

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

MOLLY CRANE,)
Individually and on Behalf of)
All Other Persons Similarly Situated,)

Plaintiff,)

v.)

SEXY HAIR CONCEPTS, LLC, and)
ULTA SALON COSMETICS)
& FRAGRANCE, INC.,)

Defendants.)
_____)

Civil Action No. 17-CV-10300

**DEFENDANT SEXY HAIR CONCEPTS, LLC’S
ANSWER AND AFFIRMATIVE DEFENSES
TO PLAINTIFF’S AMENDED COMPLAINT**

Defendant Sexy Hair Concepts, LLC (“SHC”) hereby submits its Answer and Affirmative Defenses (the “Answer”) to the Amended Complaint (the “Complaint”) of Plaintiff Molly Crane (“Plaintiff”).

Preliminary Statement

1. SHC admits that the Complaint refers to certain defendants as “Defendants”, and, in this Answer, the term “Defendants” shall mean SHC and Ulta Salon Cosmetics & Fragrance, Inc. (“Ulta”). For a further response, to the extent that the Complaint contains allegations directed to Ulta by the use of the term “Defendants” or otherwise, SHC responds on behalf of itself only and makes no response on behalf of Ulta. SHC admits that Plaintiff seeks to bring a class action. SHC denies that certification of any class would be appropriate in this action, denies that it engaged in any unlawful acts, and denies that Plaintiff and the purported class

members are entitled to any relief. Except to the extent admitted herein, SHC denies the allegations contained in Paragraph 1.

2. SHC admits that it distributes hair care products, including shampoos and conditioners, under the name and having the logo “sexyhair®”. SHC admits, on information and belief, that Ulta sells sexyhair® hair care products in stores and online. SHC denies any remaining allegations contained in Paragraph 2.

3. SHC admits that it has sold, at different times, different hair care products in different collections that have included the words “Sulfate-Free” in the product names, admits that such products did not contain Sodium Laurel Sulfate or Sodium Laureth Sulfate, and admits that some of such products may have contained an incidental amount of an ingredient known as sodium sulfate. SHC denies any remaining allegations contained in Paragraph 3.

4. SHC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 4, and, on that basis, denies all such allegations.

5. SHC denies the allegations contained in Paragraph 5.

Parties

6. SHC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 6, and, on that basis, denies all such allegations.

7. SHC admits that it is a Delaware limited liability company with its principal place of business in Chatsworth, California. SHC denies any remaining allegations contained in Paragraph 7.

8. The allegations contained in Paragraph 8 are directed to another defendant, and therefore no response is required by SHC. To the extent that a response is required, SHC admits, on information and belief, that Ulta is a Delaware corporation with its principal place of business

in Bolingbrook, Illinois, and admits, on information and belief, that Ulta has stores located within the Commonwealth of Massachusetts and elsewhere in the United States. SHC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 8, and, on that basis, denies all such allegations.

Jurisdiction and Venue

9. The allegations contained in Paragraph 9 state legal conclusions to which no response is required. To the extent that a response is required, SHC admits that this Court has diversity jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(d). SHC denies any remaining allegations contained in Paragraph 9.

10. The allegations contained in Paragraph 10 state legal conclusions to which no response is required. To the extent that a response is required, SHC admits that venue is proper. SHC denies any remaining allegations contained in Paragraph 10.

Factual Allegations

11. SHC admits that it distributes hair care products throughout the United States through distributors, retailers, salons and online. Except to the extent admitted herein, because of the vague and ambiguous nature of the allegations contained in Paragraph 11, SHC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11, and, on that basis, denies all such allegations.

12. SHC admits that sulfates may be described as compounds made of sulfur-containing mineral salts and may be incorporated into formulations, including for their detergent properties. Except to the extent admitted herein, because of the vague and ambiguous nature of the remaining allegations contained in Paragraph 12, SHC is without knowledge or information

sufficient to form a belief as to the truth of the allegations contained in Paragraph 12, and, on that basis, denies all such allegations.

13. Because of the vague and ambiguous nature of the allegations contained in Paragraph 13 concerning “consumers”, SHC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13, and, on that basis, denies all such allegations.

14. Because of the vague and ambiguous nature of the allegations contained in Paragraph 14, SHC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14, and, on that basis, denies all such allegations.

15. Because of the vague and ambiguous nature of the allegations contained in Paragraph 15, SHC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15, and, on that basis, denies all such allegations.

