

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 octocrylene-
5 containing sunscreen products 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 sunscreen
8 (products claiming a Sun Protection Factor) manufactured, distributed, and offered for sale or
9 use to consumers throughout the State of California.

10 3. Benzophenone is commonly found in sunscreen (products claiming a Sun
11 Protection Factor) 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 BEIERSDORF, INC., THE ESTEE LAUDER COMPANIES INC.,
23 NORDSTROM, INC., STRIVECTIN HOLDINGS, LLC, ULTA SALON, COSMETICS &
24 FRAGRANCE, INC., and WAL-MART STORES, INC., manufacture, distribute, and/or sell
25 octocrylene-containing sunscreen (products claiming a Sun Protection Factor) that contain and
26 causes consumer exposure to benzophenone in levels that require a warning under Proposition
27 65 as follows:
28

1 a. Defendants BEIERSDORF, INC. and WAL-MART STORES, INC.
2 manufacture, distribute, and/or sell octocrylene-containing sunscreen (products claiming
3 a Sun Protection Factor) that contain benzophenone and that is marketed under
4 Beiersdorf, Inc.'s or one of its affiliated companies brand-names, including, but not
5 limited to, *Nivea Men Sensitive Protective Lotion Broad Spectrum SPF 15 Sunscreen*
6 *(Octocrylene 8.4%), UPC #0 72140 01630 2*. Specifically excluded from the products
7 above, however, for purposes of this Complaint, are (i) lip protector products for which
8 BEIERSDORF, INC. received a Notice of Violation from Shefa LMV, LLC on March
9 26, 2015; and (ii) those sunscreen products for which WAL-MART STORES, INC. is
10 subject to enforcement by Anthony E. Held, PH.D., P.E. in *Anthony E. Held v.*
11 *Drugstore.com, Inc., et al., Case No. Civ 1403766*, filed on October 3, 2014, now part of
12 the *Levlad* consolidated action, lead case *Anthony E. Held, PH.D., P.E v. Levlad, LLC, Et*
13 *al., Case No. Civ 1402798*.

14 b. Defendants THE ESTEE LAUDER COMPANIES INC., (including its
15 subsidiary Clinique Laboratories, LLC) and NORDSTROM, INC., manufacture,
16 distribute, and/or sell octocrylene-containing sunscreen (products claiming a Sun
17 Protection Factor) that contain benzophenone including, but not limited to, *Clinique*
18 *Repairwear Laser Focus All-Smooth Makeup Broad Spectrum SPF 15 (Octocrylene 2%),*
19 *7C5H-06, UPC #0 20714 49428 5*. Specifically excluded from the products above,
20 however, for purposes of this Complaint, are skin cream products for which ESTEE
21 LAUDER COMPANIES INC. received a Notice of Violation (through its subsidiary)
22 from Shefa LMV, LLC on August 14, 2015.

23 c. Defendants STRIVECTIN HOLDINGS, LLC and ULTA SALON,
24 COSMETICS & FRAGRANCE, INC., manufacture, distribute, and/or sell octocrylene-
25 containing sunscreen (products claiming a Sun Protection Factor) that contain
26 benzophenone including, but not limited to, *StriVectin-AR Advanced Retinol Day*
27 *Treatment SPF 30 (Octocrylene 2.7%), UPC #8 17777 00815*. Specifically excluded
28

1 from the products above however, for purposes of this Complaint, are lip tint products for
2 which STRIVECTIN HOLDINGS, LLC received a Notice of Violation from Shefa
3 LMV, LLC on May 8, 2015.

4 7. The products referenced in paragraphs 6(a)-(c) shall be collectively referred to
5 hereinafter as the “PRODUCTS.” As to each specific defendant, however, PRODUCTS shall
6 refer only to those products (with exclusions) referenced in paragraphs 6(a)-(c) for that specific
7 defendant.

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

13 9. For defendants’ violations of Proposition 65, plaintiff seeks preliminary and
14 permanent injunctive relief to compel defendants to provide purchasers or users of the
15 PRODUCTS with the required warning regarding the health hazards of benzophenone. Health
16 & Safety Code § 25249.7(a).

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

19 **PARTIES**

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

24 12. Defendant BEIERSDORF, INC (“BEIERSDORF”) is a person in the course of
25 doing business within the meaning of Health and Safety Code section 25249.11.
26
27
28

1 13. BEIERSDORF manufactures, distributes, and/or offers the PRODUCTS for sale or
2 use in the State of California, or implies by its conduct that it manufactures, distributes, and/or
3 offers the PRODUCTS for sale or use in the State of California.

