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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION

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12 ANTHONY E. HELD, PH.D., P.E.,) Case No.
13 Plaintiff,)
14 v.) **COMPLAINT FOR CIVIL PENALTIES**
) **AND INJUNCTIVE RELIEF**
15 KORRES USA LTD.; LVMH MOET) (Health & Safety Code. § 25249.6 *et seq.*)
16 HENNESSY LOUIS VUITTON, INC.;)
17 SEPHORA USA, INC.; and DOES 1-150,)
inclusive,)
18 Defendants.)

NATURE OF THE ACTION

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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. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at
11 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”), “[n]o person in the course of
12 doing business shall knowingly and intentionally expose any individual to a chemical known to
13 the state to cause cancer or reproductive toxicity without first giving clear and reasonable
14 warning to such individual . . .” Health & Safety Code § 25249.6.

15 4. Pursuant to Proposition 65, on June 22, 2012, California identified and listed
16 benzophenone as a chemical known to cause cancer. Benzophenone became subject to the
17 “clear and reasonable warning” requirements of the act one year later on June 22, 2013. Cal.
18 Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 & 25249.10(b).

19 5. Defendants manufacture, distribute, and/or sell sunscreen that contains
20 benzophenone in levels that require a warning under Proposition 65 including, but not limited
21 to, *Korres Suncare Yoghurt Nourishing Fluid Veil Face Sunscreen Broad Spectrum SPF 30*
22 *(Octocrylene 10%), UPC #5 203069 058783*. All such sunscreen containing benzophenone is
23 referred to collectively hereinafter as “PRODUCTS.”

24 6. Defendants’ failure to warn consumers and other individuals in the State of
25 California about their exposure to benzophenone in conjunction with defendants’ sales of the
26 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 7. For defendants' violations of Proposition 65, Dr. Held 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 8. Pursuant to Health and Safety Code section 25249.7(b), Dr. Held also seeks civil
8 penalties against defendants for their violations of Proposition 65.

9 **PARTIES**

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

14 10. Defendant KORRES USA LTD. ("KORRES") is a person in the course of doing
15 business within the meaning of Health and Safety Code section 25249.11.

16 11. KORRES 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 12. Defendant LVMH MOET HENNESSY LOUIS VUITTON, INC. ("LVMH") is a
20 person in the course of doing business within the meaning of Health and Safety Code section
21 25249.11.

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

25 14. Defendant SEPHORA USA, INC. ("SEPHORA") is a person in the course of
26 doing business within the meaning of Health and Safety Code section 25249.11.

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

4 16. 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 17. 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 18. 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 19. 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 20. 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 21. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the
19 State of California.

20 22. At this time, the true names of defendants DOES 1 through 150, inclusive, are
21 unknown to Dr. Held, who, therefore, sues said defendants by their fictitious names pursuant to
22 Code of Civil Procedure section 474. Dr. Held 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 23. KORRES, LVMH, SEPHORA, MANUFACTURER DEFENDANTS,
26 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS shall, where appropriate,
27 collectively be referred to as “DEFENDANTS.”
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1 **VENUE AND JURISDICTION**

2 24. 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 25. 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 26. The California Superior Court has jurisdiction over DEFENDANTS based on Dr.
12 Held’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 27. Dr. Held realleges and incorporates by reference, as if fully set forth herein,
20 Paragraphs 1 through 26, inclusive.

21 28. 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 29. 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 30. On March 23, 2016, a 60-Day Notice of Violation (“Notice”) was provided to
4 KORRES, LVMH, SEPHORA, and certain public enforcement agencies stating that, as a result
5 of DEFENDANTS’ sales of the PRODUCTS containing benzophenone, purchasers and users in
6 the 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 31. DEFENDANTS have engaged in the manufacture, distribution, and offering of
11 the PRODUCTS for sale or use in violation of Health and Safety Code section 25249.6, and
12 such violations have continued to occur beyond DEFENDANTS’ receipt of Dr. Held’s Notice.
13 As such, DEFENDANTS’ violations are ongoing and continuous in nature, and will continue to
14 occur in the future.

15 32. 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 DEFENDANTS under Proposition 65.

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

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

23 35. 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 36. 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 37. DEFENDANTS 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 38. DEFENDANTS 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 39. DEFENDANTS 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 40. 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
15 DEFENDANTS without a “clear and reasonable warning,” have suffered, and continue to
16 suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

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

20 42. 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
22 DEFENDANTS.

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1 **PRAYER FOR RELIEF**

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

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

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

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

14 4. That the Court grant Dr. Held his reasonable attorneys’ fees and costs of suit; and

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

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17 Dated: July 27, 2016

Respectfully Submitted,
THE CHANLER GROUP

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20 By: _____
Troy C. Bailey
Attorneys for
ANTHONY E. HELD, PH.D., P.E.