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and the Proposed Class*

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA**

HALEY CANADAY, individually  
and on behalf of all others similarly  
situated,  
  
Plaintiff,  
  
v.  
  
THE PROCTER & GAMBLE  
COMPANY,  
  
Defendant.

Case No. '21CV2024 AJB JLB

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff HALEY CANADAY (“Plaintiff”) brings this Class Action  
2 Complaint, on behalf of herself and all others similarly situated, against Defendant  
3 THE PROCTER & GAMBLE COMPANY (“Defendant”), demanding a trial by  
4 jury, and alleges as follows:

5 **SUMMARY OF THE ACTION**

6 1. This is a proposed class action complaint brought on behalf of a Class,  
7 as defined below, of California consumers who purchased aerosol antiperspirant  
8 products manufactured, marketed, advertised, sold and labeled by Defendant under  
9 the brand names “Secret” and “Old Spice” (the “Products”).

10 2. Defendant failed inform Plaintiff and the Class members that the  
11 Products are benzene, a known carcinogen. Making matters worse, Defendant  
12 discloses some ingredients, but failed to disclose the presence of benzene.

13 3. Defendant’s misrepresentations and omissions about the Products were  
14 uniform and were communicated to Plaintiff, and every other member of the Class,  
15 at every point of purchase and consumption throughout the Class Period.<sup>1</sup>

16 4. This lawsuit seeks to enjoin Defendant’s false and misleading practices  
17 and to recover damages and restitution on behalf of the class under applicable state  
18 laws.

19 **JURISDICTION AND VENUE**

20 5. This Court has subject matter jurisdiction under the Class Action  
21 Fairness Act, 28 U.S.C. § 1332(d) in that: (1) this is a class action involving more  
22 than 100 class members; (2) Plaintiff is a citizen of the State of California and the  
23 class she seeks to represent are also citizens of California and Defendant is a citizen  
24 of the State of Ohio; and (3) the amount in controversy exceeds the sum of  
25 \$5,000,000, exclusive of interest and costs.

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27 <sup>1</sup> The Class Period shall encompass all sales from December 1, 2017 through the  
28 date of entry of class certification (the “Class Period”).

1 6. This Court has personal jurisdiction over Defendant for reasons  
2 including but not limited to the following: Plaintiff's claims arise out of Defendant's  
3 conduct within the District, including the Products were sold to Plaintiff within the  
4 District and therefore the deception occurred within the District.

5 7. Pursuant to 28 U.S.C. § 1391(d), venue is proper in this District because  
6 a substantial part of the events, omissions, acts and transactions giving rise to the  
7 claims herein occurred in the District.

8 **PARTIES**

9 8. Plaintiff is a citizen of California, residing in San Diego County,  
10 California. Plaintiff purchased Secret Powder Fresh Aerosol from Walmart in San  
11 Diego, California, in or around October 2021. The label of the Product she purchased  
12 did not identify benzene as an active or inactive ingredient. In fact, it did not disclose  
13 the presence of benzene at all.

14 9. Plaintiff purchased the Product because she believed the Product did  
15 not contain benzene based on the representations on the principal display panel of  
16 the Product, and Defendant's omission of the fact that the Product contained  
17 benzene. Plaintiff remains in the market for PCPs, and continues to shop at Walmart  
18 and other locations where the Products are sold. If the Products did not contain  
19 benzene, as represented on the Product's label, Plaintiff would purchase the Product  
20 again in the immediate future. If the Court were to issue an injunction ordering  
21 Defendant to comply with the state and federal laws, and prohibiting Defendant's  
22 use of the deceptive practices discussed herein, Plaintiff would likely purchase the  
23 Products again in the near future. At present, however, Plaintiff cannot be confident  
24 that the labeling of the Products is, and will be, truthful and non-misleading.

25 10. Had Defendant not made the false, misleading, and deceptive  
26 representations and omissions in failing to disclose the presence of benzene in the  
27 Products, Plaintiff would not have been willing to pay the same amount for the  
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1 Product, and, consequently, she would not have been willing to purchase the Product  
2 at all. Plaintiff purchased and/or paid more for the Product than she would have if  
3 she had known the truth about the Product. The Product Plaintiff received was worth  
4 less than the Product for which she paid. Plaintiff was injured in fact and lost money  
5 as a result of Defendant's improper conduct.

