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Superior Court of California,  
County of Alameda

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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

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

19 ENVIRONMENTAL HEALTH ADVOCATES,  
20 INC.,

21 Plaintiff,

22 v.

23 CERAVE LLC, a New York limited liability  
24 company; L'OREAL USA S/D, INC., a Delaware  
25 corporation; ULTA SALON, COSMETICS &  
26 FRAGRANCE, INC., a Delaware corporation; and  
27 DOES 1 through 100, inclusive,

28 Defendants.

Case No.: **25CV106088**

**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 retinol serums  
8 including, but not limited to CeraVe Retinol Serum (“Products”). Defendants know and intend that  
9 customers will use Products containing DEA.

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

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

20           4.       Plaintiff seeks injunctive relief compelling Defendants to sufficiently warn consumers  
21 in California before exposing them to DEA in Products. (Health & Safety Code, § 25249.7(a).) Plaintiff  
22 also seeks civil penalties against Defendants for violations of Proposition 65 along with attorney’s fees  
23 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 CERAVE LLC (“CeraVe”) is a limited liability company organized and  
11 existing under the laws of New York. CeraVe is registered to do business in California, and does  
12 business in the County of Alameda, within the meaning of Health and Safety Code, section 25249.11.  
13 CeraVe manufactures, imports, sells, or distributes the Products in California and Alameda County.

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

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

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



1           17.     In 2012, the International Agency for Research on Cancer (IARC) also formally  
2 identified DEA as a Group 2B possible human carcinogen. (See IARC Working Group on the Evaluation  
3 of Carcinogenic Risks to Humans, Some Chemicals Present in Industrial and Consumer Products, Food  
4 and Drinking-Water. Lyon (FR): International Agency for Research on Cancer; 2013, (IARC  
5 Monographs on the Evaluation of Carcinogenic Risks to Humans, No. 101.)  
6 DIETHANOLAMINE, available at: <https://www.ncbi.nlm.nih.gov/books/NBK373177/> [last visited  
7 January 8, 2025].)

8           18.     Animal studies have reported effects on various organ systems from long-term topical  
9 administration of DEA. For example, a study conducted by the National Toxicology Program  
10 (hereinafter, the “NTP study”) showed that dermal exposure to DEA amplified the development of  
11 tumors in the liver and kidney tubules. (See National Toxicology Program, NTP Toxicology and  
12 Carcinogenesis Studies of Diethanolamine (CAS No. 111-42-2) in F344/N Rats and B6C3F1 Mice  
13 (Dermal Studies). Natl Toxicol Program Tech Rep Ser. 1999 Jul; 478:1-212. PMID: 12571685.,  
14 available at: <https://pubmed.ncbi.nlm.nih.gov/12571685/> [last visited January 8, 2025].)

15           19.     The Office of Environmental Health Hazard Assessment (“OEHHA”) has established  
16 specific safe harbor levels for many of the chemicals listed under Proposition 65. For cancer-causing  
17 chemicals in particular, a safe harbor level is called a “No Significant Risk Level,” or “NSRL.” An  
18 NSRL is the daily intake level calculated to result in one excess case of cancer in an exposed human  
19 population of 100,000, assuming lifetime exposure at the level in question. (See OEHHA’s Proposition  
20 65 Process for Developing Safe Harbor Numbers (February 2001), available at  
21 <https://oehha.ca.gov/media/downloads/cmr/2001safeharborprocess.pdf> [last visited January 8, 2025].)

22 The State of California has not yet established an NSRL for DEA. However, research suggests that an  
23 NSRL of 5.6 micrograms/day of DEA is appropriate, where dermal absorption is the route of exposure.  
24 (See Wang B, Amacher DE, Whittaker MH. Derivation of a No-Significant-Risk-Level (NSRL) for  
25 diethanolamine (DEA). Regul Toxicol Pharmacol. 2014 Feb;68(1):76-84. doi:  
26 10.1016/j.yrtph.2013.11.009. Epub 2013 Nov 23. PMID: 24275050. [last visited January 8, 2025].) This  
27 NSRL is derived from the NTP study described above, using a benchmark dose modeling method based  
28

1 on the incidence of hepatocellular carcinomas in female mice, in accordance with the guidelines of the  
2 California Environmental Protection Agency.

3 20. In order to ensure that the injunctive relief sought herein confers a public benefit upon  
4 California consumers, EHA adopts the NSRL of 5.6 micrograms/day for DEA derived from the NTP  
5 study.

6 **V.**  
**CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION**

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

9 21. Plaintiff incorporates by reference each and every allegation contained above.

10 22. Proposition 65 mandates that citizens be informed about exposures to chemicals that  
11 cause cancer, birth defects, and other reproductive harm.

12 23. Defendants manufactured, imported, sold, and/or distributed Products containing DEA  
13 in violation of Health and Safety Code, section 25249.6 et seq. Plaintiff is informed and believes such  
14 violations have continued after receipt of the Notices and will continue to occur into the future.

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

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

21 26. Defendant's Products exceed the NSRL of 5.6 micrograms/day, which was derived from  
22 the NTP study.

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

27 28. Defendants' actions in this regard were deliberate and not accidental.

28 ///

1           29.     More than sixty days prior to naming each defendant in this lawsuit, Plaintiff issued a  
2 60-Day Notice of Violation upon each Defendant as required by and in compliance with Proposition 65.  
3 Plaintiff provided the Notice to the various required public enforcement agencies along with a certificate  
4 of merit. The Notice alleged that Defendants violated Proposition 65 by failing to sufficiently warn  
5 consumers in California of the health hazards associated with exposures to DEA contained in the  
6 Products.

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

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

12          32.     Defendants are liable for a maximum civil penalty of \$2,500 per day for each violation  
13 of Proposition 65 pursuant to Health and Safety Code, section 252497(b). Injunctive relief is also  
14 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: January 8, 2025

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