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FILED

JUL 31 2015

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, PH.D., P.E. Plaintiff, v. JOHNSON & JOHNSON CONSUMER COMPANIES, INC.; DOES 1-150, inclusive, Defendants.	Case No. CIV 1502839 **COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF** (Health & Safety Code. § 25249.6 *et seq.*)

NATURE OF THE ACTION

1. This Complaint is a representative action brought by plaintiff Anthony E. Held, Ph.D., P.E. in the public interest of the citizens of the State of California to enforce the People's right to be informed of the presence of benzophenone, a toxic chemical found in sunscreen sold in California.

2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to warn California citizens about the risk of exposure to benzophenone present in and on sunscreen manufactured, distributed, and offered for sale or use to consumers throughout the State of California.

3. High levels of benzophenone are commonly found in sunscreen that defendants manufacture, distribute, and offer for sale to consumers throughout the State of California.

4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Health and Safety Code section 25249.6 *et seq.* ("Proposition 65"), "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual . . . " Health & Safety Code § 25249.6.

5. Pursuant to Proposition 65, on June 22, 2012, California identified and listed benzophenone as a chemical known to cause cancer. Benzophenone became subject to the "clear and reasonable warning" requirements of the act one year later on June 22, 2013. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

6. Defendants manufacture, distribute, and sell sunscreen that contains benzophenone in levels that require a warning under Proposition 65 including, but not limited to, *Aveeno Active Naturals Protect+ Hydrate Lotion Sunscreen Broad Spectrum SPF 70, UPC #3 8137-115180 6.* All such sunscreens containing benzophenone are referred to collectively hereinafter as "PRODUCTS."

7. Defendants' failure to warn consumers and other individuals in the State of California about their exposure to benzophenone in conjunction with defendants' sales of the

PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinment of such conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) & (b)(1).

8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and permanent injunctive relief to compel defendants to provide purchasers or users of the PRODUCTS with the required warning regarding the health hazards of benzophenone. Health & Safety Code § 25249.7(a).

9. Pursuant to Health and Safety Code section 25249.7(b), plaintiff also seeks civil penalties against defendants for their violations of Proposition 65.

PARTIES

10. Plaintiff Anthony E. Held, Ph.D., P.E. is a citizen of the State of California who is dedicated to protecting the health of California citizens through the elimination or reduction of toxic exposures from consumer products; and he brings this action in the public interest pursuant to Health and Safety Code section 25249.7(d).

11. Defendant JOHNSON & JOHNSON CONSUMER COMPANIES, INC. ("JOHNSON & JOHNSON") is a person in the course of doing business within the meaning of Health and Safety Code section 25249.11.

12. JOHNSON & JOHNSON manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California, or implies by its conduct that it manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California..

13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each persons in the course of doing business within the meaning of Health and Safety Code section 25249.11.

14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate, and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate, and manufacture one or more of the PRODUCTS offered for sale or use in the State of California.

15. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each a person in the course of doing business within the meaning of Health and Safety Code section 25249.11.

16. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use in the State of California.

17. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each a person in the course of doing business within the meaning of Health and Safety Code section 25249.11.

18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the State of California.

19. At this time, the true names of defendants DOES 1 through 150, inclusive, are unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named defendants is responsible for the acts and occurrences alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

20. JOHNSON & JOHNSON, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to as "DEFENDANTS."

VENUE AND JURISDICTION

21. Venue is proper in the Marin County Superior Court, pursuant to Code of Civil Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction, because one or more instances of wrongful conduct occurred, and continue to occur, in Marin County, and/or because DEFENDANTS conducted, and continue to conduct, business in this county with respect to the PRODUCTS.

22. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, section 10, which grants the Superior Court "original jurisdiction in all causes except those given by statute to other trial courts." The statute under which this action is brought does not specify any other basis of subject matter jurisdiction.