6 11. Defendant THE PROCTER & GAMBLE COMPANY is incorporated  
7 in the State of Ohio, with its principal place of business at 1 Procter & Gamble Plaza,  
8 Cincinnati, Ohio 45202.

9 12. Defendant manufactures, markets, advertises and sells personal care  
10 products, also known as PCPs, including the Products, one or more of which were  
11 purchased by Plaintiff and members of the proposed Class. Defendant manufactured,  
12 marketed, advertised, distributed and sold its Products widely throughout the State  
13 of California and the Southern District of California during the Class Period.

14 13. Defendant is a top manufacturer and distributor of PCPs, including  
15 deodorant and antiperspirant products.

16 14. On information and belief, in committing the wrongful acts alleged  
17 herein, Defendant, in connection with its subsidiaries, affiliates, and/or other related  
18 entities and their employees, planned, participated in and furthered a common  
19 scheme to induce members of the public to purchase the Products by means of false,  
20 misleading, deceptive and fraudulent acts and omissions.

21 **FACTS COMMON TO ALL CAUSES OF ACTION**

22 15. Appended hereto is a true copy of a Citizen Petition ("Petition") dated  
23 November 3, 2021, submitted to the Food and Drug Administration ("FDA") by  
24 Valisure, LLC. Valisure is "an analytical laboratory that is accredited to  
25 International Organization for Standardization ("ISO/TEC") 17025:2017 standards  
26 for chemical testing (PJLA Accreditation Number 94238)." Exhibit A.

27 16. The Petition concerns results of analytical testing conducted by  
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1 Valisure on a variety of “body spray” products, including the Products that are the  
2 subject of this Complaint. The testing indicated that all of the Products contained  
3 benzene.

4 17. Benzene “is used as a constituent in motor fuels; as a solvent for fats,  
5 waxes, resins, oils, inks, paints, plastics, and rubber; in the extraction of oils from  
6 seeds and nuts; and in photogravure printing. It is also used as a chemical  
7 intermediate. Benzene is also used in the manufacture of detergents, explosives,  
8 pharmaceuticals, and dyestuffs.”<sup>2</sup>

9 18. The harmful effects of benzene on human health are well documented  
10 and well accepted. According to the Centers for Disease Control and Prevention  
11 (“CDC”):

12 The major effect of benzene from long-term exposure is on the  
13 blood. (Long-term exposure means exposure of a year or more.)  
14 Benzene causes harmful effects on the bone marrow and can  
15 cause a decrease in red blood cells, leading to anemia. It can also  
16 cause excessive bleeding and can affect the immune system,  
17 increasing the chance for infection. Some women who breathed  
18 high levels of benzene for many months had irregular menstrual  
19 periods and a decrease in the size of their ovaries. . . . Animal  
20 studies have shown low birth weights, delayed bone formation,  
21 and bone marrow damage when pregnant animals breathed  
22 benzene.<sup>3</sup>

23 19. Thus, “[t]he Department of Health and Human Services (DHHS) has  
24 determined that benzene causes cancer in humans. Long-term exposure to high  
25 levels of benzene in the air can cause leukemia, cancer of the blood-forming organs.”  
26 *Id.*

27 20. Indeed, in 1948, the American Petroleum Institute stated: “it is  
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25  
26 <sup>2</sup> <https://www.epa.gov/sites/default/files/2016-09/documents/benzene.pdf>

27 <sup>3</sup> <https://emergency.cdc.gov/agent/benzene/basics/facts.asp>

1 generally considered that the only absolutely safe concentration for benzene is  
2 zero.”<sup>4</sup>

3 21. The Petition describes the dangers of benzene to human health as  
4 follows:

5 The centers for Disease Control and Prevention (“CDC”) has  
6 determined that benzene causes cancer in humans. The World  
7 Health Organization (“WHO”) and the International Agency for  
8 Research on Cancer (“IARC”) Have classified benzene as a  
9 Group 1 compound and lists it as a “Class 1 solvent” that “should  
10 not be employed in the manufacture of drug substances,  
11 excipients, and drug products because of their unacceptable  
12 toxicity . . . However, if their use is unavoidable in order to  
13 produce a be restricted” and benzene is restricted under such  
14 guidance to 2 parts per million (“ppm”).

