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1 PRODUCTS is a violation of Proposition 65, and subjects defendants to enjoinder of such
2 conduct as well as civil penalties for each violation. Health & Safety Code § 25249.7(a) &
3 (b)(1).

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

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

10 PARTIES

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

15 11. Defendant MSD CONSUMER CARE, INC. ("MSD") is a person in the course of
16 doing business within the meaning of Health and Safety Code section 25249.11.

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

20 13. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
21 persons in the course of doing business within the meaning of Health and Safety Code section
22 25249.11.

23 14. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
24 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
25 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
26 California.

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

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

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

8 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
9 State of California.

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

15 20. MSD, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
16 and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to as
17 "DEFENDANTS."

18 VENUE AND JURISDICTION

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

24 22. The California Superior Court has jurisdiction over this action pursuant to
25 California Constitution Article VI, section 10, which grants the Superior Court "original
26 jurisdiction in all causes except those given by statute to other trial courts." The statute under
27 which this action is brought does not specify any other basis of subject matter jurisdiction.
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1 23. The California Superior Court has jurisdiction over DEFENDANTS based on
2 plaintiff's information and good faith belief that each defendant is a person, firm, corporation or
3 association that is a citizen of the state of California, has sufficient minimum contacts in the
4 state of California, and/or otherwise purposefully avails itself of the California market.
5 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
6 California courts consistent with traditional notions of fair play and substantial justice.

7 **FIRST CAUSE OF ACTION**

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

9 24. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
10 Paragraphs 1 through 23, inclusive.

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

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

19 27. On January 23, 2015, plaintiff served a supplemental sixty-day notice of violation,
20 together with the requisite certificate of merit, on MSD and certain public enforcement agencies
21 alleging that, as a result of DEFENDANTS' sales of the PRODUCTS containing
22 benzophenone, purchasers and users in the State of California were being exposed to
23 benzophenone resulting from their reasonably foreseeable use of the PRODUCTS, without the
24 individual purchasers and users first having been provided with a "clear and reasonable
25 warning" regarding the harms associated with such exposures, as required by Proposition 65.

26 28. DEFENDANTS have engaged in the manufacture, distribution, and offering of
27 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
28

1 such violations have continued to occur beyond DEFENDANTS' receipt of plaintiff's Notice.
2 As such, DEFENDANTS' violations are ongoing and continuous in nature, and will continue to
3 occur in the future.

4 29. After receiving the claims asserted in the Notice, the appropriate public
5 enforcement agencies have failed to commence and diligently prosecute a cause of action
6 against DEFENDANTS under Proposition 65.

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

10 31. DEFENDANTS knew or should have known that the PRODUCTS they
11 manufactured, distributed, and offered for sale or use in California contained benzophenone.

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

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

17 34. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
18 of the PRODUCTS exposed individuals to benzophenone through dermal contact and/or
19 ingestion.

20 35. DEFENDANTS intended that such exposures to benzophenone from the
21 reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-accidental
22 participation in the manufacture, distribution, and offering of the PRODUCTS for sale or use to
23 individuals in the State of California.

24 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
25 consumers and other individuals in the State of California who were or who would become
26 exposed to benzophenone through dermal contact and/or ingestion during the reasonably
27 foreseeable uses of the PRODUCTS.

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

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

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

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, 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.;

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- 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: August 25, 2015

Respectfully Submitted,
THE CHANLER GROUP

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