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ELECTRONICALLY
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Superior Court of California,
County of San Francisco
02/21/2025
Clerk of the Court
BY: SAHAR ENAYATI
Deputy Clerk

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

11 PRECILA BALABBO,
12 Plaintiff,
13 vs.
14 ULTA BEAUTY, INC., ULTA BEAUTY
COSMETICS, LLC
Defendants.

Case No.:
**COMPLAINT FOR CIVIL PENALTIES AND
INJUNCTIVE RELIEF**
CGC-25-622594
(Violation of Health & Safety Code § 25249.5 et
seq.)

15 Plaintiff Precila Balabbo (“Plaintiff”), by and through her attorneys, alleges the following
16 cause 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 without first giving clear and reasonable
23 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 to enforce the People’s right to be informed of the health
26 hazards caused by exposure to diethanolamine (DEA), a toxic chemical found in products sold
27 and/or distributed by defendants Ulta Beauty, Inc. and/or Ulta Beauty Cosmetics, LLC
28 (collectively, “Ulta” or “Defendants” and each a “Defendant”) 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 (up to a maximum civil penalty amount per violation of \$912,000.00) to be
13 imposed upon defendants in a civil action for violations of Proposition 65. Health & Safety Code
14 § 25249.7(b). Proposition 65 also allows for any court of competent jurisdiction to enjoin the
15 actions of a defendant which “violate or threaten to violate” the statute. Health & Safety Code §
16 25249.7.

17 6. Plaintiff alleges that Defendants distribute and/or offer for sale in California,
18 without a requisite exposure warning, Stila Glisten & Glow liquid eye shadows manufactured,
19 distributed, and/or sold by Stila Styles, LLC (the “Products”) that expose persons to DEA when
20 used for their intended purpose.

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 Ulta Beauty, Inc., 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 Ulta Beauty, Inc. 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 Beauty Cosmetics, LLC, through its business, effectively imports,
15 distributes, sells, and/or offers the Products for sale or use in the State of California, or it implies
16 by its conduct that it imports, distributes, sells, and/or offers the Products for sale or use in the
17 State of California. Plaintiff alleges that defendant Ulta Beauty Cosmetics, LLC is a "person" in
18 the course of doing business within the meaning of Health & Safety Code sections 25249.6 and
19 25249.11.

20 **VENUE AND JURISDICTION**

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

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

1 warnings under the Clear and Reasonable Warnings section 25601 of Title 27 of the California
2 Code of Regulations.

3 31. On February 23, 2024, Plaintiff received from the analytical chemist an exposure
4 assessment report which concluded that persons in California who use the Products will be exposed
5 to levels of DEA that require a Proposition 65 exposure warning.

6 32. On February 23, 2024, Plaintiff gave notice of alleged violation of Health and
7 Safety Code § 25249.6 (the "Notice") to Defendants concerning the exposure of California citizens
8 to DEA from use of the Products without proper warning, subject to a private action to Defendants
9 and to the California Attorney General's office and the offices of the County District attorneys and
10 City Attorneys for each city with a population greater than 750,000 persons wherein the herein
11 violations allegedly occurred.

12 33. 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 DEA exposure, and that counsel believed there was meritorious and reasonable cause for a private
16 action.

17 34. 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 a
19 cause of action against Defendants under Proposition 65 to enforce the alleged violations which
20 are the subject of the Notice.

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

23 **FIRST CAUSE OF ACTION**

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

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

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

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

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

4 40. Plaintiff, based on her best information and belief, avers that at all relevant times
5 herein, and at least since February 23, 2024, continuing until the present, that Defendants have
6 continued to knowingly and intentionally expose California users and consumers of the Products
7 to DEA without providing required warnings under Proposition 65.

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

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

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

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

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

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

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff demands judgment against each Defendant and requests the
3 following 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 (up to a maximum civil penalty amount per
6 violation of \$912,000.00) in accordance with Health and Safety Code § 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: February 21, 2025

BRODSKY SMITH

13 By: _____

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