12 22. The Petition goes on to state:

13 Because many of the body spray products Valisure tested did not  
14 contain detectable levels of benzene, it does not appear that  
15 benzene use is unavoidable for their manufacture, and  
16 considering the log history and widespread use of these  
17 products,. It does not appear that they currently constitute a  
18 significant therapeutic advance; therefore, any significant  
19 detection of benzene should be deemed unacceptable.<sup>5</sup>

18 23. The Petition asks the FDA to, *inter alia*, recall the batches of products  
19 tested, to notify the public of the products’ dangers, and to conduct further  
20 examination and testing of such products.

21 24. The FDA regulates antiperspirants as over-the-counter (“OTC”) drugs,  
22 not as cosmetics. 21 C.F.R. § 350.3.

23 25. It is a violation of Food Drug and Cosmetic Act (“FDCA”) to  
24 manufacture or to introduce into commerce any misbranded or adulterated drug. 21

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26 <sup>4</sup> American Petroleum Institute, API Toxicology Review, Benzene 1948.

27 <sup>5</sup> Exhibit A.

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1 C.F.R. § 350.1(a), (g).

2 26. An OTC antiperspirant “is generally recognized as safe and effective  
3 and is not misbranded if it meets . . . *each* condition established in § 330.1” 21 C.F.R.  
4 § 350.1(a) (emphasis added).

5 27. Section 330.1(c)(1) mandates that the label be in compliance with  
6 section 201.66 of the FDCA. Section 201.66(c) mandates that the label identify the  
7 active and inactive ingredients. *See* 21 C.F.R. § 201.66(c)(2) & (8). By failing to list  
8 benzene, the Products do not meet the requirements of sections 201.66 and 330.01  
9 and is therefore misbranded.

10 28. Further, section 330.1(e) mandates that it contain only suitable inactive  
11 ingredients which are safe in the amounts administered. 21 C.F.R. § 330.1(e). As a  
12 known carcinogen, benzene is not included in the list of ingredients that the FDA  
13 allows to be contained in antiperspirant products. 21 C.F.R. § 350.10. As a result,  
14 the Products are misbranded.

15 29. Still further, a drug is misbranded “if its labeling is false or misleading  
16 in any particular.” 21 U.S.C. § 352(a)(1). It is also considered misbranded if its  
17 labeling does not list “the proportion of each active ingredient” (21 U.S.C.  
18 §352(e)(1)(A)(ii)). or “[i]f it is dangerous to health when used in the dosage or  
19 manner, or with the frequency or duration prescribed, recommended, or suggested  
20 in the labeling thereof.” 21 U.S.C. §352(j).

21 30. A drug is adulterated “if it consists in whole or in part of any filthy,  
22 putrid, or decomposed substance; or . . . whereby it may have been rendered injurious  
23 to health.” 21 U.S.C. § 352(a)(2)(B).

24 31. Valisure tested several batches of Secret Powder Fresh 24 Hour Aerosol  
25 Antiperspirant. The testing indicated benzene levels of 16.2 PPM, 16.1 PPM, and  
26 12.5 PPM. The first batch listed was also tested by the Chemical and Biophysical  
27 Instrumentation Center at Yale University, which found a benzene contamination  
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1 level of 13.1 PPM.

2 32. Valisure also tested several batches of Secret Cool Light & Airy  
3 Smooth Feel Dry Spray Antiperspirant, finding benzene contamination levels of 4.85  
4 PPM, 2.58 PPM, 1.64 PPM and 1.35 PPM.

5 33. Valisure also tested Secret Out Last Protecting Powder, 48 Hour Sweat  
6 & Odor Protection Antiperspirant, finding a benzene contamination level of 1.24  
7 PPM.

