

**SUMMONS ON FIRST AMENDED
(CITACION JUDICIAL) COMPLAINT**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

UNITED EXCHANGE CORP., a California Corporation, and DOES 1-50

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CONSUMER ADVOCACY GROUP, INC., in the public interest

SUM-100
**CONFIRMED COPY
OF ORIGINAL FILED**
Los Angeles Superior Court

DEC 31 2008

John A. Clarke, Executive Officer/Clerk
By *[Signature]*, Deput
CYNTHIA M. JACOBS

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

Superior Court of California for the County of Los Angeles
Stanley Mosk Courthouse
111 North Hill Street, Los Angeles, CA 90012

CASE NUMBER: BC403123
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Daniel D. Cho (SBN 105409), YEROUSHALMI & ASSOCIATES
3700 Wilshire Boulevard, Suite 480, Los Angeles, CA 90010; Tel: (213) 382-3183

DATE: DEC 31 2008
(Fecha)

JOHN A. CLARKE
Clerk, by _____
(Secretario)

CYNTHIA JACOBS
Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):



**CONFORMED COPY
OF ORIGINAL FILED**
Los Angeles Superior Court

UCJ 31 2008

John A. Clarke, Executive Officer/Clerk

By *[Signature]*
CYNTHIA M. JACOBS

Deput.

1 REUBEN YEROUSHALMI (SBN 193981)
2 DANIEL D. CHO (SBN 105409)
3 BEN YEROUSHALMI (SBN 232540)
4 **YEROUSHALMI & ASSOCIATES**
5 3700 WILSHIRE BLVD., SUITE 480
6 LOS ANGELES, CA 90010
7 Telephone: 213-382-3183
8 Facsimile: 213-382-3430

9 Attorneys for Plaintiffs,
10 Consumer Advocacy Group, Inc

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13
14 COUNTY OF LOS ANGELES – CENTRAL JUDICIAL DISTRICT

15 CONSUMER ADVOCACY GROUP, INC.,) CASE NO. BC403123
16 in the public interest,)
17 Plaintiff,) FIRST AMENDED COMPLAINT FOR
18 v.) PENALTY, INJUNCTION, AND
19 UNITED EXCHANGE CORP., a California) RESTITUTION
20 corporation, and DOES 1-50;)
21 Violation of Proposition 65, the Safe
22 Defendants.) Drinking Water and Toxic Enforcement
23 Act of 1986 (Health & Safety Code., §§
24) 25249.5, et seq.)
25) ACTION IS AN UNLIMITED CIVIL
26) CASE (exceeds \$25,000)
27)
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35 Plaintiff Consumer Advocacy Group, Inc. alleges, based on information and belief, a
36 cause of action against defendants as follows:
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THE PARTIES

1. Plaintiff, Consumer Advocacy Group, Inc. ("Plaintiff"), is a non-profit corporation qualified to do business in the State of California. It brings this action in the public interest as defined under Health and Safety Code section 25249.7, subdivision (d).
2. Defendant United Exchange Corp. is a California corporation.
3. Plaintiff is ignorant of the true names and capacities of defendants Does 1-50, and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint to allege their true names and capacities when ascertained. Plaintiff is informed, believes, and thereon alleges that each fictitiously named defendant is responsible in some manner for the occurrences herein alleged and the damages caused thereby.
4. Plaintiff is informed, believes, and thereon alleges that United Exchange Corp. at all times mentioned herein has conducted business within the State of California.
5. At all times mentioned herein, "Defendants" include United Exchange Corp. and Does 1-50.
6. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the Defendants was a person doing business within the meaning of Health and Safety Code section 25249.11, subdivision (b), and that each of the Defendants had ten or more employees.

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JURISDICTION

7. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those given by statute to other trial courts.

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BACKGROUND AND PRELIMINARY FACTS

8. In 1986, California voters approved an initiative to address growing concerns about exposure to toxic chemicals. The initiative, The Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code sections 25249.5, *et seq.*

1 (“Proposition 65”), helps to protect California’s drinking water sources from
2 contamination, to allow consumers to make informed choices about the products they
3 buy, and to enable persons to protect themselves from toxic chemicals as they see fit.

