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FILED
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KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

ANTHONY E. HELD, PH.D., P.E.)
)
Plaintiff,)
)
v.)
)
DRUGSTORE.COM, INC.; ENERGIZER)
HOLDINGS, INC.; ENERGIZER)
PERSONAL CARE, LLC; JOHNSON &)
JOHNSON; MERCK & CO., INC.;)
PLAYTEX PRODUCTS, LLC; PRODUCT)
QUEST MANUFACTURING, LLC; RITE)
AID CORPORATION; SUN)
PHARMACEUTICALS CORP.;)
WALGREEN CO.; WAL-MART STORES,)
INC. and DOES 1-150, inclusive,)
)
Defendants.)

Case No. CIV 14 03 766

**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. 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 and
5 scar creams containing sunscreen 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 sunscreens and
8 scar creams containing sunscreen manufactured, distributed, and offered for sale or use to
9 consumers throughout the State of California.

10 3. High levels of benzophenone are commonly found in sunscreens and scar creams
11 containing sunscreen 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 manufacture, distribute, sell and/or offer for sale in California
23 products containing benzophenone in levels that require a warning under Proposition 65 as
24 follows:

25 a. Defendants ENERGIZER HOLDINGS, INC., ENERGIZER PERSONAL
26 CARE, LLC, PLAYTEX PRODUCTS, LLC, SUN PHARMACEUTICALS CORP. and
27 WAL-MART STORES, INC. manufacture, distribute, import, sell and/or offer for sale in
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1 California *Banana Boat Kids UVA/UVB Protection Sunscreen Stick, UPC #0 79656*
2 *04653 3* containing benzophenone in levels that require a health hazard warning under
3 Proposition 65.

4 b. Defendants ENERGIZER HOLDINGS, INC., ENERGIZER PERSONAL
5 CARE, LLC, PLAYTEX PRODUCTS, LLC, SUN PHARMACEUTICALS CORP. and
6 WAL-MART STORES, INC. manufacture, distribute, import, sell and/or offer for sale in
7 California sunscreen containing benzophenone in levels that require a health hazard
8 warning under Proposition 65.

9 c. Defendants JOHNSON & JOHNSON and WAL-MART STORES, INC.
10 manufacture, distribute, import, sell and/or offer for sale in California *Aveeno Active*
11 *Naturals Protect + Hydrate Lotion Sunscreen Broad Spectrum SPF 70, UPC #3 8137-*
12 *115180 6* containing benzophenone in levels that require a health hazard warning under
13 Proposition 65.

14 d. Defendants JOHNSON & JOHNSON and WAL-MART STORES, INC.
15 manufacture, distribute, import, sell and/or offer for sale in California sunscreen
16 containing benzophenone in levels that require a health hazard warning under Proposition
17 65.

18 e. Defendants MERCK & CO., INC., WALGREEN CO. and
19 DRUGSTORE.COM, INC. manufacture, distribute, import, sell and/or offer for sale in
20 California *Coppertone Sport High Performance Sunscreen UVA/UVB Broad Spectrum*
21 *SPF 30, #0 418871 9* containing benzophenone in levels that require a health hazard
22 warning under Proposition 65.

23 f. Defendants MERCK & CO., INC., WALGREEN CO. and
24 DRUGSTORE.COM, INC. manufacture, distribute, import, sell and/or offer for sale in
25 California scar scream containing sunscreen, containing benzophenone in levels that
26 require a health hazard warning under Proposition 65.

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g. Defendants RITE AID CORPORATION and PRODUCT QUEST MANUFACTURING, LLC manufacture, distribute, import, sell and/or offer for sale in California *Rite Aid Renewal Ultimate Sheer Sunscreen Lotion Broad Spectrum SPF 100, Item # 353723, UPC #0 11822 53723 0* containing benzophenone in levels that require a health hazard warning under Proposition 65.

h. Defendants RITE AID CORPORATION and PRODUCT QUEST MANUFACTURING, LLC manufacture, distribute, import, sell and/or offer for sale in California sunscreen containing benzophenone in levels that require a health hazard warning under Proposition 65.

7. All products containing benzophenone, as listed in paragraphs 6(a) through 6(h) above, shall hereinafter be referred to as the "PRODUCTS." As to each specific defendant, however, PRODUCTS shall refer only to the specific products listed for each specific defendant in paragraph 6(a) through 6(h).

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

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

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

PARTIES

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

6 12. Defendants DRUGSTORE.COM, INC. ("DRUGSTORE.COM"), ENERGIZER
7 HOLDINGS, INC. ("ENERGIZER HODLINGS"), ENERGIZER PERSONAL CARE, LLC
8 ("EPC"), JOHNSON & JOHNSON ("J&J"), MERCK & CO., INC. ("MERCK"), PRODUCT
9 QUEST, MANUFACTURING, LLC ("PQM"), PLAYTEX PRODUCTS, LLC ("PLAYTEX"),
10 RITE AID CORPORATION ("RITE AID"), SUN PHARMACEUTICALS CORP. ("SUN
11 PHARMACEUTICALS"), WALGREEN CO. ("WALGREEN") and WAL-MART STORES,
12 INC. ("WAL-MART") and are each a person in the course of doing business within the
13 meaning of Health and Safety Code section 25249.11.