16. SHC admits, on information and belief, that, on February 22, 2016, the “Beautyeditor” blog published a post by Michelle Villette. To the extent that a further response is required, SHC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 16, and, on that basis, denies all such allegations.

17. SHC admits, on information and belief, that, on June 8, 2015, the “bellatory” blog published a post by Melissa Jongman. To the extent that a further response is required, SHC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 17, and, on that basis, denies all such allegations.

18. SHC admits, on information and belief, that, on April 1, 2015, Women’sHealth published an article by Alessandra Foresto, and admits, on information and belief, that, on

September 19, 2016, Essence published an article by Marianne Mychaskiw. To the extent that a further response is required, SHC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 18, and, on that basis, denies all such allegations.

19. SHC admits, on information and belief, that, on September 29, 2010, The New York Times published an article by Catherine Saint Louis. To the extent that a further response is required, SHC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 19, and, on that basis, denies all such allegations.

20. Because of the vague and ambiguous nature of the allegations contained in Paragraph 20, SHC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20, and, on that basis, denies all such allegations.

21. SHC denies the allegations contained in Paragraph 21.

22. Because of the vague and ambiguous nature of the allegations contained in Paragraph 22, SHC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 22, and, on that basis, denies all such allegations.

23. The allegations contained in Paragraph 23 state conclusions of law to which no response is required. To the extent that a response is required, SHC admits that it distributed hair care products that included the text “Free of Sulfate” or “Sulfate-Free” on different labels at different times on the front of different hair care products. SHC denies any remaining allegations contained in Paragraph 23.

24. The allegations contained in Paragraph 24 state conclusions of law to which no response is required. To the extent that a response is required, SHC admits that it included the

text “Free of Sulfate” or “Sulfate-Free” on different labels at different times on the front of different hair care products. SHC denies any remaining allegations contained in Paragraph 24.

25. SHC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 25, and, on that basis, denies all such allegations.

26. SHC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 26, and, on that basis, denies all such allegations.

27. The allegations contained in Paragraph 27 state legal conclusions to which no response is required. To the extent that a response is required, because of the vague and ambiguous nature of the allegations contained in Paragraph 27, SHC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 27, and, on that basis, denies all such allegations.

28. The allegations contained in Paragraph 28 state legal conclusions to which no response is required. To the extent that a response is required, because of the vague and ambiguous nature of the allegations contained in Paragraph 28, SHC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 28, and, on that basis, denies all such allegations.

29. Because of the vague and ambiguous nature of the allegations contained in Paragraph 29, SHC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 29, and, on that basis, denies all such allegations. SHC is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in Paragraph 29, and, on that basis, denies all such allegations.

30. SHC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 30, and, on that basis, denies all such allegations.

31. The allegations contained in Paragraph 31 state legal conclusions to which no response is required. To the extent that a response is required, because of the vague and ambiguous nature of the allegations contained in Paragraph 31, SHC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 31, and, on that basis, denies all such allegations. SHC is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in Paragraph 31, and, on that basis, denies all such allegations.

32. The allegations contained in Paragraph 32 state legal conclusions to which no response is required. To the extent that a response is required, because of the vague and ambiguous nature of the allegations contained in Paragraph 32, SHC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 32, and, on that basis, denies all such allegations. SHC is without knowledge or information sufficient to form a belief as to the truth of any remaining allegations contained in Paragraph 32, and, on that basis, denies all such allegations.

33. The allegations contained in Paragraph 33 state legal conclusions to which no response is required. To the extent that a response is required, because of the vague and ambiguous nature of the allegations contained in Paragraph 33, SHC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 33, and, on that basis, denies all such allegations. SHC denies any remaining allegations contained in Paragraph 33.

34. The allegations in Paragraph 34 state legal conclusions to which no response is required. To the extent that a response is required, SHC denies any remaining allegations contained in Paragraph 34.

35. SHC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 35, and, on that basis, denies all such allegations.

36. SHC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 36, and, on that basis, denies all such allegations.

37. The allegations contained in Paragraph 37 state legal conclusions to which no response is required. To the extent that a response is required, because of the vague and ambiguous nature of the allegations contained in Paragraph 37, SHC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 37, and, on that basis, denies all such allegations.

