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County of Alameda

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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 ULTA SALON, COSMETICS &
22 FRAGRANCE, INC., a Delaware corporation;
23 and DOES 1 through 100, inclusive,

24 Defendants.

Case No.: **24CV098746**

**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 known carcinogen. Defendants expose consumers to DEA by manufacturing, importing, selling, and/or
6 distributing gel hand sanitizers including, but not limited to, Ultra Unscented Gel Hand Sanitizer
7 (“Products”). Defendants know and intend that customers will use Products containing DEA.

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

13 3. California identified and listed DEA as a chemical known to cause cancer as early as
14 June 22, 2012.

15 4. Defendants failed to sufficiently warn consumers and individuals in California about
16 potential exposure to DEA in connection with Defendants' manufacture, import, sale, or distribution of
17 Products. This is a violation of Proposition 65.

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

II.
PARTIES

22
23 6. Plaintiff ENVIRONMENTAL HEALTH ADVOCATES, INC. (“Plaintiff”) is a
24 corporation in the State of California dedicated to protecting the health of California citizens through
25 the elimination or reduction of toxic exposure from consumer products. It brings this action in the public
26 interest pursuant to Health and Safety Code, section 25249.7.

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1 7. Defendant ULTA SALON, COSMETICS & FRAGRANCE, INC. ("Ultra") is a
2 corporation organized and existing under the laws of Delaware. Ultra is registered to do business in
3 California, and does business in the County of Alameda, within the meaning of Health and Safety Code,
4 section 25249.11. Ultra manufactures, imports, sells, or distributes the Products in California and
5 Alameda County.

6 8. Plaintiff does not know the true names and/or capacities, whether individual, partners,
7 or corporate, of the Defendants sued herein as DOES 1 through 100, inclusive, and for that reason sues
8 said Defendants under fictitious names pursuant to Cal. Civ. Proc. § 474. Plaintiff will seek leave to
9 amend this Complaint when the true names and capacities of these Defendants have been ascertained.
10 Plaintiff is informed and believes and thereon alleges that these Defendants are responsible in whole or
11 in part for the remedies and penalties sought herein.

12 9. At all times mentioned, Defendants were the agents, alter egos, servants, joint venturers,
13 joint employers, or employees for each other. Defendants acted with the consent of the other Co-
14 Defendants and acted within the course, purpose, and scope of their agency, service, or employment.
15 All conduct was ratified by Defendants, and each of them.

16 **III.**
17 **VENUE AND JURISDICTION**

18 10. California Constitution Article VI, Section 10 grants the Superior Court original
19 jurisdiction in all cases except those given by statute to other trial courts. The Health and Safety Code
20 statute upon which this action is based does not give jurisdiction to any other court. As such, this Court
21 has jurisdiction.

22 11. Venue is proper in Alameda County Superior Court pursuant to Code of Civil
23 Procedure, sections 394, 395, and 395.5. Wrongful conduct occurred and continues to occur in this
24 County. Defendant conducted and continues to conduct business in this County as it relates to Products.

25 12. Defendants have sufficient minimum contacts in the State of California or otherwise
26 purposefully avails itself of the California market. Exercising jurisdiction over Defendants would be
27 consistent with traditional notions of fair play and substantial justice.

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1 **IV.**
2 **CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION**

4 **(Violation of Proposition 65 – Against all Defendants)**

5 13. Plaintiff incorporates by reference each and every allegation contained above.

6 14. Proposition 65 mandates that citizens be informed about exposures to chemicals that
7 cause cancer, birth defects, and other reproductive harm.

8 15. Defendants manufactured, imported, sold, and/or distributed Products containing DEA
9 in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and believes such
10 violations have continued after receipt of the Notice (defined *infra*) and will continue to occur into the
11 future.

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

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

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

22 19. Defendants' actions in this regard were deliberate and not accidental.

23 20. More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a
24 60-Day Notice of Violation (“Notice”) as required by and in compliance with Proposition 65. Plaintiff
25 provided the Notice to the various required public enforcement agencies along with a certificate of merit.
26 The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn consumers in
27 California of the health hazards associated with exposures to DEA contained in the Products.

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

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

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

7 **PRAYER FOR RELIEF**

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

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

16
17 Respectfully submitted:

18 Dated: November 7, 2024

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