1	Evan J. Smith, Esquire (SBN 242352) Ryan P. Cardona, Esquire (SBN 302113)	ELECTRONICALLY	
2	BRODSKY & SMITH 9595 Wilshire Blvd., Ste. 900	FILED	
3	Beverly Hills, CA 90212 Telephone: (877) 534-2590	Superior Court of California, County of San Francisco	
4	Facsimile: (310) 247-0160	06/24/2022 Clerk of the Court BY: JEFFREY FLORES	
5	Attorneys for Plaintiff	Deputy Clerk	
6	SUPERIOR COURT OF THE STATE OF CALIFORNIA		
7	COUNTY OF SAN FRANCISCO		
8	PRECILA BALABBO,	Case No.: CGC-22-600384	
9 10	Plaintiff,	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF	
11	VS.	(Violation of Health & Safety Code § 25249.5 et	
12	JOHN PAUL MITCHELL SYSTEMS, ULTA BEAUTY, INC.,	seq.)	
13	Defendants.		
14			
15	Plaintiff Precila Balabbo ("Plaintiff"), by and through her attorneys, alleges the following		
16			
17	BACKGROUND OF THE CASE		
18		ative action on behalf of all California citizens to	
19		ater and Toxic Enforcement Act of 1986, codified at	
20		("Proposition 65"), which reads, in relevant part,	
21	"[n]o person in the course of doing business shall knowingly and intentionally expose any		
22		ause cancer without first giving clear and reasonable	
23	warning to such individual". Health & Safe	ety Code § 25249.6.	
24	2. This complaint is a representat	ive action brought by Plaintiff in the public interest	
25	of the citizens of the State of California to enf	force the People's right to be informed of the health	
26	hazards caused by exposure to di(2-ethylhexyl) phthalate (DEA), a toxic chemical found in John		
27	Paul teatree gel sold and/or distributed by defendant John Paul Mitchell Systems ("John Paul")		
28	and/or defendant Ulta Beauty, Inc. ("Ulta Beauty") (collectively, "Defendants") in California.		
	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF – VIOLATION OF HEALTH & SAFETY CODE §25249.5		

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

4. Proposition 65 requires all businesses with ten (10) or more employees that operate
within California or sell products therein to comply with Proposition 65 regulations. Included in
such regulations is the requirement that businesses must label any product containing a Proposition
65-listed chemical that will create an exposure above safe harbor levels with a "clear and
reasonable" warning before "knowingly and intentionally" exposing any person to any such listed
chemical.

Proposition 65 allows for civil penalties of up to \$2,500.00 per day per violation
 for up to 365 days to be imposed upon defendants in a civil action for violations of Proposition 65.
 Health & Safety Code § 25249.7(b). Proposition 65 also allows for any court of competent
 jurisdiction to enjoin the actions of a defendant which "violate or threaten to violate" the statute.
 Health & Safety Code § 25249.7.

6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,
without a requisite exposure warning, John Paul teatree gel (the "Products") that exposes persons
to DEA when used for their intended purpose.

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

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

9. Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring
Defendants to provide purchasers or users of the Products with required warnings related to the
dangers and health hazards associated with exposure to DEA pursuant to Health and Safety Code
§ 25249.7(a).

1 2 10. Plaintiff further seeks a reasonable award of attorney's fees and costs.

PARTIES

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

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

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

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VENUE AND JURISDICTION

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

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

27 16. This Court has jurisdiction over Defendants because each defendant is either a
28 citizen of the State of California, has sufficient minimum contacts with the State of California, is

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

STATUTORY BACKGROUND

6 17. The people of the State of California declared in Proposition 65 their right "[t]o be
7 informed about exposures to chemicals that cause cancer, birth defects, or other reproductive
8 harm." (Section 1(b) of Initiative Measure, Proposition 65.)

9 18. To effect this goal, Proposition 65 requires that individuals be provided with a
10 "clear and reasonable warning" before being exposed to substances listed by the State of California
11 as causing cancer or reproductive toxicity. H&S Code § 25249.6 states, in pertinent part:

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No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual...

14 19. An exposure to a chemical in a consumer product is one "which results from a
15 person's acquisition, purchase, storage, consumption or other reasonably foreseeable use of a
16 consumer good, or any exposure that results from receiving a consumer service." (27 CCR §
17 25602, para (b).) H&S Code § 25603(c) states that "a person in the course of doing business ...
18 shall provide a warning to any person to whom the product is sold or transferred unless the product
19 is packaged or labeled with a clear and reasonable warning."

more of the following methods individually or in combination:¹

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a. A warning that appears on a product's label or other labeling.

Pursuant to H&S Code § 25603.1, the warning may be provided by using one or

¹ Alternatively, a person in the course of doing business may elect to comply with the warning requirements set out in the amended version of 27 CCR 25601, *et.seq.*. as amended on August 30, 2016, and operative on August 30, 2018.

- 4 -

b. Identification of the product at the retail outlet in a manner which provides
a warning. Identification may be through shelf labeling, signs, menus, or a combination
thereof.

c. The warnings provided pursuant to subparagraphs (a) and (b) shall be
prominently placed upon a product's labels or other labeling or displayed at the retail outlet
with such conspicuousness, as compared with other words, statements, designs, or devices
in the label, labeling or display as to render it likely to be read and understood by an
ordinary individual under customary conditions of purchase or use.

d. A system of signs, public advertising identifying the system and toll-free information services, or any other system that provides clear and reasonable warnings.