8 34. Valisure tested three batches of Old Spice Pure Sport antiperspirant,  
9 finding benzene contamination levels of 17.7 PPM, 17.4 PPM, and 3.34 PPM.

10 35. Valisure tested Old Spice Sweat Defense, Stronger Swagger Dry Spray  
11 antiperspirant, finding a benzene contamination level of 4.54 PPM.

12 36. Valisure tested Old Spice Sweat Defense, Ultimate Captain Dry Spray,  
13 finding a benzene contamination level of 0.44 PPM.

14 37. None of the Products' labels identify benzene as an active or inactive  
15 ingredient.

16 38. None of the Products' labels identify the presence of benzene within  
17 the Products.

18 39. Defendant's deceptive acts about the Products as set forth herein were  
19 uniform and were communicated to Plaintiff, and to every other member of the  
20 Class, at every point of purchase and consumption.

21 40. By failing to disclose the presence of benzene, particularly when it  
22 discloses the presence of other ingredients, Defendant deceives and misleads  
23 reasonable consumers. A reasonable consumer purchases the Products believing  
24 they do not contain benzene based on the Products' labeling.

25 41. Reasonable consumers, including Plaintiff, purchased the Products  
26 based upon their belief that they do not contain benzene.

27 42. Unfortunately for consumers, the Products contain benzene.

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1           43. Hence, Defendant's labeling is false and misleading.

2           44. Defendant has profited enormously from its false and misleading  
3 marketing of the Products. Consumers either would not have purchased the Products  
4 had they known they contain benzene or would have purchased less expensive  
5 products.

6           45. In making the false, misleading, and deceptive representations and  
7 omissions described herein, Defendant knew and intended that consumers would pay  
8 for, and/or pay a premium for, Products that did not disclose that they contain  
9 benzene.

10           46. As an immediate, direct, and proximate result of Defendant's false,  
11 misleading, and deceptive representations and omissions, Defendant injured  
12 Plaintiff and the Class members in that they:

- 13           a. Paid a sum of money for the Products, which were not what  
14 Defendant represented;
- 15           b. Paid a premium price for the Products, which were not what  
16 Defendant represented;
- 17           c. Were deprived of the benefit of the bargain because the Products  
18 they purchased were different from what Defendant represented;
- 19           d. Were deprived of the benefit of the bargain because the Products  
20 they purchased had less value than what Defendant represented;
- 21           e. Could not safely be used for the purpose for which they were  
22 purchased; and
- 23           f. Were of a different quality than what Defendant promised.

24           47. Had Defendant not made the false, misleading, and deceptive  
25 representations and omissions, Plaintiff and the Class members would not have been  
26 willing to pay the same amount for the Products they purchased, and/or Plaintiff and  
27 the Class members would not have been willing to purchase the Products at all.

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1 48. Plaintiff and the Class members paid for Products that did not contain  
2 benzene but received Products that contained benzene. The Products Plaintiff and  
3 the Class members received were worth less than the Products for which they paid.

4 49. Based on Defendant's misleading and deceptive representations,  
5 Defendant was able to, and did, charge a premium price for the Products over the  
6 cost of competitive products that did not contain benzene.

7 50. Plaintiff and the Class members all paid money for the Products.  
8 However, Plaintiff and the Class members did not obtain the full value of the  
9 advertised Products due to Defendant's misrepresentations and omissions. Plaintiff  
10 and the Class members purchased and/or paid more for, the Products than they would  
11 have had they known the truth about the Products. Consequently, Plaintiff and the  
12 Class members have suffered injury in fact and lost money as a result of Defendant's  
13 wrongful conduct.

14 **RULE 9(b) ALLEGATIONS**

15 51. Federal Rule of Civil Procedure ("Rule") 9(b) provides that "[i]n  
16 alleging fraud or mistake, a party must state with particularity the circumstances  
17 constituting fraud or mistake." Fed. R. Civ. P. 9(b). As detailed in the paragraphs  
18 above, Plaintiff has satisfied the requirements of Rule 9(b) by establishing the  
19 following elements with sufficient particularity:

20 52. WHO: Defendant made material misrepresentations and omissions by  
21 failing to adequately disclose material facts as detailed herein. Except as identified  
22 herein, Plaintiff is unaware, and therefore unable to identify, the true names and  
23 identities of those individuals at Defendant who are responsible for such material  
24 misrepresentations and/or omissions.

