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**FILED**

NOV 18 2014

KIM TURNER, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: E. Chais, Deputy

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 STILA STYLES, LLC; DERMSTORE LLC;  
18 and DOES 1-150, inclusive,

19 Defendants.

20 <sup>CIV</sup> Case No. 1404364

21 **COMPLAINT FOR CIVIL PENALTIES  
22 AND INJUNCTIVE RELIEF**

23 (Health & Safety Code. § 25249.6 *et seq.*)

VIA FAX

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 color  
5 correcting sticks containing sunscreen sold 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 color correcting  
8 sticks containing sunscreen manufactured, distributed, and offered for sale or use to consumers  
9 throughout the State of California.

10 3. High levels of benzophenone are commonly found in color correcting sticks  
11 containing sunscreen that defendants manufacture, distribute, and offer for sale to consumers  
12 throughout the State of California.

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

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

22 6. Defendants manufacture, distribute, and sell color correcting sticks containing  
23 sunscreen that contain benzophenone in levels that require a warning under Proposition 65  
24 including, but not limited to, *Stila CC Color Correcting Stick Broad-Spectrum SPF 20, Warm*  
25 *06, S899-06-1790, UPC #0 94800 34467 9*. All such color correcting sticks containing  
26 sunscreen containing benzophenone are referred to collectively hereinafter as "PRODUCTS."  
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1           15. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each  
2 persons in the course of doing business within the meaning of Health and Safety Code section  
3 25249.11.

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

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

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

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

15           20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
16 State of California.

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

22           22. STILA, DERMSTORE, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
23 DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be  
24 referred to as "DEFENDANTS."

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1 **VENUE AND JURISDICTION**

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

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

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

17 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23   **PRAYER FOR RELIEF**

24           Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

25           1.   That the Court, pursuant to Health and Safety Code section 25249.7(b), assess  
26 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;  
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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, Pursuant to Health and Safety Code section 25249.7(a), issue preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS currently in the chain of commerce in California without a "clear and reasonable warning" as defined by California Code of Regulations title 27, section 25601 *et seq.*;

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

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

Dated: November 14, 2014

Respectfully Submitted,  
THE CHANLER GROUP

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