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

**06/24/2022**  
Clerk of the Court  
BY: JEFFREY FLORES  
Deputy Clerk

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO

11 PRECILA BALABBO,  
12 Plaintiff,

13 vs.

14 JOHN PAUL MITCHELL SYSTEMS,  
15 ULTA BEAUTY, INC.,  
16 Defendants.

Case No.:

**CGC-22-600384**

**COMPLAINT FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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

17 Plaintiff Precila Balabbo (“Plaintiff”), by and through her 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 at  
22 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 without first giving clear and reasonable  
25 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 hazards caused by exposure to di(2-ethylhexyl) phthalate (DEA), a toxic chemical found in John  
Paul teatree gel sold and/or distributed by defendant John Paul Mitchell Systems (“John Paul”) and/or defendant Ulta Beauty, Inc. (“Ulta Beauty”) (collectively, “Defendants”) in California.

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

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

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

16          6.       Plaintiff alleges that Defendants distribute and/or offer for sale in California,  
17 without a requisite exposure warning, John Paul teatree gel (the “Products”) that exposes persons  
18 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 enjoinder and civil  
22 penalties described herein.

23          8.       Plaintiff seeks civil penalties against Defendants for their violations of Proposition  
24 65 in accordance with Health and Safety Code § 25249.7(b).

25          9.       Plaintiff also seeks injunctive relief, preliminarily and permanently, requiring  
26 Defendants to provide purchasers or users of the Products with required warnings related to the  
27 dangers and health hazards associated with exposure to DEA pursuant to Health and Safety Code  
28 § 25249.7(a).



1 registered with the California Secretary of State as foreign corporations authorized to do business  
2 in the 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 consistent  
4 and permissible with traditional notions of fair play and substantial justice.

5 **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:

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

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

21 20. Pursuant to H&S Code § 25603.1, the warning may be provided by using one or  
22 more of the following methods individually or in combination:<sup>1</sup>

- 23 a. A warning that appears on a product’s label or other labeling.

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26  
27 <sup>1</sup> Alternatively, a person in the course of doing business may elect to comply with the warning  
28 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.







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

2           40.     Plaintiff, based on her best information and belief, avers that at all relevant times  
3 herein, and at least since July 14, 2022, continuing until the present, that Defendants have  
4 continued to knowingly and intentionally expose California users and consumers of the Products  
5 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.

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

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

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

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

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



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

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