Class Action Allegations

38. SHC incorporates its responses to the foregoing allegations as if fully set forth herein.

39. SHC admits that Plaintiff seeks to allege a class action on behalf of a “Massachusetts Class”, which Plaintiff defines in Paragraph 39 of the Complaint. SHC denies that certification of any class or subclass would be appropriate in this case, and denies that Plaintiff and the purported class members are entitled to any relief. The cited statutory and rule provisions speak for themselves, and SHC denies any allegations by Plaintiff that are inconsistent with such provisions. SHC denies any remaining allegations contained in Paragraph 39.

40. SHC admits that Plaintiff seeks to allege a class action on behalf of a “National Class”, which Plaintiff defines in Paragraph 40 of the Complaint. SHC denies that certification of any class or subclass would be appropriate in this case, and denies that Plaintiff and the purported class members are entitled to any relief. The cited rule provision speaks for itself, and

SHC denies any allegations by Plaintiff that are inconsistent with such provision. SHC denies any remaining allegations contained in Paragraph 40.

41. SHC denies that certification of any class or subclass would be appropriate in this action, and denies that Plaintiff and the purported class members are entitled to any relief.

42. The allegations contained in Paragraph 42 state legal conclusions to which no response is required. To the extent that a response is required, SHC denies any remaining allegations contained in Paragraph 42.

43. SHC denies the allegations contained in Paragraph 43 including, without limitation, that certification of any class or subclass would be appropriate in this action.

44. SHC denies the allegations contained in Paragraph 44 including, without limitation, that certification of any class or subclass would be appropriate in this action.

45. SHC denies the allegations contained in Paragraph 45 and each of its subparagraphs, including, without limitation, that certification of any class or subclass would be appropriate in this action, and that the purported class members are entitled to any relief.

46. SHC denies the allegations contained in Paragraph 46 including, without limitation, that certification of any class or subclass would be appropriate in this action.

47. SHC denies the allegations contained in Paragraph 47 including, without limitation, that certification of any class or subclass would be appropriate in this action.

48. SHC denies the allegations contained in Paragraph 48 including, without limitation, that certification of any class or subclass would be appropriate in this action, and that the purported class members are entitled to any relief.

49. SHC denies the allegations contained in Paragraph 49 including, without limitation, that certification of any class or subclass would be appropriate in this action.

50. SHC denies the allegations contained in Paragraph 50.

51. SHC denies the allegations contained in Paragraph 51 including, without limitation, that certification of any class or subclass would be appropriate in this action, and that the purported class members are entitled to any relief.

COUNT I

(Violation of Chapter 93A)

52. SHC incorporates its responses to the foregoing allegations as if fully set forth herein.

53. The allegations contained in Paragraph 53 state legal conclusions to which no response is required. To the extent that a response is required, SHC admits that it sold hair care products in the Commonwealth of Massachusetts. Except to the extent admitted herein, because of the vague and ambiguous nature of the allegations contained in Paragraph 53, SHC is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 53, and, on that basis, denies all such allegations.

54. The allegations contained in Paragraph 54 state legal conclusions to which no response is required. To the extent that a response is required, SHC denies the allegations contained in Paragraph 54.

55. The allegations contained in Paragraph 55 state legal conclusions to which no response is required. To the extent that a response is required, SHC denies the allegations, including each subparagraph and footnote, contained in Paragraph 55.

56. The allegations contained in Paragraph 56 state legal conclusions to which no response is required. To the extent that a response is required, SHC denies the allegations contained in Paragraph 56.

57. SHC denies the allegations contained in Paragraph 57.

58. SHC denies the allegations contained in Paragraph 58.

59. The allegations contained in Paragraph 59 state legal conclusions to which no response is required. To the extent that a response is required, SHC admits that Plaintiff sent SHC a written demand for relief dated November 18, 2016. SHC denies any remaining allegations contained in Paragraph 59.

60. SHC denies the allegations contained in Paragraph 60.

COUNT II

(Unjust Enrichment)

61. SHC incorporates its responses to the foregoing allegations as if fully set forth herein.

62. SHC admits that Plaintiff seeks to bring Count II on behalf of herself and a class, which Plaintiff defines in Paragraph 40 of the Complaint. SHC denies that certification of any class or subclass would be appropriate in this action, denies that Plaintiff and the purported class members are entitled to any relief, and denies any remaining allegations contained in Paragraph 62.

63. SHC admits that Plaintiff seeks to bring Count II, on behalf of herself and a class, which Plaintiff defines in Paragraph 39 of the Complaint, in the alternative to Count I, in the event Plaintiff, for whatever reason, is unable to obtain an adequate remedy through her claim under Count I. SHC denies that certification of any class or subclass would be appropriate in this action, denies that Plaintiff and the purported class members are entitled to any relief, and denies any remaining allegations contained in Paragraph 63.

