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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 SANTA CRUZ**

11 ENVIRONMENTAL HEALTH ADVOCATES,
12 INC.,

13 Plaintiff,

14 v.

15 FEDERICI BRANDS LLC, a Delaware limited
liability company; SEPHORA USA, INC., a
Michigan corporation; and DOES 1 through
16 100, inclusive,

17 Defendants.

Case No.: 23CV00293

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

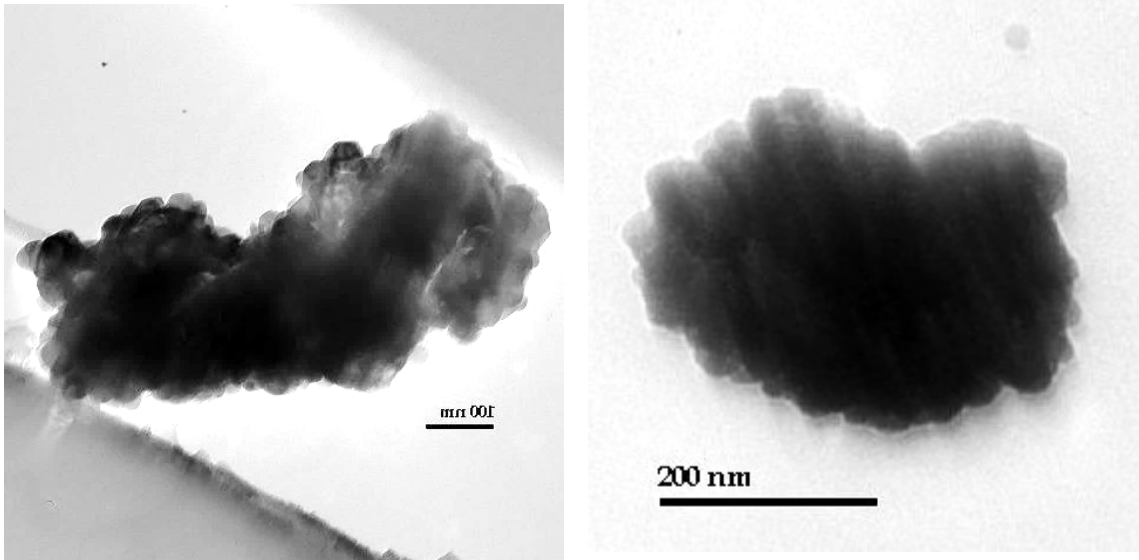
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Superior Court of California
County of Santa Cruz
2/3/2023 10:00 AM
Clerk of the Court by Deputy,
Karen Broughton



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 hair products including but
8 not limited to the Color Wow Root Coverup (“Products”). Defendants know and intend that customers
9 will use Products containing TiO2. Below are pictures of TiO2 particles found in an exemplar of
10 Defendants’ Products:



20 2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California
21 Health and Safety Code, section 25249.6 et seq. (“Proposition 65”), “[n]o person in the course of doing
22 business shall knowingly and intentionally expose any individual to a chemical known to the state to
23 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
24 individual. . . .” (Health & Safety Code, § 25249.6.)

25 3. California identified and listed Titanium Dioxide (airborne, unbound particles of
26 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 FEDERICI BRANDS LLC ("FB") is a limited liability company organized
15 and existing under the laws of Delaware. FB is registered to do business in California, and does business
16 in the County of Santa Cruz, within the meaning of Health and Safety Code, section 25249.11. FB
17 manufactures, imports, sells, or distributes the Products in California and Santa Cruz County.

18 8. Defendant SEPHORA USA, INC. ("SUI") is a corporation organized and existing under
19 the laws of Michigan. SUI is registered to do business in California, and does business in the County of
20 Santa Cruz, within the meaning of Health and Safety Code, section 25249.11. SUI manufactures,
21 imports, sells, or distributes the Products in California and Santa Cruz County.

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

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

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

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

11 20. Defendants' actions in this regard were deliberate and not accidental.

12 21. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a
13 60-Day Notice of Violation ("Notice") as required by and in compliance with Proposition 65. Plaintiff
14 provided the Notice to the various required public enforcement agencies along with a certificate of merit.
15 The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in
16 California of the health hazards associated with exposures to TiO₂ contained in the Products.

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

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

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

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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.

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11 Respectfully submitted:

12 Dated: February 3, 2023

ENTORNO LAW, LLP

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14 By: 
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20 Environmental Health Advocates, Inc.
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