4 9. Proposition 65 requires the Governor of California to publish a list of chemicals known to
5 the state to cause cancer, birth defects, or other reproductive harm. *Health & Safety*
6 *Code*, § 25249.8. The list, which the Governor updates at least once a year, contains over
7 550 chemicals. Proposition 65 imposes warning requirements and other controls that
8 apply to Proposition 65-listed chemicals.

9 10. All businesses with ten or more employees that operate or sell products in California
10 must comply with Proposition 65. Under Proposition 65, businesses are: (1) prohibited
11 from knowingly discharging Proposition 65-listed chemicals into sources of drinking
12 water (*Health & Safety Code*, § 25249.5), and (2) required to provide “clear and
13 reasonable” warnings before exposing a person, knowingly and intentionally, to a
14 Proposition 65-listed chemical (*Health & Safety Code*, § 25249.6).

15 11. Plaintiff conducted research, from which it identified a widespread practice of
16 manufacturers and distributors of hair coloring products of exposing, knowingly and
17 intentionally, persons in California to the Proposition 65-listed chemicals of such
18 products without first providing clear and reasonable warnings of such to the exposed
19 persons prior to exposure. Plaintiff later discerned that Defendants engaged in such
20 practice.
21

22 **FIRST CAUSE OF ACTION**

23 **(By Consumer Advocacy Group, Inc. and against United Exchange Corp. and Does 1-50**
24 **For Violation Of Proposition 65, The Safe Drinking Water And Toxic Enforcement Act Of**
25 **1986 (*Health & Safety Code*, §§ 25249.5, *et seq.*))**

26 **United Exchange 5 Minute Hair Color (Including Dark Brown)**

27 12. Plaintiff, Consumer Advocacy Group, Inc. repeats and incorporates by reference
28 paragraphs 1 through 11 of this complaint as though fully set forth herein.

1 13. Each of the Defendants is, and at all times mentioned herein, was a manufacturer or
2 distributor United Exchange 5 Minute Hair Color (Including Dark Brown) (hereinafter
3 "United Exchange"), a consumer product designed for the coloring of hair.

4 14. Plaintiff is informed, believes, and thereon alleges that United Exchange contains
5 Diaminotoluene (mixed).

6 15. On January 1, 1990, the Governor of California added Diaminotoluene (mixed) to the list
7 of chemicals known to the State to cause cancer (*Cal. Code Regs. 22 § 12000(b)*).
8 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
9 after addition of Diaminotoluene (mixed) to the list of chemicals known to the State to
10 cause cancer, Diaminotoluene (mixed) became fully subject to Proposition 65 warning
11 requirements and discharge prohibitions.

12 16. Plaintiff is informed, believes, and thereon alleges that between June 11, 2005 and the
13 present, each of the Defendants knowingly and intentionally exposed California
14 consumers and users of United Exchange, which it manufactured or distributed as
15 mentioned above, to Diaminotoluene (mixed), without first giving clear and reasonable
16 warning of such to the exposed persons before the time of exposure. Defendants have
17 distributed United Exchange in California. Defendants thereby violated Proposition 65.

18 17. The principal routes of exposure are through dermal contact and inhalation when users of
19 United Exchange pour color base into applicator bottle, replace cap, shake applicator
20 bottle thoroughly to mix color until uniform, snip applicator tip, squeeze product onto
21 scalp area, massaging color from hair roots to tips, leaving product on hair for
22 approximately 5 minutes before rinsing from hair. In doing so, users permit bare skin,
23 including scalp and hands, to touch the product containing Diaminotoluene (mixed). In
24 doing so, users also breathed in fumes emanating from the product. The foregoing routes
25 of exposure assume use of the product in accordance with its instructions.

26 18. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
27 Proposition 65 as to United Exchange have been ongoing and continuous to the date of
28 the signing of this complaint, so that a separate and distinct violation of Proposition 65

1 occurred each and every time a consumer was exposed to Diaminotoluene (mixed) by
2 using United Exchange as mentioned herein.

3 19. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
4 mentioned herein is ever continuing.

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6 **Men's Select® 5 Minute Hair Color**

7 20. Plaintiff, Consumer Advocacy Group, Inc. repeats and incorporates by reference
8 paragraphs 1 through 11 of this complaint as though fully set forth herein.

9 21. Each of the Defendants is, and at all times mentioned herein, was a manufacturer or
10 distributor Men's Select® 5 Minute Hair Color (hereinafter "Men's Select"), a consumer
11 product designed for the coloring of hair.