25 53. WHAT: Defendant made material misrepresentations regarding the  
26 inclusion of benzene in the Products. Specifically, Defendant labeled the Products  
27 with some ingredients but failed to disclose the presence of benzene within the  
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1 Products. By labeling the Products with some ingredients, but not benzene,  
2 Defendant communicated to reasonably consumers that the Products did not contain  
3 benzene. These representations were false and misleading because the Products  
4 contained benzene.

5 54. WHEN: Defendant made the material misrepresentations, omissions,  
6 and non-disclosures detailed herein continuously at every point of purchase and  
7 consumption throughout the Class Period.

8 55. WHERE: Defendant's material misrepresentations, omissions, and  
9 non-disclosures detailed herein were made, *inter alia*, on the packaging of the  
10 Products.

11 56. HOW: Defendant made numerous, written material misrepresentations,  
12 omissions, and non-disclosures on the packaging of the Products that were designed  
13 to, and, in fact, did, mislead Plaintiff and Class members into purchasing the  
14 Products.

15 57. WHY: Defendant engaged in the material misrepresentations,  
16 omissions, and non-disclosures detailed herein for the express purpose of inducing  
17 Plaintiff and other reasonable consumers to purchase and/or pay a premium for the  
18 Products based on the belief that the Products did not contain benzene. Defendant  
19 profited by selling the Products to thousands of unsuspecting consumers.

20 **CLASS ALLEGATIONS**

21 58. Plaintiff brings this action as a class action pursuant to Federal Rule of  
22 Civil Procedure 23. Plaintiff seeks to represent the following class ("Class" or  
23 "California Class") defined as follows:

24 All consumers within the State of California who purchased the  
25 Products from December 1, 2017 through the date of entry of  
26 class certification for their personal use, rather than for resale or  
27 distribution. Excluded from the Class are Defendant's current or  
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1 former officers, directors, and employees; counsel for Plaintiff  
2 and Defendant; and the judicial officer to whom this lawsuit is  
3 assigned.

4 The requirements of Federal Rule of Civil Procedure 23 are satisfied because:

5 A. Numerosity: The members of the class are so numerous that  
6 joinder of all members is impracticable. While the exact number of class members  
7 is presently unknown to Plaintiff, based on Defendant's volume of sales, Plaintiff  
8 estimates that it is in the thousands.

9 B. Commonality: There are questions of law and fact that are  
10 common to the class members and that predominate over individual questions.  
11 These include the following:

- 12 i. Whether Defendant materially misrepresented, omitted,  
13 and/or failed to disclose to the class members that the  
14 Products contained benzene;
- 15 ii. Whether Defendant's misrepresentations and omissions  
16 were material to reasonable consumers;
- 17 iii. Whether Defendant's labeling, marketing, and sale of the  
18 Products constitutes an unfair, unlawful, or fraudulent  
19 business practice;
- 20 iv. Whether Defendant's labeling, marketing, and sale of the  
21 Products constitutes false advertising;
- 22 v. Whether Defendant's conduct injured consumers and, if  
23 so, the extent of the injury; and
- 24 vi. The appropriate remedies for Defendant's conduct.

25 C. Typicality: Plaintiff's claims are typical of the claims of the class  
26 members because Plaintiff suffered the same injury as the class members—*i.e.*,  
27 Plaintiff purchased the Products based on Defendant's misleading  
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1 misrepresentations, omissions, and non-disclosures that the Products did not contain  
2 benzene.

3 D. Adequacy: Plaintiff will fairly and adequately represent and  
4 protect the interests of the members of each class. Plaintiff does not have any  
5 interests that are adverse to those of the class members. Plaintiff has retained  
6 competent counsel experienced in class action litigation and intends to prosecute this  
7 action vigorously.