64. SHC denies the allegations contained in Paragraph 64.

65. The allegations contained in Paragraph 65 state legal conclusions to which no response is required. To the extent that a response is required, SHC admits that it sells some of its products directly to consumers, and admits that it sells its products to distributors, retailers, and salons. SHC is without knowledge or information sufficient to form a belief as to whether it received a direct financial benefit from the sale of a product to Plaintiff. Because of the vague and ambiguous nature of the remaining allegations contained in Paragraph 65, SHC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 65, and, on that basis, denies all such allegations.

66. The allegations contained in Paragraph 66 state legal conclusions to which no response is required. The allegations contained in Paragraph 66 are directed to Ulta and therefore no response is required by SHC. To the extent that a response is required, SHC admits that it sells hair care products to Ulta. Except to the extent admitted herein, SHC is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph 66, and, on that basis, denies all such allegations.

67. SHC denies the allegations contained in Paragraph 67.

68. The allegations contained in Paragraph 68 state legal conclusions to which no response is required. To the extent that a response is required, SHC denies the remaining allegations contained in Paragraph 68.

69. SHC denies each and every allegation in Plaintiff's Complaint except those specifically admitted in this Answer.

Prayers for Relief

No response is required to the allegations asserted in the Prayers for Relief. To the extent that a response is required, SHC admits that Plaintiff prays for relief. SHC denies that Plaintiff is

entitled to any relief from SHC, including damages, including, but not limited to, monetary, multiple, or statutory damages, interest, costs, attorneys' fees, expenses, declaratory, equitable, and/or injunctive relief, or that Plaintiff is otherwise entitled to any relief from SHC, or that any class or subclass can and/or should be certified.

Jury Demand

No response is required to the allegations asserted in the Jury Demand. To the extent that a response is required, SHC admits that Plaintiff requests a trial by jury on all claims so triable. SHC denies that a trial by jury should be granted as Plaintiff fails to state a claim upon which a jury trial may be granted and certain of Plaintiff's claims preclude a jury trial. To the extent that a trial by jury is granted, SHC demands a trial by a jury of twelve.

Affirmative Defenses

Discovery and investigation may reveal that one or more of the following additional defenses should be available to SHC in this matter. SHC accordingly asserts these separate and additional defenses. Upon completion of discovery, if the facts warrant, SHC may withdraw any of these additional defenses as may be appropriate. By setting forth these additional defenses, SHC does not assume the burden of proving any fact, issue, or element of a cause of action where such burden properly belongs to Plaintiff. Moreover, nothing stated herein is intended or shall be construed as an acknowledgement that any particular issue or subject necessarily is relevant to Plaintiff's allegations.

First Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, on the ground that Plaintiff lacks standing to sue.

Second Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, on the ground that the hair care products at issue are not similarly marketed or labeled.

Third Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because they fail to state a claim upon which relief can be granted.

Fourth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because the proposed classes are not certifiable under Rule 23 of the Federal Rules of Civil Procedure.

Fifth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because the proposed classes are not certifiable under Section 9(2) of Chapter 93A of the Massachusetts General Laws.

Sixth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because the lack of common questions of law and fact preclude the case from proceeding as a class action.

Seventh Affirmative Defense

This case is not maintainable as a class action to the extent that the elements of and defenses to the claims of unjust enrichment of Plaintiff and/or the purported class members vary among the states because this presents individualized issues that are incongruous with Rule 23 of

the Federal Rules of Civil Procedure and/or Section 9(2) of Chapter 93A of the Massachusetts General Laws.

Eighth Affirmative Defense

This case is not maintainable as a class action to the extent that the purchasing decisions of Plaintiff and/or the purported class members were subjective because this presents individualized issues that are incongruous with Rule 23 of the Federal Rules of Civil Procedure and/or Section 9(2) of Chapter 93A of the Massachusetts General Laws.

Ninth Affirmative Defense

This case is not maintainable as a class action to the extent that Plaintiff and/or the purported class members paid varying amounts for the hair care products because this presents individualized issues that are incongruous with Rule 23 of the Federal Rules of Civil Procedure and/or Section 9(2) of Chapter 93A of the Massachusetts General Laws.