12 22. Plaintiff is informed, believes, and thereon alleges that Men's Select contains
13 Diaminotoluene (mixed).

14 23. On January 1, 1990, the Governor of California added Diaminotoluene (mixed) to the list
15 of chemicals known to the State to cause cancer (*Cal. Code Regs. 22 § 12000(b)*).
16 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
17 after addition of Diaminotoluene (mixed) to the list of chemicals known to the State to
18 cause cancer, Diaminotoluene (mixed) became fully subject to Proposition 65 warning
19 requirements and discharge prohibitions.

20 24. Plaintiff is informed, believes, and thereon alleges that between March 31, 2005 and the
21 present, each of the Defendants knowingly and intentionally exposed California
22 consumers and users of Men's Select, which it manufactured or distributed as mentioned
23 above, to Diaminotoluene (mixed), without first giving clear and reasonable warning of
24 such to the exposed persons before the time of exposure. Defendants have distributed
25 Men's Select in California. Defendants thereby violated Proposition 65.

26 25. The principal routes of exposure are through dermal contact and inhalation when users of
27 Men's Select pour color base into applicator bottle, replace cap, shake applicator bottle
28 thoroughly to mix color until uniform, snip applicator tip, squeeze product onto scalp

1 area, massaging color from hair roots to tips, leaving product on hair for approximately 5
2 minutes before rinsing from hair. In doing so, users permit bare skin, including scalp and
3 hands, to touch the product containing Diaminotoluene (mixed). In doing so, users also
4 breathed in fumes emanating from the product. The foregoing routes of exposure assume
5 use of the product in accordance with its instructions.

6 26. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
7 Proposition 65 as to Men's Select have been ongoing and continuous to the date of the
8 signing of this complaint, so that a separate and distinct violation of Proposition 65
9 occurred each and every time a consumer was exposed to Diaminotoluene (mixed) by
10 using Men's Select as mentioned herein.

11 27. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
12 mentioned herein is ever continuing.

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14 **Nu-Pore® Permanent Cream Hairdye (in assorted colors including dark blonde, medium**
15 **brown, light blonde, black, and dark brown)**

16 28. Plaintiff, Consumer Advocacy Group, Inc. repeats and incorporates by reference
17 paragraphs 1 through 11 of this complaint as though fully set forth herein. Each of the
18 Defendants is, and at all times mentioned herein, was a manufacturer or distributor Nu-
19 Pore® Permanent Cream Hairdye (in assorted colors including dark blonde, medium
20 brown, light blonde, black, and dark brown) (hereinafter "Nu-Pore"), a consumer product
21 designed for the coloring of hair.

22 29. Plaintiff is informed, believes, and thereon alleges that Nu-Pore contains Diaminotoluene
23 (mixed).

24 30. On January 1, 1990, the Governor of California added Diaminotoluene (mixed) to the list
25 of chemicals known to the State to cause cancer (*Cal. Code Regs. 22 § 12000(b)*).
26 Pursuant to Health and Safety Code sections 25249.9 and 25249.10, twenty (20) months
27 after addition of Diaminotoluene (mixed) to the list of chemicals known to the State to
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1 cause cancer, Diaminotoluene (mixed) became fully subject to Proposition 65 warning
2 requirements and discharge prohibitions.

3 31. Plaintiff is informed, believes, and thereon alleges that between March 31, 2005 and the
4 present, each of the Defendants knowingly and intentionally exposed California
5 consumers and users of Nu-Pore, which it manufactured or distributed as mentioned
6 above, to Diaminotoluene (mixed), without first giving clear and reasonable warning of
7 such to the exposed persons before the time of exposure. Defendants have distributed
8 Nu-Pore in California. Defendants thereby violated Proposition 65.

9 32. The principal routes of exposure are through dermal contact and inhalation when users of
10 Nu-Pore pour color base into applicator bottle, replace cap, shake applicator bottle
11 thoroughly to mix color until uniform, snip applicator tip, squeeze product onto scalp
12 area, massaging color from hair roots to tips, leaving product on hair for approximately
13 25 minutes before rinsing from hair. In doing so, users permit bare skin, including scalp
14 and hands, to touch the product containing Diaminotoluene (mixed). In doing so, users
15 also breathed in fumes emanating from the product. The foregoing routes of exposure
16 assume use of the product in accordance with its instructions.

