

1 Josh Voorhees, State Bar No. 241436
2 Troy C. Bailey, State Bar No. 277424
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

9 Attorneys for Plaintiff
10 ANTHONY E. HELD, Ph.D., P.E.

FILED

SEP 23 2015

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

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF MARIN
14 UNLIMITED CIVIL JURISDICTION

15 ANTHONY E. HELD, PH.D., P.E.,

16 Plaintiff,

17 v.

18 PERSON & COVEY, INC.; and DOES 1-
19 150, inclusive,

20 Defendants.

21 Case No. CW 1503495

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

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

NATURE OF THE ACTION

1
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 sunscreen 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 sunscreen
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 sunscreen 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 sunscreen that contains
22 benzophenone in levels that require a warning under Proposition 65 including, but not limited
23 to, *SolBar PF Cream 50 Sunscreen Broad Spectrum UVB & UVA Sun Protection, NDC 0096-*
24 *0686-04, UPC #3 00960 68604 8*. All such sunscreens containing benzophenone are referred to
25 collectively hereinafter as “PRODUCTS.”

26 7. Defendants’ failure to warn consumers and other individuals in the State of
27 California about their exposure to benzophenone in conjunction with defendants’ sales of the
28

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 PERSON & COVEY, INC. ("PERSON & COVEY") is a person in the
16 course of doing business within the meaning of Health and Safety Code section 25249.11.

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

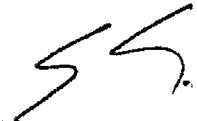
24 36. DEFENDANTS failed to provide a "clear and reasonable warning" to those
25 consumers and other individuals in the State of California who were or who would become
26 exposed to benzophenone through dermal contact and/or ingestion during the reasonably
27 foreseeable uses of the PRODUCTS.
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 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: September 23, 2015

Respectfully Submitted,
THE CHANLER GROUP

By: 

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