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FILED

2014 JUL -7 A 8:13

STEPHEN H. NASH  
CLERK OF THE SUPERIOR COURT  
COUNTY OF CONTRA COSTA, CA

G. WACHNER

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF CONTRA COSTA  
UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, PH.D., P.E. ) Case No. C 14-01281  
 )  
Plaintiff, )  
 )  
v. ) **COMPLAINT FOR CIVIL PENALTIES**  
 ) **AND INJUNCTIVE RELIEF**  
 )  
MERCK & CO., INC., WALGREEN CO., ) (Health & Safety Code. § 25249.6 *et seq.*)  
DRUGSTORE.COM, INC.; and DOES 1- )  
150, inclusive, )  
 )  
Defendants. )

PER LOCAL RULE 5 THIS  
CASE IS ASSIGNED TO  
DEPT 33  
SUMMONS ISSUED

**NATURE OF THE ACTION**

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

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

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

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

17          5.     Pursuant to Proposition 65, on June 22, 2012, California identified and listed  
18 benzophenone as a chemical known to cause birth defects and other reproductive harm.  
19 benzophenone became subject to the “clear and reasonable warning” requirements of the act one  
20 year later on June 22, 2013. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§  
21 25249.8 & 25249.10(b).

22          6.     Defendants manufacture, distribute, and sell sunscreens that contain  
23 benzophenone in levels that require a warning under Proposition 65 including, but not limited  
24 to, *Coppertone Sport High Performance Sunscreen UVA/UVB Broad Spectrum SPF 30, #0*  
25 *418871 9*. All such sunscreens containing benzophenone are referred to collectively hereinafter  
26 as “PRODUCTS.”  
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1           15. Defendant DRUGSTORE.COM, INC. ("DRUGSTORE.COM") is a person in the  
2 course of doing business within the meaning of Health and Safety Code section 25249.11.

3           16. DRUGSTORE.COM manufactures, distributes, and/or offers the PRODUCTS for  
4 sale or use in the State of California, or implies by its conduct that it manufactures, distributes,  
5 and/or offers the PRODUCTS for sale or use in the State of California.

6           17. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each  
7 persons in the course of doing business within the meaning of Health and Safety Code section  
8 25249.11.

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

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

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

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

20           22. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
21 State of California.

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

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

5           31. On February 26, 2014, plaintiff’s 60-Day Notice of Violation (the “Notice”),  
6 together with the requisite Certificate of Merit, was provided to MERCK, WALGREEN,  
7 DRUGSTORE.COM and certain public enforcement agencies stating that, as a result of  
8 DEFENDANTS’ sales of the PRODUCTS containing benzophenone, purchasers and users in  
9 the State of California were being exposed to benzophenone resulting from the reasonably  
10 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having  
11 been provided with a “clear and reasonable warning” regarding such toxic exposures, as  
12 required by Proposition 65.

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

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

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

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

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

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

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

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

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

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

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

23           43. As a consequence of the above-described acts, Health and Safety Code  
24 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
25 DEFENDANTS.  
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**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 3, 2014

Respectfully Submitted,  
THE CHANLER GROUP

By:   
\_\_\_\_\_  
Troy C. Bailey  
Attorneys for Plaintiff  
ANTHONY E. HELD, PH.D., P.E.