

1 Evan J. Smith, Esquire (SBN 242352)  
2 Ryan P. Cardona, Esquire (SBN 302113)  
3 BRODSKY SMITH  
4 9595 Wilshire Blvd., Ste. 900  
5 Beverly Hills, CA 90212  
6 Telephone: (877) 534-2590  
7 Facsimile: (310) 247-0160

8 *Attorneys for Plaintiff*

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

10/13/2021  
Clerk of the Court  
BY: KAREN VALDES  
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CGC-21-596018

9 EMA BELL,

10 Plaintiff,

11 vs.

12 BENEFIT COSMETICS, LLC, ULTA  
13 BEAUTY, INC.,

14 Defendants.

Case No.:

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

**(Violation of Health & Safety Code § 25249.5 et  
seq.)**

15 Plaintiff Ema Bell (“Plaintiff”), by and through her attorneys, alleges the following cause  
16 of action in the public interest of the citizens of the State of California.

17 **BACKGROUND OF THE CASE**

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

24 2. This complaint is a representative action brought by Plaintiff in the public interest  
25 of the citizens of the State of California against defendants Benefit Cosmetics, LLC (“Benefit  
26 Cosmetics”) and Ulta Beauty, Inc. (“Ulta”) (collectively, the “Defendants”) to enforce the People’s  
27 right to be informed of the health hazards caused by exposure to diethanolamine (DEA), a toxic  
28

1 chemical found in mascaras manufactured, distributed, and sold by Benefit Cosmetics in  
2 California.

3 3. DEA is a harmful chemical known to the State of California to cause cancer. On  
4 June 22, 2012, the State of California listed DEA as a chemical known to the State to cause cancer  
5 and it has come under the purview of Proposition 65 regulations since that time. Cal. Code Regs.  
6 Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

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

12 5. Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation  
13 for up to 365 days (up to a maximum civil penalty amount per violation of \$912,000.00) to be  
14 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code  
15 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the  
16 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §  
17 25249.7.

18 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,  
19 without a requisite exposure warning, mascaras manufactured, distributed, and sold by Benefit  
20 Cosmetics (the “Products”) that expose persons to DEA.

21 7. Defendants’ failure to warn consumers and other individuals in California of the  
22 health hazards associated with exposure to DEA in conjunction with the sale and/or distribution  
23 of the Products is a violation of Proposition 65 and subjects Defendants to the enjoinder and civil  
24 penalties described herein.

25 8. Plaintiff seeks civil penalties against Defendants for their violations of Proposition  
26 65 in accordance with Health and Safety Code § 25249.7(b).

27 9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
28 Defendants to provide purchasers or users of the Products with required warnings related to the

1 dangers and health hazards associated with exposure to DEA pursuant to Health and Safety Code  
2 § 25249.7(a).

3 10. Plaintiff further seeks a reasonable award of attorney's fees and costs.

4 **PARTIES**

5 11. Plaintiff is a citizen of the State of California acting in the interest of the general  
6 public to promote awareness of exposures to toxic chemicals in products sold in California and to  
7 improve human health by reducing hazardous substances contained in such items. She brings this  
8 action in the public interest pursuant to Health and Safety Code § 25249.7(d).

9 12. Defendant Benefit Cosmetics, through its business, effectively imports, distributes,  
10 sells, and/or offers the Products for sale or use in the State of California, or it implies by its conduct  
11 that it imports, distributes, sells, and/or offers the Products for sale or use in the State of California.  
12 Plaintiff alleges that defendant Benefit Cosmetics is a "person" in the course of doing business  
13 within the meaning of Health & Safety Code sections 25249.6 and 25249.11.

14 13. Defendant Ulta, through its business, effectively imports, distributes, sells, and/or  
15 offers the Products for sale or use in the State of California, or it implies by its conduct that it  
16 imports, distributes, sells, and/or offers the Products for sale or use in the State of California.  
17 Plaintiff alleges that defendant Ulta is a "person" in the course of doing business within the  
18 meaning of Health & Safety Code sections 25249.6 and 25249.11.

19 **VENUE AND JURISDICTION**

20 14. Venue is proper in the County of San Francisco because one or more of the  
21 instances of wrongful conduct occurred, and continue to occur in this county and/or because  
22 Defendants conducted, and continue to conduct, business in the County of San Francisco with  
23 respect to the Products.

24 15. This Court has jurisdiction over this action pursuant to California Constitution  
25 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those  
26 given by statute to other trial courts. Health and Safety Code § 25249.7 allows for the enforcement  
27 of violations of Proposition 65 in any Court of competent jurisdiction; therefore, this Court has  
28 jurisdiction over this lawsuit.





1 the Products with subsequent touching of the user’s hand to mouth, through hand to food to mouth  
2 contact, or through hand to cigarette to mouth contact.