17 33. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of
18 Proposition 65 as to Nu-pore have been ongoing and continuous to the date of the signing
19 of this complaint, so that a separate and distinct violation of Proposition 65 occurred each
20 and every time a consumer was exposed to Diaminotoluene (mixed) by using Nu-Pore as
21 mentioned herein.

22 34. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65
23 mentioned herein is ever continuing.

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25 **SATISFACTION OF PRIOR NOTICE**

26 35. On or about March 31, 2008, Plaintiff gave notice of alleged violations of Health and
27 Safety Code section 25249.6 subject to a private action to United Exchange Corp.,
28 identified in the notice as United Exchange Corp., and to the California Attorney General,

1 County District Attorneys, and City Attorneys for each city containing a population of at
2 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning
3 consumer products Men's Select and Nu-Pore.

4 36. On or about June 11, 2008, Plaintiff gave notice of alleged violations of Health and
5 Safety Code section 25249.6 subject to a private action to United Exchange Corp.,
6 identified in the notice as United Exchange Corp., and to the California Attorney General,
7 County District Attorneys, and City Attorneys for each city containing a population of at
8 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning
9 consumer products United Exchange and Nu-Pore.

10 37. Before sending the notice of alleged violation, Plaintiff investigated the consumer
11 products involved, the likelihood that such products would cause users to suffer
12 significant exposures to Diaminotoluene (mixed), the corporate structure of each of the
13 Defendants, and other relevant matters.

14 38. Plaintiff's notice of alleged violation included a certificate of merit executed by the
15 attorney for the noticing party, Plaintiff. The certificates of merit stated that the attorney
16 for Plaintiff who executed the certificate had consulted with at least one person with
17 relevant and appropriate expertise who had reviewed data regarding the exposure to
18 Diaminotoluene (mixed), respectively, which are the subject Proposition 65-listed
19 chemicals of this action. Based on that information, the attorney for Plaintiff who
20 executed the certificates believed there was a reasonable and meritorious case for this
21 private action. The attorney for Plaintiff attached to the certificates of merit served on the
22 Attorney General information sufficient to establish the basis of the certificates of merit.

23 39. Plaintiff is commencing this action more than sixty (60) days from the dates that Plaintiff
24 gave notice of the alleged violations to United Exchange Corp. and to the public
25 prosecutors referenced in Paragraphs 35 and 36.

26 40. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor
27 any applicable district attorney or city attorney has commenced and is diligently
28 prosecuting an action against the Defendants.

1 41. Plaintiff's allegations regarding United Exchange concern a "consumer product
2 exposure," which is an exposure that results from a person's acquisition, purchase,
3 storage, consumption, or other reasonably foreseeable use of a consumer good. United
4 Exchange is a consumer product, and as mentioned in paragraphs 12-19, exposure to
5 Diaminotoluene (mixed) took place as a result of such consumption and foreseeable use.

6 42. Plaintiff's allegations regarding Men's Select concern a "consumer product exposure,"
7 which is an exposure that results from a person's acquisition, purchase, storage,
8 consumption, or other reasonably foreseeable use of a consumer good. Men's Select is a
9 consumer product, and as mentioned in paragraphs 20-27, exposure to Diaminotoluene
10 (mixed) took place as a result of such consumption and foreseeable use.

11 43. Plaintiff's allegations regarding Nu-Pore concern a "consumer product exposure," which
12 is an exposure that results from a person's acquisition, purchase, storage, consumption, or
13 other reasonably foreseeable use of a consumer good. Nu-Pore is a consumer product,
14 and as mentioned in paragraphs 28-34, exposure to Diaminotoluene (mixed) took place as
15 a result of such consumption and foreseeable use.


16 **PRAYER FOR RELIEF**

17 Plaintiff demands against each of the Defendants as follows:

- 18 1. A permanent injunction mandating Proposition 65 compliant warnings;
19 2. Penalties pursuant to Health and Safety Code section 25249.7, subdivision (b);
20 3. Costs of suit;
21 4. Reasonable attorney fees and costs; and
22 5. Any further relief that the court may deem just and equitable.

23 Dated: December 30, 2008

YEROUSHALMI & ASSOCIATES

26 BY: 
27 Daniel D. Cho
28 Attorneys for Plaintiff,
Consumer Advocacy Group, Inc.