

**FILED**

**OCT 27 2014**

KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT

By: \_\_\_\_\_, Deputy  
**E. CHAIS**

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF MARIN

13 UNLIMITED CIVIL JURISDICTION

14 ANTHONY E. HELD, PH.D., P.E., )

15 Plaintiff, )

16 v. )

17 DRUGSTORE.COM, INC.; ENERGIZER )  
18 HOLDINGS, INC.; ENERGIZER )  
19 PERSONAL CARE, LLC; JOHNSON & )  
20 JOHNSON; MERCK & CO., INC.; )  
21 PLAYTEX PRODUCTS, LLC; PRODUCT )  
22 QUEST MANUFACTURING, LLC; RITE )  
23 AID CORPORATION; SUN )  
24 PHARMACEUTICALS CORP.; )  
25 WALGREEN CO.; WAL-MART STORES, )  
26 INC. and DOES 1-150, inclusive, )

27 Defendants. )

Case No. CIV1403766

**NOTICE OF ERRATA RE: COMPLAINT  
FOR CIVIL PENALTIES AND  
INJUNCTIVE RELIEF**

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**TO ALL PARTIES AND THEIR COUNSEL OF RECORD:**

**PLEASE TAKE NOTICE** that Troy C. Bailey hereby files this Notice of Errata with respect to the Complaint for Civil Penalties and Injunctive Relief filed with this Court on October 3, 2014 (“Complaint”). The following inadvertent errors were made in the Complaint: (i) on Page 1, Lines 4-5, 7-8, and 10-11, the language “...and scar creams containing sunscreen” should be struck; (ii) on Page 2, Line 25, language pertaining to the listing of the products as “scar cream containing sunscreen, containing benzophenone...” should have read “...sunscreen containing benzophenone...”; (iii) on Page 4, Lines 7 and 14, and on Page 5, Line 13, the listing of a defendant as “ENERGIZER HODLINGS” should have read “ENERGIZER HOLDINGS”; (iv) on Page 4, Lines 8-9, the listed of defendant as “PRODUCT QUEST, MANUFACTURING, LLC” should have read “PRODUCT QUEST MANUFACTURING, LLC”; and (v) on Page 4, Line 14, and on Page 5, Line 13 the term “MERZ” should be struck. A true and correct copy is attached hereto.

Respectfully submitted,  
**THE CHANLER GROUP**

Dated: October 21, 2014

By:   
Troy C. Bailey  
Attorneys for Plaintiff  
Anthony E. Held, Ph.D., P.E.



1 **NATURE OF THE ACTION**

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 sunscreens  
8 manufactured, distributed, and offered for sale or use to consumers throughout the State of  
9 California.

10 3. High levels of benzophenone are 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 cancer. Benzophenone became subject to the  
19 "clear and reasonable warning" requirements of the act one year later on June 22, 2013. Cal.  
20 Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

21 6. Defendants manufacture, distribute, sell and/or offer for sale in California  
22 products containing benzophenone in levels that require a warning under Proposition 65 as  
23 follows:

24 a. Defendants **ENERGIZER HOLDINGS, INC., ENERGIZER PERSONAL**  
25 **CARE, LLC, PLAYTEX PRODUCTS, LLC, SUN PHARMACEUTICALS CORP.** and  
26 **WAL-MART STORES, INC.** manufacture, distribute, import, sell and/or offer for sale in  
27 California *Banana Boat Kids UVA/UVB Protection Sunscreen Stick, UPC #0 79656*  
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1           04653 3 containing benzophenone in levels that require a health hazard warning under  
2           Proposition 65.

3           b.       Defendants ENERGIZER HOLDINGS, INC., ENERGIZER PERSONAL  
4           CARE, LLC, PLAYTEX PRODUCTS, LLC, SUN PHARMACEUTICALS CORP. and  
5           WAL-MART STORES, INC. manufacture, distribute, import, sell and/or offer for sale in  
6           California sunscreen containing benzophenone in levels that require a health hazard  
7           warning under Proposition 65.

8           c.       Defendants JOHNSON & JOHNSON and WAL-MART STORES, INC.  
9           manufacture, distribute, import, sell and/or offer for sale in California *Aveeno Active*  
10          *Naturals Protect + Hydrate Lotion Sunscreen Broad Spectrum SPF 70, UPC #3 8137-*  
11          *115180 6* containing benzophenone in levels that require a health hazard warning under  
12          Proposition 65.

13          d.       Defendants JOHNSON & JOHNSON and WAL-MART STORES, INC.  
14          manufacture, distribute, import, sell and/or offer for sale in California sunscreen  
15          containing benzophenone in levels that require a health hazard warning under Proposition  
16          65.

17          e.       Defendants MERCK & CO., INC., WALGREEN CO. and  
18          DRUGSTORE.COM, INC. manufacture, distribute, import, sell and/or offer for sale in  
19          California *Coppertone Sport High Performance Sunscreen UVA/UVB Broad Spectrum*  
20          *SPF 30, #0 418871 9* containing benzophenone in levels that require a health hazard  
21          warning under Proposition 65.

22          f.       Defendants MERCK & CO., INC., WALGREEN CO. and  
23          DRUGSTORE.COM, INC. manufacture, distribute, import, sell and/or offer for sale in  
24          California sunscreen containing benzophenone in levels that require a health hazard  
25          warning under Proposition 65.

26          g.       Defendants RITE AID CORPORATION and PRODUCT QUEST  
27          MANUFACTURING, LLC manufacture, distribute, import, sell and/or offer for sale in  
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1 California Rite Aid Renewal Ultimate Sheer Sunscreen Lotion Broad Spectrum SPF 100,  
2 Item # 353723, UPC #0 11822 53723 0 containing benzophenone in levels that require a  
3 health hazard warning under Proposition 65.