Tenth Affirmative Defense

This case is not maintainable as a class action to the extent that Plaintiff and/or the purported class members used up and/or no longer possess the hair care products because this presents individualized issues that are incongruous with Rule 23 of the Federal Rules of Civil Procedure and/or Section 9(2) of Chapter 93A of the Massachusetts General Laws.

Eleventh Affirmative Defense

This case is not maintainable as a class action to the extent that Plaintiff and/or the purported class members unsuccessfully attempted to return or successfully returned the hair care products for a refund because this presents individualized issues that are incongruous with Rule 23 of the Federal Rules of Civil Procedure and/or Section 9(2) of Chapter 93A of the Massachusetts General Laws.

Twelfth Affirmative Defense

This case is not maintainable as a class action to the extent that the labels and formulas of the hair care products purchased by Plaintiff and/or the purported class members changed over time because this presents individualized issues that are incongruous with Rule 23 of the Federal Rules of Civil Procedure and/or Section 9(2) of Chapter 93A of the Massachusetts General Laws.

Thirteenth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because Plaintiff's claims are not typical of the claims of the purported class members, precluding the case from proceeding as a class action.

Fourteenth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, to extent that the proposed classes are not ascertainable.

Fifteenth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, by the doctrine of laches. SHC has been prejudiced by Plaintiff's unreasonable delay in asserting the purported causes of action in the Complaint.

Sixteenth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, by the doctrines of payment, compromise, and/or settlement.

Seventeenth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, by express and/or implied release of such claims.

Eighteenth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, by the applicable statutes of limitations.

Nineteenth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, by the doctrine of waiver.

Twentieth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, by the doctrine of unclean hands.

Twenty-First Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, by express and limited warranties.

Twenty-Second Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, by the doctrine of mitigation. With respect to each purported cause of action in the Complaint, Plaintiff and/or the purported class members have failed to exercise reasonable diligence to mitigate their alleged damages and/or injuries. To that extent, Plaintiff and/or the purported class members may not recover damages.

Twenty-Third Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, by the doctrine of unjust enrichment.

Twenty-Fourth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, by the economic loss doctrine.

Twenty-Fifth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because Plaintiff has failed to join necessary and indispensable parties.

Twenty-Sixth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because SHC is entitled to indemnification from one or more third parties.

Twenty-Seventh Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, to the extent Plaintiff alleges injuries, damages, or losses that were directly or proximately caused by intervening, superseding acts and conduct of others over whom SHC had no control.

Twenty-Eighth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because Plaintiff relied upon the representations of unknown third parties, learned intermediaries, and sophisticated users in deciding to purchase a hair care product.

Twenty-Ninth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because SHC did not engage in willful, intentional, knowing, or reckless misconduct.

Thirtieth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because SHC did not make extremely or egregiously negligent misrepresentations.

Thirty-First Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because SHC acted in good faith and had reasonable grounds to believe that its conduct did not violate any law.

Thirty-Second Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because SHC is entitled to the benefit of all defenses and presumptions contained in or arising under the Food, Drug, and Cosmetic Act (the “FD&C Act”), 21 U.S.C. § 301 *et seq.*, the Fair Packaging and Labeling Act (the “FP&L Act”), 15 U.S.C. § 1451 *et seq.*, and the regulations promulgated in connection with the FD&C Act and the FP&L Act.

Thirty-Third Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because the labeling on the products at issue comports with all legal requirements for the labeling of cosmetics under the FD&C Act, the FP&L Act, and the regulations promulgated in connection with the FD&C Act and the FP&L Act, including, but not limited to, 21 C.F.R. § 701.3.

Thirty-Fourth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because such claims, which depend on a construction of state law that would establish requirements for labeling of a cosmetic that are different from, in addition to, or otherwise not identical with the requirements specifically applicable to the products at issue under the FD&C Act and the FP&L Act, are preempted by federal law. 21 U.S.C. § 379s(a).

Thirty-Fifth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because the action is subject to dismissal or stay due to the application of the primary jurisdiction doctrine to allow the United States Food and Drug Administration to determine whether the label is compliant with the FD&C Act, the FP&L Act, and the regulations promulgated in connection with the FD&C Act and the FP&L Act.

Thirty-Sixth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because the written demand for relief sent by Plaintiff to SHC on November 18, 2016 did not reasonably describe the unfair or deceptive act or practice, the injury suffered, or the relief demanded.

Thirty-Seventh Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because the labeling on the products at issue did not violate any legally mandated standard.

Thirty-Eighth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because the labeling on the products at issue comports with accepted labeling standards in the hair care industry.