8 E. Superiority: A class action is superior to other available methods  
9 for the fair and efficient adjudication of this controversy. Class action treatment will  
10 permit a large number of similarly situated persons to prosecute their common  
11 claims in a single forum simultaneously, efficiently, and without the unnecessary  
12 duplication of effort and expense that numerous individual actions would engender.  
13 Since the damages suffered by individual class members are relatively small, the  
14 expense and burden of individual litigation make it virtually impossible for the class  
15 members to seek redress for the wrongful conduct alleged, while an important public  
16 interest will be served by addressing the matter as a class action.

17 59. The prerequisites for maintaining a class action for injunctive or  
18 equitable relief under Federal Rule of Civil Procedure 23(b)(2) are met because  
19 Defendant had acted or refused to act on grounds generally applicable to each class,  
20 thereby making appropriate final injunctive or equitable relief with respect to each  
21 class as a whole.

22 **FIRST CAUSE OF ACTION**  
23 **Violation of the Unfair Competition Law,**  
24 **California Bus. & Prof. Code § 17200 *et seq.***  
**(On Behalf of the Class)**

25 60. Plaintiff incorporates by reference the allegations set forth above.

26 61. Plaintiff brings this claim for violation of the Unfair Competition Law,  
27 BUS. & PROF. CODE § 17200 *et seq.* (“UCL”), on behalf of the Class.

28 62. The circumstances giving rise to Plaintiff’s and the Class members’

1 allegations include Defendant’s corporate policies regarding the sale and marketing  
2 of the Products.

3 63. Under the UCL, “unfair competition” means and includes “any  
4 unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue  
5 or misleading advertising and any act prohibited by” the CAL. BUS. & PROF. CODE  
6 § 17200.

7 64. By engaging in the acts and practices described herein, Defendant  
8 commits one or more acts of “unfair competition” as the UCL defines the term.

9 65. Defendant committed, and continues to commit, “unlawful” business  
10 acts or practices by, among other things, violating:

11 a. The FDCA by introducing into commerce misbranded and/or  
12 adulterated OTC antiperspirants, *see* 21 U.S.C. §§ 351 and 352;  
13 and 21 C.F.R. § 350.1(a); *see* also ¶¶ 24-30.

14 b. The Fair Packaging and Labeling Program (“FPLP”) by  
15 introducing into commerce consumer commodities that did not  
16 accurately list all the contents (i.e. benzene), *ee* 15 U.S.C. §§  
17 1452 and 1453. By failing to list benzene, Defendants violated  
18 the FPLP;

19 c. The Sherman Food, Drug, and Cosmetic Act, *see* Cal. Health and  
20 Safety Code §§ 111440 and 111445, by misbranding the  
21 Products as follows:

22 i. Labeling the Products with false and misleading labeling  
23 by failing to disclose the presence of benzene, *see* Cal.  
24 Health and Safety Code § 111330;

25 ii. Failing to conform with labeling requirements,  
26 specifically, failing to disclose the presence of benzene,  
27 *see* Cal. Health and Safety Code §§ 111335 and 110290;

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and

iii. Failing include an accurate statement of the quantity of the contents, specifically, benzene, *see* Cal. Health and Safety Code § 111340; and

d. The CLRA and the FAL as described herein.

66. Defendant committed, and continues to commit, “unfair” business acts or practices by, among other things:

a. Engaging in conduct for which the utility of the conduct, if any, is outweighed by the gravity of the consequences to Plaintiff and the members of the Class;

b. Engaging in conduct that is immoral, unethical, oppressive, unscrupulous, or substantially injurious to Plaintiff and the members of the Class; and

c. Engaging in conduct that undermines or violates the spirit or intent of the consumer protection laws that this Class Action Complaint invokes.

67. Defendant committed, and continues to commit, “fraudulent” business acts or practices because, as alleged above, Defendant’s misrepresentations, omissions, and non-disclosures concerning the Products were false and misleading, and Plaintiff and the Class members relied on those misrepresentations, omissions, and non-disclosures in purchasing the Products.

68. Defendant commits unlawful, unfair, and fraudulent business acts or practices by, among other things, engaging in conduct Defendant knew or should have known was likely to and did deceive reasonable consumers, including Plaintiff and the Class members.