4 h. Defendants RITE AID CORPORATION and PRODUCT QUEST  
5 MANUFACTURING, LLC manufacture, distribute, import, sell and/or offer for sale in  
6 California sunscreen containing benzophenone in levels that require a health hazard  
7 warning under Proposition 65.

8 7. All products containing benzophenone, as listed in paragraphs 6(a) through 6(h)  
9 above, shall hereinafter be referred to as the "PRODUCTS." As to each specific defendant,  
10 however, PRODUCTS shall refer only to the specific products listed for each specific defendant  
11 in paragraph 6(a) through 6(h).

12 8. Defendants' failure to warn consumers and other individuals in the State of  
13 California about their exposure to benzophenone in conjunction with defendants' sales of the  
14 PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder of such  
15 conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) &  
16 (b)(1).

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

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

23 **PARTIES**

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

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1           12. Defendants DRUGSTORE.COM, INC. ("DRUGSTORE.COM"), ENERGIZER  
2 HOLDINGS, INC. ("ENERGIZER HOLDINGS"), ENERGIZER PERSONAL CARE, LLC  
3 ("EPC"), JOHNSON & JOHNSON ("J&J"), MERCK & CO., INC. ("MERCK"), PRODUCT  
4 QUEST MANUFACTURING, LLC ("PQM"), PLAYTEX PRODUCTS, LLC ("PLAYTEX"),  
5 RITE AID CORPORATION ("RITE AID"), SUN PHARMACEUTICALS CORP. ("SUN  
6 PHARMACEUTICALS"), WALGREEN CO. ("WALGREEN") and WAL-MART STORES,  
7 INC. ("WAL-MART") and are each a person in the course of doing business within the  
8 meaning of Health and Safety Code section 25249.11.

9           13. DRUGSTORE.COM, ENERGIZER HOLDINGS, EPC, J&J, MERCK, PQM,  
10 PLAYTEX, RITE AID, SUN PHARMACEUTICALS, WALGREEN and WAL-MART each  
11 manufacture, distribute, sell and/or offer the PRODUCTS for sale or use in the State of  
12 California, or imply by their conduct that they manufacture, distribute, sell and/or offer the  
13 PRODUCTS for sale or use in the State of California.

14           14. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each  
15 persons in the course of doing business within the meaning of Health and Safety Code section  
16 25249.11.

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

21           16. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons  
22 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

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

26           18. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each persons in  
27 the course of doing business within the meaning of Health and Safety Code section 25249.11.  
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1 **FIRST CAUSE OF ACTION**

2 **(Violation of Proposition 65 - Against All Defendants)**

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

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

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

13 28. On February 26, 2014, plaintiff’s 60-Day Notices of Violation, together with the  
14 requisite Certificates of Merit, were provided to MERCK, WALGREEN, DRUGSTORE.COM,  
15 J&J, WAL-MART STORES, INC. and certain public enforcement agencies stating that, as a  
16 result of DEFENDANTS’ sales of the PRODUCTS containing benzophenone, purchasers and  
17 users in the State of California were being exposed to benzophenone resulting from the  
18 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users  
19 first having been provided with a “clear and reasonable warning” regarding such toxic  
20 exposures, as required by Proposition 65 (“February Notices”).

21 29. On April 16, 2014, plaintiff’s 60-Day Notice of Violation, together with the  
22 requisite Certificate of Merit, was provided to RITE AID CORPORATION and certain public  
23 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS  
24 containing benzophenone, purchasers and users in the State of California were being exposed to  
25 benzophenone resulting from the reasonably foreseeable uses of the PRODUCTS, without the  
26 individual purchasers and users first having been provided with a “clear and reasonable  
27 warning” regarding such toxic exposures, as required by Proposition 65. On June 20, 2014,  
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1 plaintiff's Supplemental 60-Day Notice of Violation, together with the requisite Certificate of  
2 Merit, was provided to RITE CORPORATION, PQM and to certain public enforcement to  
3 include PQM in the allegations of violations set forth in the April 16, 2014 Notice ("April  
4 Notice").

5 30. On June 20, 2014, plaintiff's 60-Day Notice of Violation, together with the  
6 requisite Certificate of Merit, was provided to ENERGIZER HOLDINGS, EPC, PLAYTEX,  
7 SUN PHARMACEUTICALS, WAL-MART STORES, INC. and certain public enforcement  
8 agencies stating that, as a result of DEFENDANTS' sales of the PRODUCTS containing  
9 benzophenone, purchasers and users in the State of California were being exposed to  
10 benzophenone resulting from the reasonably foreseeable uses of the PRODUCTS, without the  
11 individual purchasers and users first having been provided with a "clear and reasonable  
12 warning" regarding such toxic exposures, as required by Proposition 65 ("June Notice").

13 31. The February Notices, April Notice and June Notice shall hereinafter be  
14 collectively referred to as the "Notice."

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

20 33. After receiving PLAINTIFF'S sixty-day notices of violation, the appropriate  
21 public enforcement agencies have failed to commence and diligently prosecute a cause of action  
22 against DEFENDANTS under Proposition 65.

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

26 35. DEFENDANTS knew or should have known that the PRODUCTS they  
27 manufactured, distributed, and offered for sale or use in California contained benzophenone.  
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1           36. Benzophenone is present in or on the PRODUCTS in such a way as to expose  
2 individuals through dermal contact and/or ingestion during reasonably foreseeable use.

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

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

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

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

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

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

25           43. As a consequence of the above-described acts, Health and Safety Code  
26 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
27 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: October 20, 2014

Respectfully Submitted,

THE CHANLER GROUP

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