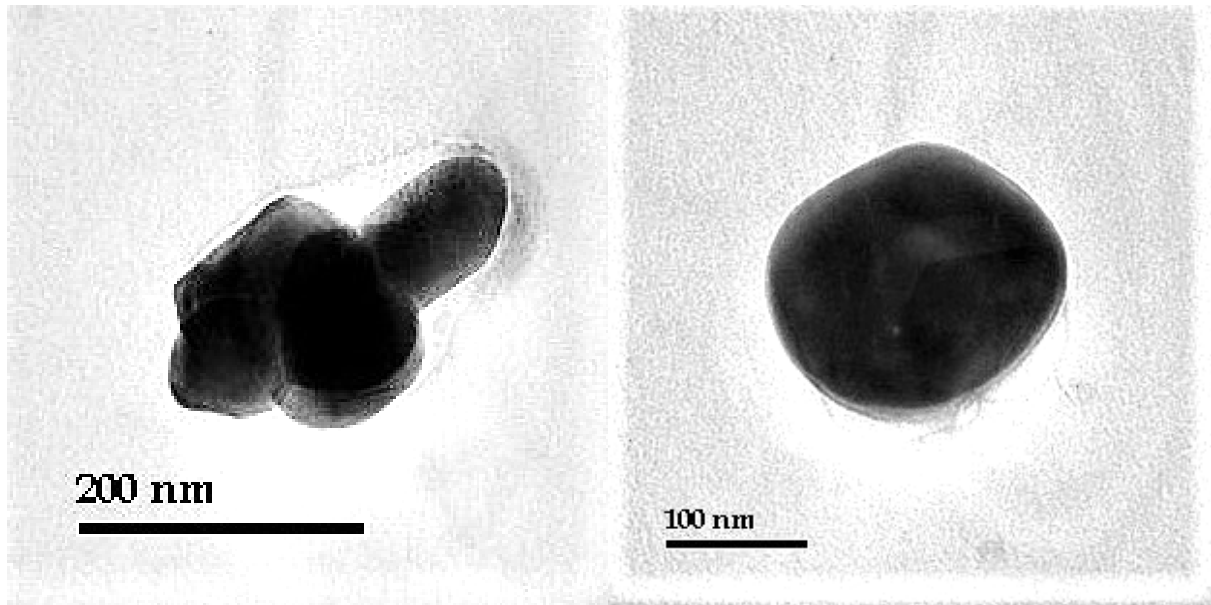
14 KAT VON D, INC., a California corporation;
15 KENDO HOLDINGS INC., a Delaware
corporation; SEPHORA USA, INC., a
Michigan corporation; and DOES 1 through
16 100, inclusive,

17 Defendants.

I.

INTRODUCTION

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3 1. This Complaint is a representative action brought by Environmental Health Advocates,
4 Inc. (“Plaintiff”) in the public interest of the citizens of the State of California (“the People”). Plaintiff
5 seeks to remedy Defendants’ failure to inform the People of exposure to Titanium Dioxide (airborne,
6 unbound particles of respirable size) (“TiO₂”), a known carcinogen. Defendants expose consumers to
7 TiO₂ by manufacturing, importing, selling, and/or distributing blush products including but not limited
8 to the Kat Von D Everlasting Blush (“Products”). Defendants know and intend that customers will use
9 Products containing TiO₂. Below are pictures of TiO₂ particles found in an exemplar of Defendants’
10 Products:



21 2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California

22 3. Health and Safety Code, section 25249.6 et seq. (“Proposition 65”), “[n]o person in the
23 course of doing business shall knowingly and intentionally expose any individual to a chemical known
24 to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to
25 such individual. . . .” (Health & Safety Code, § 25249.6.)

26 4. 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 17. Proposition 65 mandates that citizens be informed about exposures to chemicals that
2 cause cancer, birth defects, and other reproductive harm.

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

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

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

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

17 22. Defendants' actions in this regard were deliberate and not accidental.

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

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

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

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