



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 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, *Nature's Gate Kids Broad Spectrum SPF 50 Sunscreen Lotion, UPC #0 78347 30044 2*. All  
25 such sunscreens containing benzophenone are referred to collectively hereinafter as  
26 "PRODUCTS."  
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1 because one or more instances of wrongful conduct occurred, and continue to occur, in Marin  
2 County, and/or because DEFENDANTS conducted, and continue to conduct, business in this  
3 county with respect to the PRODUCTS.

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

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

14 **FIRST CAUSE OF ACTION**

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

16 26. Plaintiff realleges and incorporates by reference, as if fully set forth herein,  
17 Paragraphs 1 through 25, inclusive.

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

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

26 29. On March 26, 2014, plaintiff’s 60-Day Notice of Violation (the “Notice”),  
27 together with the requisite Certificate of Merit, was provided to LEVLAD, SPROUTS, and  
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1 certain public enforcement agencies stating that, as a result of DEFENDANTS' sales of the  
2 PRODUCTS containing benzophenone, purchasers and users in the State of California were  
3 being exposed to benzophenone resulting from the reasonably foreseeable uses of the  
4 PRODUCTS, without the individual purchasers and users first having been provided with a  
5 "clear and reasonable warning" regarding such toxic exposures, as required by Proposition 65.

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

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

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

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

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

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

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

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

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

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

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

17           41. As a consequence of the above-described acts, Health and Safety Code  
18 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against  
19 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 15, 2014

Respectfully Submitted,  
THE CHANLER GROUP

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