

**FILED**

JUL 21 2016

JAMES M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: C. Lucchesi, Deputy

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9  
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

UNLIMITED CIVIL JURISDICTION

11  
12 ANTHONY E. HELD, PH.D., P.E.,

13 Plaintiff,

14 v.

15 AMERISOURCEBERGEN  
16 CORPORATION; and DOES 1-150,  
inclusive,

17 Defendants.

Case No.

*CIV* 1602644

COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF

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

1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff Anthony E. Held,  
3 Ph.D., P.E. (“Dr. Held”) in the public interest of the citizens of the State of California to enforce  
4 the People’s right to be informed of the presence of benzophenone, a toxic chemical found in  
5 sunscreen sold in California.

6 2. By this Complaint, Dr. Held seeks to remedy defendants’ continuing failure to  
7 warn California citizens about the risk of exposure to benzophenone present in sunscreen  
8 manufactured, distributed, and offered for sale or use to consumers throughout the State of  
9 California.

10 3. Benzophenone is commonly found in sunscreen that defendants manufacture,  
11 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/or sell octocrylene-containing sunscreen  
22 (products that have a sun protection factor) that contain benzophenone in levels that require a  
23 warning under Proposition 65 including, but not limited to, *Good Neighbor Pharmacy Value*  
24 *Size Sport Sunscreen Broad-Spectrum SPF 50 (Octocrylene 4%), ABC#: 161-005, UPC #0*  
25 *87701 41182 3*. All such octocrylene-containing sunscreen containing benzophenone are  
26 referred to collectively hereinafter as “PRODUCTS.”  
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1 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
2 California.

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

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

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

10 18. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
11 State of California.

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

17 20. AMERISOURCEBERGEN, MANUFACTURER DEFENDANTS,  
18 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate,  
19 collectively be referred to as “DEFENDANTS.”

20 **VENUE AND JURISDICTION**

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

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

3 23. The California Superior Court has jurisdiction over DEFENDANTS based on Dr.  
4 Held’s information and good faith belief that each defendant is a person, firm, corporation or  
5 association that is a citizen of the State of California, has sufficient minimum contacts in the  
6 State of California, and/or otherwise purposefully avails itself of the California market.  
7 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by  
8 California courts consistent with traditional notions of fair play and substantial justice.

9 **FIRST CAUSE OF ACTION**

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

11 24. Dr. Held realleges and incorporates by reference, as if fully set forth herein,  
12 Paragraphs 1 through 23, inclusive.

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

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

21 27. On April 27, 2016, a 60-Day Notice of Violation (“Notice”) was provided to  
22 AMERISOURCEBERGEN and certain public enforcement agencies stating that, as a result of  
23 DEFENDANTS’ sales of the PRODUCTS containing benzophenone, purchasers and users in  
24 the State of California were being exposed to benzophenone resulting from the reasonably  
25 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having  
26 been provided with a “clear and reasonable warning” regarding such toxic exposures, as  
27 required by Proposition 65.

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1           28. DEFENDANTS have engaged in the manufacture, distribution, and offering of  
2 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and  
3 such violations have continued to occur beyond DEFENDANTS' receipt of Dr. Held's Notice.  
4 As such, DEFENDANTS' violations are ongoing and continuous in nature, and will continue to  
5 occur in the future.

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

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

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

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

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

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

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

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

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

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

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

14 **PRAYER FOR RELIEF**

15 Wherefore, Dr. Held prays for judgment against DEFENDANTS as follows:

16 1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess  
17 civil penalties against DEFENDANTS in the amount of \$2,500 per day for each violation;

18 2. That the Court, pursuant to Health and Safety Code section 25249.7(a),  
19 preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or  
20 offering the PRODUCTS for sale or use in California without first providing a “clear and  
21 reasonable warning” as defined by California Code of Regulations title 27, section 25601 *et*  
22 *seq.*, as to the harms associated with exposures to benzophenone;

23 3. That the Court, Pursuant to Health and Safety Code section 25249.7(a), issue  
24 preliminary and permanent injunctions mandating that DEFENDANTS recall all PRODUCTS  
25 currently in the chain of commerce in California without a “clear and reasonable warning” as  
26 defined by California Code of Regulations title 27, section 25601 *et seq.*;

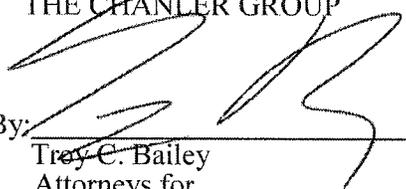
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- 4. That the Court grant Dr. Held his reasonable attorneys' fees and costs of suit; and
- 5. That the Court grant such other and further relief as may be just and proper.

Dated: July 20, 2016

Respectfully Submitted,  
THE CHANLER GROUP

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