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ENDORSED
FILED
ALAMEDA COUNTY

MAY 12 2017

CLERK OF THE SUPERIOR COURT
By TANIA PIERCE Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION

13 JOHN MOORE,

14 Plaintiff,

15 v.

16 E.T. BROWNE DRUG CO., INC.,

17 Defendant.

Case No.

RG 17860 158

**COMPLAINT FOR CIVIL PENALTIES
AND INJUNCTIVE RELIEF**

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

BY FAX

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1 NATURE OF THE ACTION

2 1. This Complaint is a representative action brought by plaintiff John Moore
3 (“Moore”) 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, Moore seeks to remedy defendant’s continuing failure to warn
7 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 defendant manufactures,
11 distributes, and offers 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. Defendant manufactures, distributes, and/or sells octocrylene-containing
22 sunscreen (products that have a sun protection factor) that contain benzophenone in levels that
23 require a warning under Proposition 65 including, but not limited to, *Palmer’s Cocoa Butter*
24 *Formula with Vitamin E Eventone Suncare SPF 50 (Octocrylene 10%), UPC #0 10181 09200 8*
25 *and Palmer’s Cocoa Butter Formula with Vitamin E Eventone Suncare Cocoa Butter*
26 *Moisturizing Sunscreen for Face SPF 45 (Octocrylene 2.7%), UPC #0 10181 09545 0*. All such
27 octocrylene-containing sunscreen containing benzophenone manufactured for sale in,
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1 distributed for sale in, or sold in California by the defendant are referred to collectively
2 hereinafter as "PRODUCTS."

3 7. Defendant's failure to warn consumers and other individuals in the State of
4 California about their exposure to benzophenone in conjunction with defendant's sales of the
5 PRODUCTS is a violation of Proposition 65, and subjects defendant 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 defendant's violations of Proposition 65, Moore seeks preliminary and
9 permanent injunctive relief to compel defendant 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), Moore also seeks civil
13 penalties against defendant for its violations of Proposition 65.

14 **PARTIES**

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

19 11. Defendant E.T. BROWNE DRUG CO., INC. ("E.T. BROWNE") is a person in
20 the course of doing business within the meaning of Health and Safety Code section 25249.11.

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

1 **VENUE AND JURISDICTION**

2 13. Venue is proper in the Alameda County Superior Court, pursuant to Code of Civil
3 Procedure sections 393, 395, and 395.5, because this Court is a court of competent jurisdiction,
4 because one or more instances of wrongful conduct occurred, and continue to occur, in Alameda
5 County, and/or because E.T. BROWNE conducted, and continues to conduct, business in this
6 county with respect to the PRODUCTS.

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

11 15. The California Superior Court has jurisdiction over E.T. BROWNE based on
12 Moore’s information and good faith belief that E.T. BROWNE is a person, firm, corporation or
13 association that is a citizen of the State of California, has sufficient minimum contacts in the
14 State of California, and/or otherwise purposefully avails itself of the California market. E.T.
15 BROWNE’S purposeful availment renders the exercise of personal jurisdiction by California
16 courts consistent with traditional notions of fair play and substantial justice.

17 **FIRST CAUSE OF ACTION**

18 **(Violation of Proposition 65)**

19 16. Moore realleges and incorporates by reference, as if fully set forth herein,
20 Paragraphs 1 through 15, inclusive.

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

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

3 19. On December 6, 2016, a 60-Day Notice of Violation (“Notice”) was provided to
4 E.T. BROWNE and certain public enforcement agencies stating that, as a result of E.T.
5 BROWNE’S sales of the PRODUCTS containing benzophenone, purchasers and users in the
6 State of California were being exposed to benzophenone resulting from the reasonably
7 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
8 been provided with a “clear and reasonable warning” regarding such toxic exposures, as
9 required by Proposition 65.

10 20. E.T. BROWNE has engaged in the manufacture, distribution, and offering of the
11 PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and such
12 violations have continued to occur beyond E.T. BROWNE’S receipt of Moore’s Notice. As
13 such, E.T. BROWNE’S violations are ongoing and continuous in nature, and will continue to
14 occur in the future.

15 21. After receiving the claims asserted in the Notice, the appropriate public
16 enforcement agencies have failed to commence and diligently prosecute a cause of action
17 against E.T. BROWNE under Proposition 65.

18 22. The PRODUCTS manufactured, distributed, and offered for sale or use in
19 California by E.T. BROWNE contain benzophenone in amounts above the allowable state
20 limits, such that they require a “clear and reasonable” warning under Proposition 65.

21 23. E.T. BROWNE knew or should have known that the PRODUCTS it
22 manufactured, distributed, and offered for sale or use in California contained benzophenone.

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

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

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1 26. E.T. BROWNE had knowledge that the normal and reasonably foreseeable uses
2 of the PRODUCTS exposed individuals to benzophenone through dermal contact and/or
3 ingestion.

4 27. E.T. BROWNE intended that such exposures to benzophenone from the
5 reasonably foreseeable uses of the PRODUCTS would occur by their deliberate, non-accidental
6 participation in the manufacture, distribution, and offering of the PRODUCTS for sale or use to
7 individuals in the State of California.

8 28. E.T. BROWNE failed to provide a “clear and reasonable warning” to those
9 consumers and other individuals in the State of California who were or who would become
10 exposed to benzophenone through dermal contact and/or ingestion during the reasonably
11 foreseeable uses of the PRODUCTS.

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

17 30. Pursuant to Health and Safety Code section 25249.7(b), as a consequence of the
18 above-described acts, E.T. BROWNE is liable for a maximum civil penalty of \$2,500 per day
19 for each violation.

20 31. As a consequence of the above-described acts, Health and Safety Code
21 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against E.T.
22 BROWNE.

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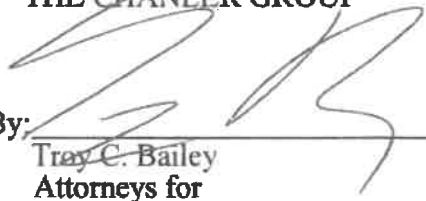
PRAYER FOR RELIEF

Wherefore, Moore prays for judgment against E.T. BROWNE as follows:

1. That the Court, pursuant to Health and Safety Code section 25249.7(b), assess civil penalties against E.T. BROWNE 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 E.T. BROWNE 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 E.T. BROWNE 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.*;
4. That the Court grant Moore 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: May 12, 2017

Respectfully Submitted,
THE CHANLER GROUP

By: 
Tray C. Bailey
Attorneys for
JOHN MOORE