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**ENDORSED  
FILED  
ALAMEDA COUNTY  
MAY 16 2017**

**CLERK OF THE SUPERIOR COURT,  
By Lanette Buffin, Deputy**

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF ALAMEDA

11 PRECILA BALABBO,  
12 Plaintiff,  
13 v.  
14 SALLY BEAUTY SUPPLY, LLC,  
15 Defendant.

Case No.: *RG* 17860443  
**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELEIF**  
**(Violation of Health & Safety Code §25249.5  
et seq.)**

17 Plaintiff Precila Balabbo ("Plaintiff"), by and through his attorneys, alleges the following  
18 cause of action in the public interest of the citizens of the State of California.

19 **BACKGROUND OF THE CASE**

20 1. Plaintiff brings this representative action on behalf of all California citizens to  
21 enforce relevant portions of Safe Drinking Water and Toxic Enforcement Act of 1986, codified  
22 at the Health and Safety Code § 25249.5 *et seq* ("Proposition 65"), which reads, in relevant part,  
23 "[n]o person in the course of doing business shall knowingly and intentionally expose any  
24 individual to a chemical known to the state to cause cancer or reproductive toxicity without first  
25 giving clear and reasonable warning to such individual ...". Health & Safety Code § 25249.6.

26 2. This complaint is a representative action brought by Plaintiff in the public interest  
27 of the citizens of the State of California to enforce the People's right to be informed of the health  
28

BY FAX

1 hazards caused by exposure to Di(2-ethylhexyl) phthalate (DEHP), a toxic chemical found in  
2 Salon Care cosmetic bags/cases manufactured, sold and/or distributed in California by defendant  
3 Sally Beauty Supply, LLC (“Sally Beauty” or “Defendant”) in California.

4 3. DEHP is a harmful chemical known to the State of California to cause cancer and  
5 reproductive toxicity. On January 1, 1988, the State of California listed DEHP as a chemical  
6 known to the State to cause cancer and DEHP has come under the purview of Proposition 65  
7 regulations since that time. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§  
8 25249.8 & 25249.10(b). On October 24, 2003, the State of California listed DEHP as a chemical  
9 known to cause reproductive toxicity. *Id.*

10 4. Proposition 65 requires all businesses with ten (10) or more employees that  
11 operate within California or sell products therein to comply with Proposition 65 regulations.  
12 Included in such regulations is the requirement that businesses must label any product containing  
13 a Proposition 65-listed chemical with a “clear and reasonable” warning before “knowingly and  
14 intentionally” exposing any person to it.

15 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
16 to be imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety  
17 Code § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin  
18 the actions of a defendant which “violate[s] or threaten[s] to violate” the statute. Health &  
19 Safety Code § 25249.7.

20 6. Plaintiff alleges that Defendant produces, manufactures, distributes, imports, sells,  
21 and/or offers for sale in California, without the required warning, Salon Care hair cases, UPC  
22 No. 5 033102 833615 (“Product” or “Products”), that contain DEHP.

23 7. Defendant’s failure to warn consumers and other individuals in California of the  
24 health hazards associated with exposure to DEHP in conjunction with the sale, manufacture,  
25 and/or distribution of the Product is a violation of Proposition 65 and subjects Defendant to the  
26 enjoinder and civil penalties described herein.

27 8. Plaintiff seeks civil penalties against Defendant for its violations of Proposition  
28 65 in accordance with Health and Safety Code § 25249.7(b).



1 with the California Secretary of State as foreign corporations authorized to do business in the  
2 State of California, and/or has otherwise purposefully availed itself of the California market.  
3 Such purposeful availment has rendered the exercise of jurisdiction by California courts  
4 consistent and permissible with traditional notions of fair play and substantial justice.

5 **SATISFACTION OF NOTICE REQUIREMENTS**

6 16. On January 4, 2017, Plaintiff gave notice of alleged violation of Health and Safety  
7 Code § 25249.6 (the "Notice") to Sally Beauty concerning the exposure of California citizens to  
8 DEHP contained in the Product without proper warning, subject to a private action to Sally  
9 Beauty and to the California Attorney General's office and the offices of the County District  
10 attorneys and City Attorneys for each city with a population greater than 750,000 persons  
11 wherein the herein violations allegedly occurred.

