

1 **ENTORNO LAW, LLP**

2 Noam Glick (SBN 251582)
3 Craig M. Nicholas (SBN 178444)
4 Jake W. Schulte (SBN 293777)
5 Janani Natarajan (SBN 346770)

6 225 Broadway, Suite 1900
7 San Diego, California 92101
8 Tel: (619) 629-0527
9 Email: noam@entornolaw.com
10 Email: craig@entornolaw.com
11 Email: jake@entornolaw.com
12 Email: janani@entornolaw.com

13 Attorneys for Plaintiff
14 Environmental Health Advocates, Inc.

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

16 **IN AND FOR THE COUNTY OF ALAMEDA**

17 ENVIRONMENTAL HEALTH ADVOCATES,
18 INC.,

19 Plaintiff,

20 v.

21 AMPRO INDUSTRIES, INC., a Tennessee
22 corporation; STRAIGHT ARROW PRODUCTS,
23 INC., a Pennsylvania corporation; TARGET
24 CORPORATION, a Minnesota corporation; AG
25 HAIR LTD., a Canadian corporation;
26 AMAZON.COM, INC., a Delaware corporation;
27 L'OREAL USA S/D, INC., a Delaware corporation;
28 ULTA SALON COSMETICS & FRAGRANCE,
INC., a Delaware corporation; CVS PHARMACY,
INC., a Rhode Island corporation; REDKEN
LABORATORIES, INC., a Delaware corporation;
SOFT SHEEN/CARSON, INC., a Delaware
corporation; WALMART INC., a Delaware
corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No.: **24CV095368**

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(Health & Safety Code § 25249.6 et seq.)

I.
INTRODUCTION

1
2 1. This Complaint is a representative action brought by Environmental Health Advocates,
3 Inc. (“Plaintiff”) in the public interest of the citizens of the State of California (“the People”). Plaintiff
4 seeks to remedy Defendants' failure to inform the People of exposure to diethanolamine (“DEA”), a
5 chemical known to the State of California to cause cancer. DEA is a common component of cosmetic
6 and grooming products, and often functions as an emulsifier or foaming agent. Defendants expose
7 consumers to DEA by manufacturing, importing, selling, and/or distributing a variety of hair products
8 including, but not limited to hair styling gels and creams, shampoos, conditioners, and hair dyes
9 (collectively, the “Products.”) Defendants know and intend that customers will use Products containing
10 DEA.

11 2. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California
12 Health and Safety Code, section 25249.6 et seq. (“Proposition 65”), “[n]o person in the course of doing
13 business shall knowingly and intentionally expose any individual to a chemical known to the state to
14 cause cancer or reproductive toxicity without first giving clear and reasonable warning to such
15 individual. . . .” (Health & Safety Code, § 25249.6.)

16 3. On or around June 22, 2012, the State of California added DEA to Proposition 65 as a
17 known carcinogen, thereby requiring a clear and reasonable warning about potential exposure to DEA
18 on affected consumer goods. Despite this, Defendants failed to sufficiently warn consumers and
19 individuals in California about potential exposure to DEA in connection with Defendants' manufacture,
20 import, sale, or distribution of Products. This is a violation of Proposition 65.

21 4. Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers
22 in California before exposing them to DEA in Products. (Health & Safety Code, § 25249.7(a).) Plaintiff
23 also seeks civil penalties against Defendants for violations of Proposition 65 along with attorney’s fees
24 and costs. (Health & Safety Code, § 25249.7(b).)

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**II.
PARTIES**

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2 5. Plaintiff ENVIRONMENTAL HEALTH ADVOCATES, INC. (“Plaintiff”) is a
3 corporation in the State of California dedicated to protecting the health of California citizens through
4 the elimination or reduction of toxic exposure from consumer products. Plaintiff has prosecuted a
5 number of Proposition 65 cases in the public interest. These cases have resulted in significant public
6 benefit—including the reformulation and repackaging of numerous consumer products—to make them
7 safer for California consumers, and to properly apprise California consumers of any health risks
8 associated with their usage. Plaintiff brings this action in the public interest pursuant to Health and
9 Safety Code, section 25249.7.