69. As detailed above, Defendant’s unlawful, unfair, and fraudulent practices include making false and misleading misrepresentations, omissions, and

1 non-disclosures by failing to disclose that the Products contained benzene.

2 70. Plaintiff and the Class members believed Defendant's that the Products  
3 did not contain benzene based on Defendant's failure to state as such while  
4 simultaneously stating the Products contained other ingredients. Plaintiff and the  
5 Class members would not purchase the Products, but for Defendant's misleading  
6 misrepresentations, omissions, and non-disclosures.

7 71. Defendant's failure to disclose the existence of benzene in the Products  
8 caused an unreasonable safety hazard by exposing Plaintiff and the Class members  
9 to a known carcinogen.

10 72. Plaintiff and the Class members are injured in fact and lost money as a  
11 result of Defendant's conduct of failing to disclose that the Products contained  
12 benzene. Plaintiff and the Class members pay for Products that did not contain  
13 benzene, but received Products that contained benzene.

14 73. Plaintiff and the Class members seek declaratory relief, injunctive  
15 relief, and other relief allowable under Business and Professions Code section  
16 17203, including but not limited to enjoining Defendant from continuing to engage  
17 in its unfair, unlawful, and fraudulent conduct alleged herein.

18 74. Therefore, Plaintiff prays for relief as set forth below.

19 **SECOND CAUSE OF ACTION**  
20 **Violation of the Consumers Legal Remedies Act**  
21 **California Civ. Code § 1750 *et seq.***  
22 **(On Behalf of the Class)**

23 75. Plaintiff incorporates by reference the allegations set forth above.

24 76. Plaintiff and the California Class members are "consumers" under the  
25 California Consumers Legal Remedies Act ("CLRA"), California Civil Code section  
26 1761(d).

27 77. The Products are "goods" under California Civil Code section 1761(a).

28 78. The purchases by Plaintiff and the California Class members of the



1 Products are “transactions” under California Civil Code section 1761(e).

2 79. Under section 1770 of the CLRA:

3 (a) The following unfair methods of competition and  
4 unfair or deceptive acts or practices undertaken by any  
5 person in a transaction intended to result or which results  
6 in the sale or lease of goods or services to any consumer  
are unlawful:

7 \* \* \* \* \*

8 (5) Representing that goods or services have sponsorship,  
9 approval, characteristics, ingredients, uses, benefits, or  
10 quantities which they do not have or that a person has a  
11 sponsorship, approval, status, affiliation, or connection  
which he or she does not have.

12 \* \* \* \* \*

13 (7) Representing that goods or services are of a particular  
14 standard, quality, or grade, or that goods are of a  
15 particular style or model, if they are of another.

16 \* \* \* \* \*

17 (9) Advertising goods or services with intent not to sell  
18 them as advertised.

19 \* \* \* \* \*

20 (16) Representing that the subject of a transaction has  
21 been supplied in accordance with a previous  
representation when it has not.

22 *Id.* § 1770.

23 80. As alleged above, Defendant violated, and continues to violate, Civil  
24 Code section 1770(a)(5) by representing the Products have characteristics, uses,  
25 benefits, and qualities which they do not. Specifically, Defendant represents the  
26 Products do not contain benzene, and with it, are free of carcinogens, when, in fact,  
27 the Products contained benzene, a carcinogen.

28

1           81. Further, as alleged above, Defendant violated, and continues to violate,  
2 Civil Code section 1770(a)(7) by representing the Products are of a particular  
3 standard or quality when they are of another. Specifically, Defendant represents the  
4 Products do not contain benzene, and with it, are free of carcinogens, when, in fact,  
5 the Products contained benzene, a carcinogen.

6           82. Further, as alleged above, Defendant violated, and continues to violate,  
7 Civil Code section 1770(a)(9) by advertising the Products do not contain benzene,  
8 and with it, are free of carcinogens, when, in fact, the Products contained benzene,  
9 a carcinogen.

10           83. Finally, as alleged above, Defendant violated, and continues to violate,  
11 Civil Code section 1770(a)(16) by representing that the Products it sold Plaintiff and  
12 the Class members contained only the ingredients listed on the label, in fact, the  
13 Products do not.

