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FILED
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KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: R. Smith, Deputy

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

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

Plaintiff,

v.

CCA INDUSTRIES, INC.; MACY'S, INC.;
SEARS HOLDINGS CORPORATION;
SHISEIDO AMERICAS CORPORATION;
SHISEIDO AMERICA INC.; and DOES 1-
150, inclusive,

Defendants.

) Case No. CIV C ✓ 15 0 0 4 0 3

) **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 certain products 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
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, sell and/or offer for sale in California
20 products containing benzophenone in levels that require a warning under Proposition 65 as
21 follows:

22 a. Defendants CCA INDUSTRIES, INC. and SEARS HOLDINGS
23 CORPORATION manufacture, distribute, import, sell and/or offer for sale in California
24 *Solar Sense Clear Zinc Sunscreen Sport Body Stick Broad Spectrum SPF 50, #17774,*
25 *UPC #0 18515 17774 2,* containing benzophenone in levels that require a health hazard
26 warning under Proposition 65.

1 b. Defendants CCA INDUSTRIES, INC. and SEARS HOLDINGS
2 CORPORATION manufacture, distribute, import, sell and/or offer for sale in California
3 sunscreen containing benzophenone in levels that require a health hazard warning under
4 Proposition 65.

5 c. Defendants MACY'S, INC., SHISEIDO AMERICA INC. and SHISEIDO
6 AMERICAS CORPORATION manufacture, distribute, import, sell and/or offer for sale
7 in California *Shiseido Extra Smooth Sun Protection Cream Broad Spectrum SPF 38,*
8 *UPC #7 30852 10516 4* containing benzophenone in levels that require a health hazard
9 warning under Proposition 65.

10 d. Defendants MACY'S, INC., SHISEIDO AMERICA INC. and SHISEIDO
11 AMERICAS CORPORATION manufacture, distribute, import, sell and/or offer for sale
12 in California sunscreen containing benzophenone in levels that require a health hazard
13 warning under Proposition 65.

14 6. All products containing benzophenone, as listed in paragraphs 5(a) through 5(d)
15 above, shall hereinafter be referred to as the "PRODUCTS." As to each specific defendant,
16 however, PRODUCTS shall refer only to the specific products listed for each specific defendant
17 in paragraphs 5(a) through 5(d).

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

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

1 association that is a citizen of the state of California, has sufficient minimum contacts in the
2 state of California, and/or otherwise purposefully avails itself of the California market.
3 DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by
4 California courts consistent with traditional notions of fair play and substantial justice.

5 **FIRST CAUSE OF ACTION**

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

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

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

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

17 27. On August 28, 2014, plaintiff's 60-Day Notices of Violation, together with the
18 requisite Certificates of Merit, were provided to SHISEIDO AMERICAS CORP., SHISEIDO,
19 MACY'S, CCA, SEARS and certain public enforcement agencies stating that, as a result of
20 DEFENDANTS' sales of the PRODUCTS containing benzophenone, purchasers and users in
21 the State of California were being exposed to benzophenone resulting from the reasonably
22 foreseeable uses of the PRODUCTS, without the individual purchasers and users first having
23 been provided with a "clear and reasonable warning" regarding such toxic exposures, as
24 required by Proposition 65 ("Notices").

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

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

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

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

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

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

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

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

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

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

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

9 39. As a consequence of the above-described acts, Health and Safety Code
10 section 25249.7(a) also specifically authorizes the Court to grant injunctive relief against
11 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: February 3, 2015

Respectfully Submitted,

THE CHANLER GROUP

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