10 6. Defendant AMPRO INDUSTRIES, INC. (“Ampro”) is a corporation organized and
11 existing under the laws of Tennessee. Ampro is registered to do business in California, and does business
12 in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. Ampro
13 manufactures, imports, sells, or distributes the Products in California and Alameda County.

14 7. Defendant STRAIGHT ARROW PRODUCTS, INC. (“SAP”) is a corporation
15 organized and existing under the laws of Pennsylvania. SAP is registered to do business in California,
16 and does business in the County of Alameda, within the meaning of Health and Safety Code, section
17 25249.11. SAP manufactures, imports, sells, or distributes the Products in California and Alameda
18 County.

19 8. Defendant TARGET CORPORATION (“Target”) is a corporation organized and
20 existing under the laws of Minnesota. Target is registered to do business in California, and does business
21 in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. Target
22 manufactures, imports, sells, or distributes the Products in California and Alameda County.

23 9. Defendant AG HAIR LTD. (“AG”) is a corporation organized and existing under the
24 laws of Canada. AG is registered to do business in California, and does business in the County of
25 Alameda, within the meaning of Health and Safety Code, section 25249.11. AG manufactures, imports,
26 sells, or distributes the Products in California and Alameda County.

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1 10. Defendant AMAZON.COM, INC. (“Amazon”) is a corporation organized and existing
2 under the laws of Delaware. Amazon is registered to do business in California, and does business in the
3 County of Alameda, within the meaning of Health and Safety Code, section 25249.11. Amazon
4 manufactures, imports, sells, or distributes the Products in California and Alameda County.

5 11. Defendant L’OREAL USA S/D, INC. (“L’oreal”) is a corporation organized and
6 existing under the laws of Delaware. L’oreal is registered to do business in California, and does business
7 in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. L’oreal
8 manufactures, imports, sells, or distributes the Products in California and Alameda County.

9 12. Defendant ULTA SALON COSMETICS & FRAGRANCE, INC. (“Ulta”) is a
10 corporation organized and existing under the laws of Delaware. Ulta is registered to do business in
11 California, and does business in the County of Alameda, within the meaning of Health and Safety Code,
12 section 25249.11. Ulta manufactures, imports, sells, or distributes the Products in California and
13 Alameda County.

14 13. Defendant CVS PHARMACY, INC. (“CVS”) is a corporation organized and existing
15 under the laws of Rhode Island. CVS is registered to do business in California, and does business in
16 the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. CVS
17 manufactures, imports, sells, or distributes the Products in California and Alameda County.

18 14. Defendant REDKEN LABORATORIES, INC. (“Redken”) is a corporation organized
19 and existing under the laws of Delaware. Redken is registered to do business in California, and does
20 business in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11.
21 Redken manufactures, imports, sells, or distributes the Products in California and Alameda County.

22 15. Defendant SOFT SHEEN/CARSON, INC. (“SSC”) is a corporation organized and
23 existing under the laws of Delaware. SSC is registered to do business in California, and does business
24 in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11. SSC
25 manufactures, imports, sells, or distributes the Products in California and Alameda County.

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IV.

BACKGROUND FACTS

22. Under California’s Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code, section 2529.6 et seq. (“Proposition 65”), “no person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state of to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual...” (Health & Safety Code, § 25249.6.)

23. Proposition 65 requires the State of California to maintain “a list of chemicals known to the state to cause cancer or reproductive toxicity,” which is to be “revised and republished in light of additional knowledge” on at least an annual basis. (Health & Safety Code, § 25249.8(a).)

24. On June 22, 2012, the State of California formally identified and listed DEA as a chemical known to cause cancer. DEA is a common component of cosmetic and grooming products, and often functions as an emulsifier or foaming agent.

