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FILED

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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 AMERICAN CONSOLIDATED
18 MANUFACTURING CO., INC.; NAIL
19 SYSTEMS INTERNATIONAL; and DOES
20 1-150, inclusive,

21 Defendants.

Case No. CIV 14 0 4 3 6 5

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

(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 UV nail gels
5 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 UV nail gels
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 UV nail gels 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, and sell UV nail gels that contain
22 benzophenone in levels that require a warning under Proposition 65 including, but not limited
23 to, *NSI Balance UV Gel System Color Gels, Red Carpet, #122*. All such UV nail gels
24 containing benzophenone are referred to collectively hereinafter as “PRODUCTS.”

25 7. Defendants’ failure to warn consumers and other individuals in the State of
26 California about their exposure to benzophenone in conjunction with defendants’ sales of the
27 PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder of such
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1 conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) &
2 (b)(1).

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

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

9 **PARTIES**

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

14 11. Defendant American Consolidated Manufacturing Co., Inc. ("AMERICAN
15 CONSOLIDATED") is a person in the course of doing business within the meaning of Health
16 and Safety Code section 25249.11.

17 12. AMERICAN CONSOLIDATED manufactures, distributes, and/or offers the
18 PRODUCTS for sale or use in the State of California, or implies by its conduct that it
19 manufactures, distributes, and/or offers the PRODUCTS for sale or use in the State of California.

20 13. Defendant Nail Systems International ("NAIL SYSTEMS") is a person in the
21 course of doing business within the meaning of Health and Safety Code section 25249.11.

22 14. NAIL SYSTEMS manufactures, distributes, and/or offers the PRODUCTS for sale
23 or use in the State of California, or implies by its conduct that it manufactures, distributes, and/or
24 offers the PRODUCTS for sale or use in the State of California.

25 15. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
26 persons in the course of doing business within the meaning of Health and Safety Code section
27 25249.11.

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1 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users
2 first having been provided with a “clear and reasonable warning” regarding such toxic
3 exposures, as required by Proposition 65.

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

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

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

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

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

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

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

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

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

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

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

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

18 **PRAYER FOR RELIEF**

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

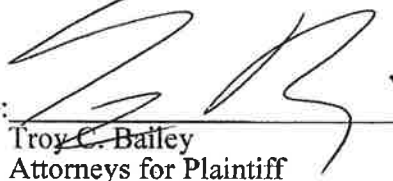
- 20 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess
21 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;
- 22 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),
23 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or
24 offering the PRODUCTS for sale or use in California without first providing a “clear and
25 reasonable warning” as defined by California Code of Regulations title 27, section 25601 *et*
26 *seq.*, as to the harms associated with exposures to benzophenone;
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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 17, 2014

Respectfully Submitted,
THE CHANLER GROUP

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