12 17. The Notice complied with all procedural requirements of Proposition 65 including  
13 the attachment of a Certificate of Merit affirming that Plaintiff's counsel had consulted with at  
14 least one person with relevant and appropriate expertise who reviewed relevant data regarding  
15 DEHP exposure, and that counsel believed there was meritorious and reasonable cause for a  
16 private action.

17 18. After receiving the Notice, and to Plaintiff's best information and belief, none of  
18 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted  
19 a cause of action against Sally Beauty under Proposition 65 to enforce the alleged violations  
20 which are the subject of Plaintiff's notice of violation.

21 19. Plaintiff is commencing this action more than sixty (60) days from the date of the  
22 Notice to Sally Beauty, as required by law.

23 **FIRST CAUSE OF ACTION**

24 **(By Plaintiff against Defendant for the Violation of Proposition 65)**

25 20. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 19 of  
26 this complaint as though fully set forth herein.

27 21. Defendant has, at all times mentioned herein, acted as manufacturer, distributor,  
28 and/or retailer of the Product.

1           22.     The Product contains DEHP, a hazardous chemical found on the Proposition 65  
2 list of chemicals known to be hazardous to human health.

3           23.     The Product does not comply with the Proposition 65 warning requirements.

4           24.     Plaintiff, based on his best information and belief, avers that at all relevant times  
5 herein, and at least since November 1, 2016, continuing until the present, that Sally Beauty has  
6 continued to knowingly and intentionally expose California users and consumers of the Product  
7 to DEHP without providing required warnings under Proposition 65.

8           25.     The exposures that are the subject of the Notice result from the purchase,  
9 acquisition, handling and recommended use of the product. Consequently, the primary route of  
10 exposure to these chemicals is through dermal absorption. Users may potentially be exposed to  
11 DEHP by dermal absorption through direct skin contact with the storage bag during routine use  
12 when the bag is grasped, opened, or manipulated with bare hands. The product can be expected  
13 to emit gas phase DEHP into the air over the lifetime of the product. Concentrations of gas  
14 phase DEHP can be expected to build within the small enclosed interior of the zippered storage  
15 bag. This gas phase DEHP can potentially be absorbed to the surface of the interior contents  
16 which includes foam hair rollers. When used to curl hair, these rollers can provide an indirect  
17 source of dermal transfer of DEHP to the user's hand or scalp. If the rollers are placed in wet  
18 hair and are in contact with the scalp, aqueous DEHP skin permeation rates have been reported  
19 to be faster than neat DEHP permeation. If the zippered storage bag for the foam rollers is stored  
20 or transported in a carrier, DEHP that leaches from the storage may contaminate other articles  
21 contained within the carrier bag that are subsequently handled or worn by the user. Finally,  
22 while mouthing of the product does not seem likely, some amount of exposure through ingestion  
23 can occur by touching the product with subsequent touching of the user's hand to mouth.

24           26.     Plaintiff, based on her best information and belief, avers that such exposures will  
25 continue every day until clear and reasonable warnings are provided to Product purchasers and  
26 users or until this known toxic chemical is removed from the Product.

27           27.     Defendant has knowledge that the normal and reasonably foreseeable use of the  
28 Product exposes individuals to DEHP, and Defendant intends that exposures to DEHP will occur

1 by their deliberate, non-accidental participation in the manufacture, importation, distribution,  
2 sale and offering of the Product to consumers in California

3 28. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
4 Complaint.

5 29. Pursuant to Health and Safety Code § 25249.7(b), as a consequence of the above  
6 described acts, Defendant is liable for a maximum civil penalty of \$2,500 per day per violation.

7 30. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically  
8 authorized to grant injunctive relief in favor of Plaintiff and against Defendant.


9  
10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff demands judgment against Defendant and requests the  
12 following relief:

- 13 A. That the court assess civil penalties against Defendant in the amount of  
14 \$2,500 per day for each violation in accordance with Health and Safety  
15 Code § 25249.7(b);
- 16 B. That the court preliminarily and permanently enjoin Defendant mandating  
17 Proposition 65 compliant warnings on the Product;
- 18 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit.
- 19 D. That the court grant any further relief as may be just and proper.
- 20

21 Dated: May 16, 2017

BRODSKY & SMITH, LLC

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