3 24. Defendants have manufactured, processed, marketed, distributed, offered to sell  
4 and/or sold the Products in California since at least September 17, 2020. The Products continue to  
5 be distributed and sold in California without the requisite warning information.

6 25. At all times relevant to this action, Defendants have knowingly and intentionally  
7 exposed users and/or consumers of the Products to DEA without first giving a clear and reasonable  
8 exposure warning to such individuals.

9 26. As a proximate result of acts by Defendants, each as a person in the course of doing  
10 business within the meaning of H&S Code § 25249.11, individuals throughout the State of  
11 California, including in San Francisco County, have been exposed to DEA without a clear and  
12 reasonable warning on the Products. The individuals subject to the violative exposures include  
13 normal and foreseeable users and consumers that use the Products, as well as all others exposed to  
14 the Products.

15 **SATISFACTION OF NOTICE REQUIREMENTS**

16 27. On October 15, 2020, Plaintiff gave notice of alleged violation of Health and Safety  
17 Code § 25249.6 (the “Notice”) to Defendants concerning the exposure of California citizens to  
18 DEA from use of the Products without proper warning, subject to a private action to Defendants  
19 and to the California Attorney General’s office and the offices of the County District attorneys and  
20 City Attorneys for each city with a population greater than 750,000 persons wherein the herein  
21 violations allegedly occurred.

22 28. The Notice complied with all procedural requirements of Proposition 65 including  
23 the attachment of a Certificate of Merit affirming that Plaintiff’s counsel had consulted with at  
24 least one person with relevant and appropriate expertise who reviewed relevant data regarding  
25 DEA exposure, and that counsel believed there was meritorious and reasonable cause for a private  
26 action.

27 29. After receiving the Notice, and to Plaintiff’s best information and belief, none of  
28 the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a

1 cause of action against Defendants under Proposition 65 to enforce the alleged violations which  
2 are the subject of the Notice.

3 30. Plaintiff is commencing this action more than sixty (60) days from the date of the  
4 Notice to Defendants, as required by law.

5 **FIRST CAUSE OF ACTION**

6 **(By Plaintiff against Defendants for the Violation of Proposition 65)**

7 31. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 30 of  
8 this Complaint as though fully set forth herein.

9 32. Defendants have, at all times mentioned herein, acted as distributor, and/or retailer  
10 of the Products.

11 33. The Products contain DEA, a hazardous chemical found on the Proposition 65 list  
12 of chemicals known to be hazardous to human health.

13 34. The Products do not comply with the Proposition 65 warning requirements.

14 35. Plaintiff, based on her best information and belief, avers that at all relevant times  
15 herein, and at least since October 15, 2020, continuing until the present, that Defendants have  
16 continued to knowingly and intentionally expose California users and consumers of the Product to  
17 DEA without providing required warnings under Proposition 65.

18 36. The exposures that are the subject of the Notice result from the purchase,  
19 acquisition, handling and recommended use of the Products. Consequently, the primary route of  
20 exposure to these chemicals is through dermal exposure. Users will be exposed to DEA in the  
21 Products through dermal exposure. Exposure to consumers includes, but is not limited, to, dermal  
22 absorption of DEA through direct skin contact with the Products or when applied to the user's  
23 eyelashes and comes into contact with portions of the user's eyelids. Some amount of exposure  
24 through ingestion can occur by touching the Products with subsequent touching of the user's hand  
25 to mouth, through hand to food to mouth contact, or through hand to cigarette to mouth contact.

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

1 38. Defendants have knowledge that the normal and reasonably foreseeable use of the  
2 Products exposes individuals to DEA, and Defendants intend that exposures to DEA will occur by  
3 its deliberate, non-accidental participation in the importation, distribution, sale and offering of the  
4 Products to consumers in California

5 39. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this  
6 Complaint.

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

10 41. Pursuant to Health and Safety Code § 25249.7(a), this Court is specifically  
11 authorized to grant injunctive relief in favor of Plaintiff and against Defendants.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff demands judgment against Defendants and requests the following  
14 relief:

15 A. That the court assess civil penalties against each Defendant in the amount of \$2,500  
16 per day for each violation for up to 365 days (up to a maximum civil penalty amount per  
17 violation of \$912,000.00) in accordance with Health and Safety Code § 25249.7(b);

18 B. That the court preliminarily and permanently enjoin Defendants mandating  
19 Proposition 65 compliant warnings on the Products;

20 C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the  
21 amount of \$50,000.00.

22 D. That the court grant any further relief as may be just and proper.

23 Dated: October 13, 2021

BRODSKY SMITH

24 By: \_\_\_\_\_

25 Evan J. Smith (SBN242352)  
26 Ryan P. Cardona (SBN302113)  
27 9595 Wilshire Boulevard, Suite 900  
28 Beverly Hills, CA 90212  
Telephone: (877) 534-2590  
Facsimile: (310) 247-0160



*Attorneys for Plaintiff*

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