Thirty-Ninth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because SHC has not committed any unlawful, unfair, deceptive, or fraudulent business acts or practices.

Fortieth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because the labeling on the products at issue is not misleading or ambiguous.

Forty-First Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because Plaintiff and/or the purported class members fail to assert an ascertainable or cognizable injury or loss.

Forty-Second Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, to the extent that they used up the hair care products without incident, injury, or loss and/or no longer possess the hair care products and therefore received the benefit of the bargain. *See, e.g., Rule v. Fort Dodge Animal Health, Inc.*, 607 F.3d 250 (1st Cir. 2010).

Forty-Third Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, on the ground that reasonable consumers do not value sulfate- or salt-free hair care products more highly than hair care products that contain sulfates or salts.

Forty-Fourth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, on the ground that sulfate- or salt-free hair care products are not sold at a price premium compared to hair care products that contain sulfates or salts.

Forty-Fifth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, due to the lack of any nonconformity, condition, or ingredient that substantially impaired the use, value, quality, benefits, or safety of the products at issue.

Forty-Sixth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, by the defense of state-of-the-art and/or that the products at issue met the consumer's reasonable expectations.

Forty-Seventh Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, to extent that the subjective claims of Plaintiff are not caused by the conduct of SHC that is alleged to have caused Plaintiff's injuries.

Forty-Eighth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, to extent that the alleged misrepresentations are not material to a reasonable consumer.

Forty-Ninth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because, to the extent that the hair care products at issue contained sulfates and/or salts, the sulfates and/or salts were not present in quantities that would be material to a reasonable consumer's purchasing decision.

Fiftieth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because, to the extent that the hair care products at issue contained sulfates and/or salts, the

sulfates and/or salts that were contained in the hair care products at issue would not be material to a reasonable consumer's purchasing decision.

Fifty-First Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because Plaintiff and/or the purported class members failed to provide reasonable notice of their claims to SHC, and therefore the claims are barred under Massachusetts law and the laws of other states applicable to the purported class members.

Fifty-Second Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because the laws of some states do not recognize a claim for unjust enrichment under the facts alleged in the Complaint.

Fifty-Third Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because SHC did not obtain a benefit from Plaintiff and/or the purported class members from the sale of the products at issue.

Fifty-Fourth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because Plaintiff and/or the purported class members were not purchasers at retail and therefore have no action under applicable state law.

Fifty-Fifth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because the subject products were not goods purchased at retail.

Fifty-Sixth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, to the extent that Plaintiff and/or Plaintiff's agents or representatives negligently or intentionally failed to preserve and permitted the spoliation of evidence that is material to the allegations in the Complaint.

Fifty-Seventh Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, by the fact that Plaintiff, purported class members, and/or the members of the general public have an adequate remedy at law.

Fifty-Eighth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because Plaintiff and/or the purported class members are not entitled to statutory damages under Chapter 93A of the Massachusetts General Laws because the actual damages, if any, of Plaintiff and each purported class member would be quantifiable.

Fifty-Ninth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, because the imposition of statutory damages in this action, unrelated to any actual harm caused by the conduct alleged in the Complaint, would violate SHC's state and federal constitutional rights, including its rights to procedural and substantive due process.

Sixtieth Affirmative Defense

The claims of Plaintiff and/or the purported class members are barred, in whole or in part, as to some or all of the purported class members because Massachusetts substantive law does not apply to their claims under choice-of-law analysis.

Reservation

SHC hereby reserves its right to amend its Answer and to assert any other affirmative defenses and other claims that may become apparent after the filing of this Answer, whether in discovery, at trial, or otherwise, so as to avoid waiver of the same.

WHEREFORE, SHC requests that the Complaint be dismissed with prejudice and upon the merits, that the relief sought in each and every paragraph of the Prayers for Relief be denied and that Plaintiff takes nothing thereby, that judgment be entered in favor of SHC and against Plaintiff, that SHC be awarded its attorneys' fees and costs incurred in defending against Plaintiff's claims, and for such other and further relief as the Court may deem necessary, just, and proper.

Respectfully submitted,

Sexy Hair Concepts, LLC,

By their Attorneys,

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Dated: November 7, 2017

CERTIFICATE OF SERVICE

I, Matthew D. Rodgers, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing and paper copies will be sent to those indicated as non-registered participants on November 7, 2017.

/s/ Matthew D. Rodgers
Matthew D. Rodgers