23. The California Superior Court has jurisdiction over DEFENDANTS based on plaintiff's information and good faith belief that each defendant is a person, firm, corporation or association that is a citizen of the state of California, has sufficient minimum contacts in the state of California, and/or otherwise purposefully avails itself of the California market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California courts consistent with traditional notions of fair play and substantial justice.

FIRST CAUSE OF ACTION

(Violation of Proposition 65 - Against All Defendants)

24. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs 1 through 23, inclusive.

25. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic Enforcement Act of 1986, the People of California expressly declare their right "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm."

26. Proposition 65 states, "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual . . . " Health & Safety Code § 25249.6.

27. On February 26, 2014 and August 28, 2014, Plaintiff issued a 60-Day Notice of Violation and Supplemental 60-Day Notice of Violation, respectively, to certain entities within the Johnson & Johnson corporate family. After consultation with counsel for JOHNSON & JOHNSON, on March 13, 2015, a Second Supplemental 60-Day Notice of Violation was provided to JOHNSON & JOHNSON, others and certain public enforcement agencies stating that, as a result of DEFENDANTS' sales of the PRODUCTS containing benzophenone, purchasers and users in the State of California were being exposed to benzophenone resulting from the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and

users first having been provided with a "clear and reasonable warning" regarding such toxic exposures, as required by Proposition 65.

28. DEFENDANTS have engaged in the manufacture, distribution, and offering of the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and such violations have continued to occur beyond DEFENDANTS' receipt of plaintiff's Notice. As such, DEFENDANTS' violations are ongoing and continuous in nature, and will continue to occur in the future.

29. After receiving the claims asserted in the Notice, the appropriate public enforcement agencies have failed to commence and diligently prosecute a cause of action against DEFENDANTS under Proposition 65.

30. The PRODUCTS manufactured, distributed, and offered for sale or use in California by DEFENDANTS contain benzophenone in amounts above the allowable state limits, such that they require a "clear and reasonable" warning under Proposition 65.

31. DEFENDANTS knew or should have known that the PRODUCTS they manufactured, distributed, and offered for sale or use in California contained benzophenone.

32. Benzophenone is present in or on the PRODUCTS in such a way as to expose individuals through dermal contact and/or ingestion during reasonably foreseeable use.

33. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and continue to cause, consumer exposures to benzophenone, as such exposures are defined by California Code of Regulations title 27, section 25602(b).

34. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses of the PRODUCTS exposed individuals to benzophenone through dermal contact and/or ingestion.

35. DEFENDANTS intended that such exposures to benzophenone from the reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-accidental participation in the manufacture, distribution, and offering of the PRODUCTS for sale or use to individuals in the State of California.

36. DEFENDANTS failed to provide a "clear and reasonable warning" to those consumers and other individuals in the State of California who were or who would become exposed to benzophenone through dermal contact and/or ingestion during the reasonably foreseeable uses of the PRODUCTS.

37. Contrary to the express policy and statutory prohibition of Proposition 65 enacted directly by California voters, individuals exposed to benzophenone through dermal contact and/or ingestion resulting from the reasonably foreseeable use of the PRODUCTS sold by DEFENDANTS without a "clear and reasonable warning," have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

38. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the above-described acts, DEFENDANTS are liable for a maximum civil penalty of $2,500 per day for each violation.

39. As a consequence of the above-described acts, Health and Safety Code section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

PRAYER FOR RELIEF

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess civil penalties against DEFENDANTS in the amount of $2,500 per day for each violation;

2. That the Court, pursuant to Health and Safety Code section 25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing a "clear and reasonable warning" as defined by California Code of Regulations title 27, section 25601 *et seq.*, as to the harms associated with exposures to benzophenone;

3. That the Court grant plaintiff his reasonable attorneys' fees and costs of suit; and

4. That the Court grant such other and further relief as may be just and proper.

Dated: July 28, 2015

Respectfully Submitted,

THE CHANLER GROUP

By: _____
Troy C. Bailey
Attorneys for
ANTHONY E. HELD, PH.D., P.E.