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**ELECTRONICALLY
FILED**
*Superior Court of California,
County of San Francisco*

01/23/2023
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

CGC-23-604168

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

15 ENVIRONMENTAL HEALTH ADVOCATES,
16 INC.,

17 Plaintiff,

18 v.

19 FENTY BEAUTY LLC, a Delaware limited
20 liability company; KENDO HOLDINGS INC.,
21 a Delaware corporation; SEPHORA USA,
22 INC., a Michigan corporation; and DOES 1
23 through 100, inclusive,

24 Defendants.

Case No.:

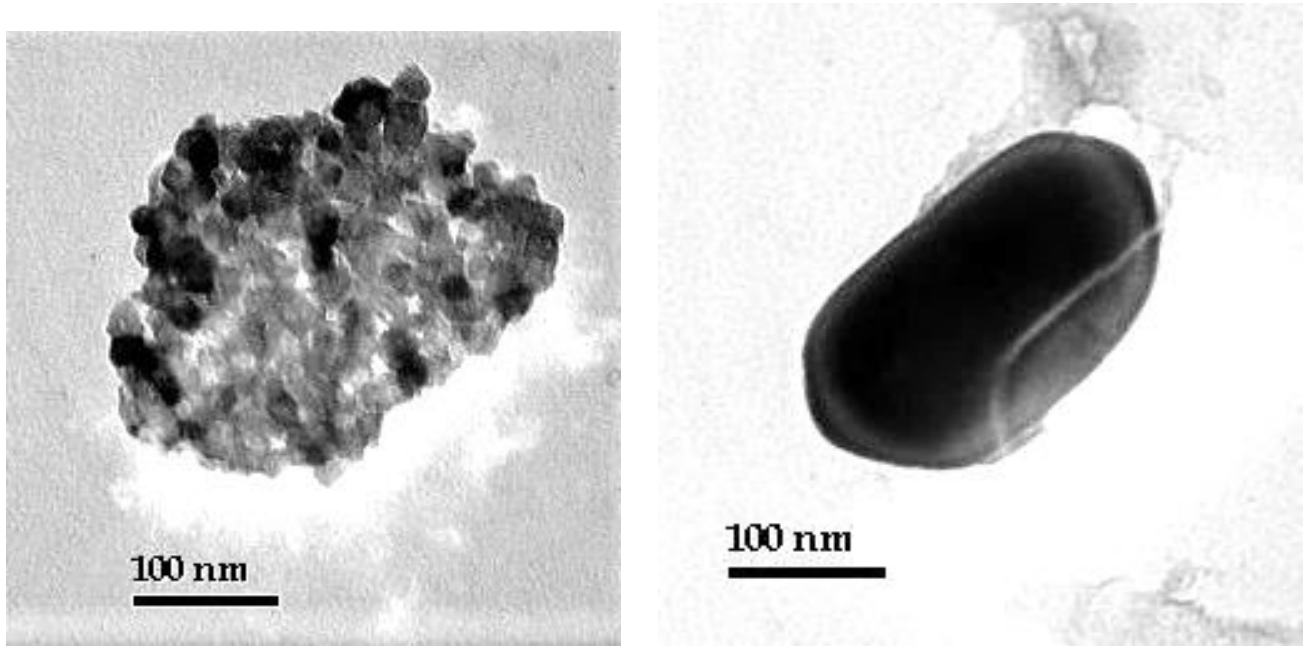
**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

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 powdered face makeup products
8 including but not limited to the Fenty Beauty Killawatt Foil Freestyle Highlighter (“Products”).
9 Defendants know and intend that customers will use Products containing TiO₂. Below are pictures of
10 TiO₂ particles found in an exemplar of Defendants’ Products:



21 2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986,
22 California 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 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 their violations of Proposition 65 along with attorney’s
7 fees 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 FENTY BEAUTY LLC (“Fenty”) is a limited liability company organized
15 and existing under the laws of Delaware. Fenty is registered to do business in California, and does
16 business in the County of San Francisco, within the meaning of Health and Safety Code, section
17 25249.11. Fenty manufactures, imports, sells, or distributes the Products in California and San Francisco
18 County.

19 8. Defendant KENDO HOLDINGS INC. (“KH”) is a corporation organized and existing
20 under the laws of Delaware. KH is registered to do business in California, and does business in the
21 County of San Francisco, within the meaning of Health and Safety Code, section 25249.11. KH
22 manufactures, imports, sells, or distributes the Products in California and San Francisco County.

23 9. Defendant SEPHORA USA, INC. (“SUI”) is a corporation organized and existing under
24 the laws of Michigan. SUI is registered to do business in California, and does business in the County of
25 San Francisco, within the meaning of Health and Safety Code, section 25249.11. SUI manufactures,
26 imports, sells, or distributes the Products in California and San Francisco County.

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1 IV.

2 **CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION**

4 **(Violation of Proposition 65 – Against all Defendants)**

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

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

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

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

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

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

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

23 22. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a
24 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff
25 provided the Notice to the various required public enforcement agencies along with a certificate of merit.
26 The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in
27 California of the health hazards associated with exposures to TiO₂ contained in the Products.
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