Proposition 65 provides that any "person who violates or threatens to violate" the
statute may be enjoined in a court of competent jurisdiction. (H&S Code § 25249.7.) The phrase
"threaten to violate" is defined to mean creating "a condition in which there is a substantial
probability that a violation will occur." (H&S Code § 25249.11(e).) Violators are liable for civil
penalties of up to \$2,500.00 per day for each violation of the Act (H&S Code § 25249.7) for up to
365 days (up to a maximum civil penalty amount per violation of \$912,000.00).

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FACTUAL BACKGROUND

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

21 23. The exposures that are the subject of the Notice result from the purchase, 22 acquisition, handling, and recommended use of the Products. Consequently, the primary route of 23 exposure is through dermal exposure. Some amount of exposure through ingestion can occur by 24 touching the Product with subsequent touching of the user's hand to mouth. Some amount of 25 exposure through ingestion will occur by touching the Products with subsequent touching of the 26 user's hand to mouth. No clear and reasonable warning is provided.

- 27 28
- COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF VIOLATION OF HEALTH & SAFETY CODE §25249.5

- 5 -

24. Defendants have manufactured, processed, marketed, distributed, offered to sell
 and/or sold the Products in California since at least July 14, 2022. The Products continue to be
 distributed and sold in California without the requisite warning information.

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

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

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SATISFACTION OF NOTICE REQUIREMNTS

14 27. On June 4, 2021 Plaintiff purchased the Product from Ulta Beauty. At the time of
15 purchase, Ulta Beauty and John Paul did not provide a Proposition 65 exposure warning for DEA
16 or any other Proposition 65 listed chemical in a manner consistent with H&S Code § 25603.1 as
17 described *supra*.

18 28. On or about June 29, 2021, the Product was sent to a testing laboratory for phthalate
19 testing to determine the phthalate content of the Product.

20 29. On July 7, 2021, the laboratory provided the results of its analysis. Results of this
21 test determined the Product exposes users to DEA (the "Chemical Test Report").

30. Plaintiff provided the Chemical Test Report and Product to an analytical chemist
to determine if, based on the findings of the Chemical Test Report and the reasonable and
foreseeable use of the Product, exposure to DEA will occur at levels that require Proposition 65
warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California
Code of Regulations.

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31. On July 14, 2022, Plaintiff received from the analytical chemist an exposure
 assessment report which concluded that persons in California who use the Products will be exposed
 to levels of DEA that require a Proposition 65 exposure warning.

32. On July 14, 2022, Plaintiff gave notice of alleged violation of Health and Safety
Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California citizens to
DEA from use of the Products without proper warning, subject to a private action to Defendants
and to the California Attorney General's office and the offices of the County District attorneys and
City Attorneys for each city with a population greater than 750,000 persons wherein the herein
violations allegedly occurred.

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

34. After receiving the Notice, and to Plaintiff's best information and belief, none of
the noticed appropriate public enforcement agencies have commenced and diligently prosecuted a
cause of action against Defendants under Proposition 65 to enforce the alleged violations which
are the subject of the Notice.

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

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

FIRST CAUSE OF ACTION

23 36. Plaintiff hereby repeats and incorporates by reference paragraphs 1 through 35 of
24 this Complaint as though fully set forth herein.

37. Defendants have, at all times mentioned herein, acted as distributer, and/or retailer
of the Products.

38. Use of the Products will expose users and consumers thereof to DEA, a hazardous
chemical found on the Proposition 65 list of chemicals known to be hazardous to human health.

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

40. Plaintiff, based on her best information and belief, avers that at all relevant times
herein, and at least since July 14, 2022, continuing until the present, that Defendants have
continued to knowingly and intentionally expose California users and consumers of the Products
to DEA without providing required warnings under Proposition 65.

6 41. The exposures that are the subject of the Notice result from the purchase, 7 acquisition, handling and recommended use of the Products. Consequently, the primary route of 8 exposure is through dermal exposure. Some amount of exposure through ingestion can occur by 9 touching the Product with subsequent touching of the user's hand to mouth. Some amount of 10 exposure through ingestion will occur by touching the Products with subsequent touching of the 11 user's hand to mouth. No clear and reasonable warning is provided.

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

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

19 44. Plaintiff has engaged in good faith efforts to resolve the herein claims prior to this20 Complaint.

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

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

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1	PRAYER FOR RELIEF
2	WHEREFORE, Plaintiff demands judgment against Defendants and requests the following
3	relief:
4	A. That the court assess civil penalties against each defendant in the amount of \$2,500
5	per day for each violation for up to 365 days in accordance with Health and Safety Code §
6	25249.7(b);
7	B. That the court preliminarily and permanently enjoin Defendants mandating
8	Proposition 65 compliant warnings on the Products;
9	C. That the court grant Plaintiff reasonable attorney's fees and costs of suit, in the
10	amount of \$50,000.00.
11	D. That the court grant any further relief as may be just and proper.
12	Dated: June 24, 2022 BRODSKY & SMITH
13	By: Evan J. Smith (SBN242352)
14	Ryan P. Cardona (SBN302113) 9595 Wilshire Boulevard, Suite 900
15	Beverly Hills, CA 90212
16 17	Telephone: (877) 534-2590 Facsimile: (310) 247-0160
18	Attorneys for Plaintiff
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	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF – VIOLATION OF HEALTH & SAFETY CODE §25249.5