4 14. Defendant THE ESTEE LAUDER COMPANIES INC. (“ESTEE LAUDER”) is a
5 person in the course of doing business within the meaning of Health and Safety Code section
6 25249.11.

7 15. ESTEE LAUDER manufactures, distributes, and/or offers the PRODUCTS for
8 sale or use in the State of California, or implies by its conduct that it manufactures, distributes,
9 and/or offers the PRODUCTS for sale or use in the State of California.

10 16. Defendant NORDSTROM, INC., (“NORDSTROM”) is a person in the course of
11 doing business within the meaning of Health and Safety Code section 25249.11.

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

15 18. Defendant STRIVECTIN HOLDINGS, LLC (“STRIVECTIN”) is a person in the
16 course of doing business within the meaning of Health and Safety Code section 25249.11.

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

20 20. Defendant ULTA SALON, COSMETICS & FRAGRANCE, INC., (“ULTA”) is a
21 person in the course of doing business within the meaning of Health and Safety Code section
22 25249.11.

23 21. ULTA manufactures, distributes, and/or offers the PRODUCTS for sale or use in
24 the State of California, or implies by its conduct that it manufactures, distributes, and/or offers
25 the PRODUCTS for sale or use in the State of California.

26 22. Defendant WAL-MART STORES, INC., (“WAL-MART”) is a person in the
27 course of doing business within the meaning of Health and Safety Code section 25249.11.
28

1 23. WAL-MART manufactures, distributes, and/or offers the PRODUCTS for sale or
2 use in the State of California, or implies by its conduct that it manufactures, distributes, and/or
3 offers the PRODUCTS for sale or use in the State of California.

4 24. Defendants DOES 1-50 (“MANUFACTURER DEFENDANTS”) are each a
5 person in the course of doing business within the meaning of Health and Safety Code section
6 25249.11.

7 25. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,
8 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,
9 and manufacture one or more of the PRODUCTS offered for sale or use in the State of
10 California.

11 26. Defendants DOES 51-100 (“DISTRIBUTOR DEFENDANTS”) are each a person
12 in the course of doing business within the meaning of Health and Safety Code section 25249.11.

13 27. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
14 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
15 in the State of California.

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

18 29. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
19 State of California.

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

25 31. BEIERSDORF, ESTEE LAUDER, NORDSTROM, STRIVECTIN, ULTA,
26 WAL-MART, INC., MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS,
27
28

1 and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to as
2 “DEFENDANTS.”

3 **VENUE AND JURISDICTION**

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

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

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

19 **FIRST CAUSE OF ACTION**

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

21 35. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
22 Paragraphs 1 through 34, inclusive.

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

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

5 38. On March 28, 2016, a 60-Day Notice of Violation (“Notice”), together with the
6 requisite Certificate of Merit, was provided to BEIERSDORF, ESTEE LAUDER,
7 NORDSTROM, STRIVECTIN, ULTA, WAL-MART and certain public enforcement agencies
8 stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing benzophenone,
9 purchasers and users in the State of California were being exposed to benzophenone resulting
10 from the reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and
11 users first having been provided with a “clear and reasonable warning” regarding such toxic
12 exposures, as required by Proposition 65.

13 39. DEFENDANTS have engaged in the manufacture, distribution, and offering of
14 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
15 such violations have continued to occur beyond DEFENDANTS’ receipt of plaintiff’s 60-Day
16 Notice. As such, DEFENDANTS’ violations are ongoing and continuous in nature, and will
17 continue to occur in the future.

18 40. After receiving the claims asserted in the Notice, the appropriate public
19 enforcement agencies have failed to commence and diligently prosecute a cause of action
20 against DEFENDANTS under Proposition 65.

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

24 42. DEFENDANTS knew or should have known that the PRODUCTS they
25 manufactured, distributed, and offered for sale or use in California contained benzophenone.
26
27
28

1 43. Benzophenone is present in or on the PRODUCTS in such a way as to expose
2 individuals through dermal contact, ingestion, and/or inhalation during reasonably foreseeable
3 use.

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

7 45. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
8 of the PRODUCTS exposed individuals to benzophenone through dermal contact, ingestion,
9 and/or inhalation.

10 46. DEFENDANTS intended that such exposures to benzophenone from the
11 reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-accidental
12 participation in the manufacture, distribution, and offering of the PRODUCTS for sale or use to
13 individuals in the State of California.

14 47. DEFENDANTS failed to provide a “clear and reasonable warning” to those
15 consumers and other individuals in the State of California who were or who would become
16 exposed to benzophenone through dermal contact, ingestion, and/or inhalation during the
17 reasonably foreseeable uses of the PRODUCTS.

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

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

26
27
28

