

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 Josh@chanler.com  
10 Troy@chanler.com

11 Attorneys for Plaintiff  
12 ANTHONY E. HELD, PH.D., P.E.

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF ALAMEDA  
15 UNLIMITED CIVIL JURISDICTION

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

17 Plaintiff,

18 v.

19 PRIME ENTERPRISES, INC.; and DOES 1-  
20 150, inclusive,

21 Defendants.

) Case No.

**RG 17846980**

) **COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

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

ENDORSED  
FILED  
ALAMEDA COUNTY  
JAN 25 2017  
CLERK OF THE SUPERIOR COURT  
By MARGARET J. DOWNING  
Deputy

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 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 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 octocrylene-containing sunscreen (products  
11 claiming a Sun Protection Factor) that defendants manufacture, distribute, and offer for sale to  
12 consumers 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 manufacture, distribute, and sell octocrylene-containing sunscreens  
23 (products claiming a Sun Protection Factor) that contain benzophenone in levels that require a  
24 warning under Proposition 65 including, but not limited to, the *Sol Mate Kid's Continuous*  
25 *Spray Sunscreen 50 (Octocrylene 2.75%), UPC #0 87524 96009 6* and the *Sol Mate Sport*  
26 *Continuous Spray Sunscreen 30 (Octocrylene 2.75%), UPC #0 87524 96021 8*. All such  
27  
28

1 octocrylene-containing sunscreens (products claiming a Sun Protection Factor) containing  
2 benzophenone are referred to collectively hereinafter as "PRODUCTS."

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

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

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

14 **PARTIES**

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

19 11. Defendant PRIME ENTERPRISES, INC. ("PRIME") is a person in the course of  
20 doing business within the meaning of Health and Safety Code section 25249.11.

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

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

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

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

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

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

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

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

20. PRIME, MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate, collectively be referred to as “DEFENDANTS.”

## VENUE AND JURISDICTION

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

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

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

**FIRST CAUSE OF ACTION**

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

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

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

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

27. On May 26, 2016, a 60-Day Notice of Violation (“Notice”) was provided to PRIME and certain public enforcement agencies stating that, as a result of DEFENDANTS’ sales of the PRODUCTS containing benzophenone, purchasers and users in the State of California were being exposed to benzophenone resulting from the reasonably foreseeable uses

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

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

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

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

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

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

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

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

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

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

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

1 currently in the chain of commerce in California without a “clear and reasonable warning” as  
2 defined by California Code of Regulations title 27, section 25601 et seq.;

3 4. That the Court grant plaintiff his reasonable attorneys’ fees and costs of suit; and

4 5. That the Court grant such other and further relief as may be just and proper.

5  
6 Dated: January 23, 2017

Respectfully Submitted,  
THE CHANLER GROUP

7  
8  
9 By: 

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