

FILED

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MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy.

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF MARIN

13 UNLIMITED CIVIL JURISDICTION

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

) Case No. 1402967

15 Plaintiff,

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

16 v.

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

17 L'OREAL USA, INC.; WALGREEN CO.;
18 DRUGSTORE.COM, INC.; and DOES 1-
19 150, inclusive,

20 Defendants.

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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 sunscreens 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 sunscreens
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 sunscreens 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 sunscreens that contain
22 benzophenone in levels that require a warning under Proposition 65 including, but not limited
23 to, *La Roche-Posay Anthelios 40 Sunscreen Cream, UPC # 8 83140 50016 2*. All such
24 sunscreens containing benzophenone are referred to collectively hereinafter as “PRODUCTS.”

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

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

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

9 **PARTIES**

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

14 11. Defendant L'OREAL USA, INC. ("L'OREAL") is a person in the course of doing
15 business within the meaning of Health and Safety Code section 25249.11.

16 12. L'OREAL manufactures, distributes, and/or offers the PRODUCTS for sale or use
17 in the State of California, or implies by its conduct that it manufactures, distributes, and/or offers
18 the PRODUCTS for sale or use in the State of California.

19 13. Defendant WALGREEN CO. ("WALGREEN") is a person in the course of doing
20 business within the meaning of Health and Safety Code section 25249.11.

21 14. WALGREEN manufactures, distributes, and/or offers the PRODUCTS for sale or
22 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.

24 15. Defendant DRUGSTORE.COM, INC. ("DRUGSTORE.COM") is a person in the
25 course of doing business within the meaning of Health and Safety Code section 25249.11.

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

4 17. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
5 persons in the course of doing business within the meaning of Health and Safety Code section
6 25249.11.

7 18. 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 19. 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 20. 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 21. 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 22. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
19 State of California.

20 23. 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 24. L'OREAL, WALGREEN, DRUGSTORE.COM, MANUFACTURER
26 DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall,
27 where appropriate, collectively be referred to as "DEFENDANTS."
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1 **VENUE AND JURISDICTION**

2 25. Venue is proper in the Marin 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 Marin
5 County, and/or because DEFENDANTS conducted, and continue to conduct, business in this
6 county with respect to the PRODUCTS.

7 26. 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 27. The California Superior Court has jurisdiction over DEFENDANTS based on
12 plaintiff's information and good faith belief that each defendant 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.
15 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
16 California courts consistent with traditional notions of fair play and substantial justice.

17 **FIRST CAUSE OF ACTION**

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

19 28. Plaintiff realleges and incorporates by reference, as if fully set forth herein,
20 Paragraphs 1 through 27, inclusive.

21 29. 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 30. 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 31. On February 26, 2014, plaintiff’s 60-Day Notice of Violation (the “Notice”),
4 together with the requisite Certificate of Merit, was provided to L’OREAL, WALGREEN,
5 DRUGSTORE.COM and certain public enforcement agencies stating that, as a result of
6 DEFENDANTS’ sales of the PRODUCTS containing benzophenone, purchasers and users in
7 the State of California were being exposed to benzophenone resulting from the reasonably
8 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
9 been provided with a “clear and reasonable warning” regarding such toxic exposures, as
10 required by Proposition 65.

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

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

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

22 35. DEFENDANTS knew or should have known that the PRODUCTS they
23 manufactured, distributed, and offered for sale or use in California contained benzophenone.

24 36. Benzophenone is present in or on the PRODUCTS in such a way as to expose
25 individuals through dermal contact and/or ingestion during reasonably foreseeable use.
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1 37. The normal and reasonably foreseeable uses of the PRODUCTS have caused, and
2 continue to cause, consumer exposures to benzophenone, as such exposures are defined by
3 California Code of Regulations title 27, section 25602(b).

4 38. DEFENDANTS had knowledge that the normal and reasonably foreseeable uses
5 of the PRODUCTS exposed individuals to benzophenone through dermal contact and/or
6 ingestion.

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

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

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

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

23 43. As a consequence of the above-described acts, Health and Safety Code
24 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
25 DEFENDANTS.

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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 grant plaintiff his reasonable attorneys' fees and costs of suit; and

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

Dated: August 4, 2014

Respectfully Submitted,
THE CHANLER GROUP

By: 

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