14 13. DRUGSTORE.COM, ENERGIZER HODLINGS, EPC, J&J, MERCK, MERZ,
15 PQM, PLAYTEX, RITE AID, SUN PHARMACEUTICALS, WALGREEN and WAL-MART
16 each manufacture, distribute, sell and/or offer the PRODUCTS for sale or use in the State of
17 California, or imply by their conduct that they manufacture, distribute, sell and/or offer the
18 PRODUCTS for sale or use in the State of California.

19 14. Defendants DOES 1-50 ("MANUFACTURER DEFENDANTS") are each
20 persons in the course of doing business within the meaning of Health and Safety Code section
21 25249.11.

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

26 16. Defendants DOES 51-100 ("DISTRIBUTOR DEFENDANTS") are each persons
27 in the course of doing business within the meaning of Health and Safety Code section 25249.11.
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1 17. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and/or
2 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use
3 in the State of California.

4 18. Defendants DOES 101-150 ("RETAILER DEFENDANTS") are each persons in
5 the course of doing business within the meaning of Health and Safety Code section 25249.11.

6 19. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
7 State of California.

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

13 21. DRUGSTORE.COM, ENERGIZER HODLINGS, EPC, J&J, MERCK, MERZ,
14 PQM, PLAYTEX, RITE AID, SUN PHARMACEUTICALS, WALGREEN, WAL-MART,
15 MANUFACTURER DEFENDANTS, DISTRIBUTOR DEFENDANTS, and RETAILER
16 DEFENDANTS shall, where appropriate, collectively be referred to as "DEFENDANTS."

17 VENUE AND JURISDICTION

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

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

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

7 **FIRST CAUSE OF ACTION**

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

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

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

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

19 28. On February 26, 2014, plaintiff's 60-Day Notices of Violation, together with the
20 requisite Certificates of Merit, were provided to MERCK, WALGREEN, DRUGSTORE.COM,
21 J&J, WAL-MART STORES, INC. and certain public enforcement agencies stating that, as a
22 result of DEFENDANTS' sales of the PRODUCTS containing benzophenone, purchasers and
23 users in the State of California were being exposed to benzophenone resulting from the
24 reasonably foreseeable uses of the PRODUCTS, without the individual purchasers and users
25 first having been provided with a "clear and reasonable warning" regarding such toxic
26 exposures, as required by Proposition 65 ("February Notices").

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1 29. On April 16, 2014, plaintiff's 60-Day Notice of Violation, together with the
2 requisite Certificate of Merit, was provided to RITE AID CORPORATION and certain public
3 enforcement agencies stating that, as a result of DEFENDANTS' sales of the PRODUCTS
4 containing benzophenone, purchasers and users in the State of California were being exposed to
5 benzophenone resulting from the reasonably foreseeable uses of the PRODUCTS, without the
6 individual purchasers and users first having been provided with a "clear and reasonable
7 warning" regarding such toxic exposures, as required by Proposition 65. On June 20, 2014,
8 plaintiff's Supplemental 60-Day Notice of Violation, together with the requisite Certificate of
9 Merit, was provided to RITE CORPORATION, PQM and to certain public enforcement to
10 include PQM in the allegations of violations set forth in the April 16, 2014 Notice ("April
11 Notice").

12 30. On June 20, 2014, plaintiff's 60-Day Notice of Violation, together with the
13 requisite Certificate of Merit, was provided to ENERGIZER HOLDINGS, EPC, PLAYTEX,
14 SUN PHARMACEUTICALS, WAL-MART STORES, INC. and certain public enforcement
15 agencies stating that, as a result of DEFENDANTS' sales of the PRODUCTS containing
16 benzophenone, purchasers and users in the State of California were being exposed to
17 benzophenone resulting from the reasonably foreseeable uses of the PRODUCTS, without the
18 individual purchasers and users first having been provided with a "clear and reasonable
19 warning" regarding such toxic exposures, as required by Proposition 65 ("June Notice").

20 31. The February Notices, April Notice and June Notice shall hereinafter be
21 collectively referred to as the "Notice."

22 32. DEFENDANTS have engaged in the manufacture, distribution, and offering of
23 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
24 such violations have continued to occur beyond DEFENDANTS' receipt of plaintiff's Notice.
25 As such, DEFENDANTS' violations are ongoing and continuous in nature, and will continue to
26 occur in the future.

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1 33. After receiving PLAINTIFF'S sixty-day notices of violation, the appropriate
2 public enforcement agencies have failed to commence and diligently prosecute a cause of action
3 against DEFENDANTS under Proposition 65.

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

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

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

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

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

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

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

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

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

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

9 **PRAYER FOR RELIEF**

10 Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

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

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

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

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

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21 Dated: October 3, 2014

Respectfully Submitted,

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THE CHANLER GROUP

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By: 

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

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