25. In 2012, the International Agency for Research on Cancer (“IARC”) also formally identified DEA as a Group 2B possible human carcinogen. (*See* IARC Working Group on the Evaluation of Carcinogenic Risks to Humans, Some Chemicals Present in Industrial and Consumer Products, Food and Drinking-Water. Lyon (FR): International Agency for Research on Cancer; 2013, (IARC Monographs on the Evaluation of Carcinogenic Risks to Humans, No. 101.) DIETHANOLAMINE, *available at*: <https://www.ncbi.nlm.nih.gov/books/NBK373177/> [last visited October 11, 2024].)

26. Animal studies have reported effects on various organ systems from long-term topical administration of DEA. For example, a study conducted by the National Toxicology Program (hereinafter, the “NTP study”) showed that dermal exposure to DEA amplified the development of tumors in the liver and kidney tubules. (*See* National Toxicology Program, NTP Toxicology and Carcinogenesis Studies of Diethanolamine (CAS No. 111-42-2) in F344/N Rats and B6C3F1 Mice (Dermal Studies). Natl Toxicol Program Tech Rep Ser. 1999 Jul; 478:1-212. PMID: 12571685., *available at*: <https://pubmed.ncbi.nlm.nih.gov/12571685/> [last visited October 11, 2024].)

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1 32. In manufacturing, importing, selling, and/or distributing Products, Defendants failed to
2 provide a clear and reasonable warning to consumers and individuals in California who may be exposed
3 to DEA through reasonably foreseeable use of the Products.

4 33. Products expose individuals to DEA through dermal absorption. This exposure is a
5 natural and foreseeable consequence of Defendants placing Products into the stream of commerce. As
6 such, Defendants intend that consumers will use Products, exposing them to DEA.

7 34. Defendant’s Products exceed the NSRL of 5.6 micrograms/day, which was derived from
8 the NTP study.

9 35. Defendants knew or should have known that the Products contained DEA and exposed
10 individuals to DEA in the ways provided above. The Notice informed Defendants of the presence of
11 DEA in the Products. Likewise, media coverage concerning DEA and related chemicals in consumer
12 products provided constructive notice to Defendants.

13 36. Defendants' actions in this regard were deliberate and not accidental.

14 37. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a
15 60-Day Notice of Violation (“Notice”) as required by and in compliance with Proposition 65. Plaintiff
16 provided the Notice to the various required public enforcement agencies along with a certificate of merit.
17 The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in
18 California of the health hazards associated with exposures to DEA contained in the Products.

19 38. The appropriate public enforcement agencies provided with the Notice failed to
20 commence and diligently prosecute a cause of action against Defendants.

21 39. Individuals exposed to DEA contained in Products through dermal absorption resulting
22 from reasonably foreseeable use of the Products have suffered and continue to suffer irreparable harm.
23 There is no other plain, speedy, or adequate remedy at law.

24 40. Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation
25 of Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also
26 appropriate pursuant to Health and Safety Code, section 25249.7(a).

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1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff prays for judgment against Defendants as follows:

- 3 1. Civil penalties in the amount of \$2,500 per day for each violation. Plaintiff alleges that
4 damages total a minimum of \$1,000,000;
- 5 2. A preliminary and permanent injunction against Defendants from manufacturing,
6 importing, selling, and/or distributing Products in California without providing a clear and reasonable
7 warning as required by Proposition 65 and related Regulations;
- 8 3. Reasonable attorney’s fees and costs of suit; and
- 9 4. Such other and further relief as may be just and proper.
- 10

11 Respectfully submitted:

12 Dated: October 11, 2024

ENTORNO LAW, LLP

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14 By: 
Noam Glick

15 Craig M. Nicholas
16 Jake W. Schulte
17 Janani Natarajan

18 Attorneys for Plaintiff
19 Environmental Health Advocates, Inc.

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