14           84. Defendant violates the CLRA by failing to disclose that the Products  
15 contain benzene, as described above, when it knows, or should know, that the  
16 Products do in fact contain benzene.

17           85. Plaintiff and the Class members believed the Products did not contain  
18 benzene based on Defendant's failure to state the Products contain benzene when it  
19 listed other ingredients. Plaintiff and the Class members would not purchase the  
20 Products, but for Defendant's misleading misrepresentations, omissions, and non-  
21 disclosures.

22           86. Defendant's failure to disclose the existence of benzene in the Products  
23 caused an unreasonable safety hazard by exposing Plaintiff and the Class members  
24 to a known carcinogen.

25           87. Plaintiff and the Class members are injured in fact and lose money as a  
26 result of Defendant's conduct. Plaintiff and the Class members pay for Products that  
27 do not contain benzene but do not receive such Products because the Products  
28

1 contained benzene.

2 88. On information and belief, Defendant’s actions were willful, wanton,  
3 and fraudulent.

4 89. On information and belief, officers, directors, or managing agents at  
5 Defendant authorized the use of the misleading statements about the Products.

6 90. Plaintiff seeks injunctive relief only, but reserves the right to amend to  
7 include claims for damages at a later date.

8 91. Pursuant to Civil Code sections 1780 and 1782, Plaintiff and California  
9 Class members seek an injunction to bar Defendant from continuing their deceptive  
10 advertising practices, and reasonable attorneys’ fees and costs.

11 **THIRD CAUSE OF ACTION**  
12 **Violation of the False Advertising Law,**  
13 **California Bus. & Prof. Code § 17500 *et seq.***  
14 **(On Behalf of the Class)**

14 92. Plaintiff incorporates by reference the allegations set forth above.

15 93. Plaintiff brings this claim for violation of the False Advertising Law,  
16 BUS. & PROF. CODE § 17500 *et seq.* (“FAL”), on behalf of the Class.

17 94. The FAL makes it unlawful for a person, firm, corporation, or  
18 association to induce the public to buy its products by through misleading  
19 misrepresentations, omissions, and non-disclosures about the Products.

20 95. At all relevant times, Defendant failed to disclose, and continues to fail  
21 to disclose, that the Products contained benzene.

22 96. Defendant failed to make the disclosure with the intent to directly  
23 induce consumers, including Plaintiff and the Class members, to purchase the  
24 Products.

25 97. Through misleading misrepresentations, omissions, and non-  
26 disclosures alleged herein, Defendant knew or should have known the existence of  
27 benzene in the Products was material to consumers and its failure to disclose its  
28

1 presence in the Products lead consumers to believe it was not in the Products.

2 98. Plaintiff and the Class members believed the Products did not contain  
3 benzene. Plaintiff and the Class members would not purchase the Products if they  
4 knew the Products contained benzene.

5 99. Defendant's failure to disclose the existence of benzene in the Products  
6 caused an unreasonable safety hazard by exposing Plaintiff and the Class members  
7 to a known carcinogen.

8 100. Plaintiff and the Class members are injured in fact and lost money as a  
9 result of Defendant's misleading misrepresentations, omissions, and non-  
10 disclosures. Plaintiff and the Class members pay for Products that did not contain  
11 benzene, but receive Products that contain benzene.

12 101. The Products Plaintiff and the Class members receive are worth less  
13 than the Products for which they pay. Plaintiff and the Class members pay a premium  
14 price on account of Defendant's misleading misrepresentations, omissions, and non-  
15 disclosures.

16 102. Pursuant to California Business & Professions Code section 17535,  
17 Plaintiff and the California Class members seek restitution of the purchase price paid  
18 for the Products and an injunction barring Defendant from continuing its deceptive  
19 practices.

20 103. Therefore, Plaintiff prays for relief as set forth below.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff, individually and on behalf of the members of the  
23 Class, respectfully requests the Court to enter an Order:

24 A. certifying the proposed Class under Federal Rule of Civil Procedure  
25 23(a), (b)(2), and (b)(3), as set forth above;

26 B. declaring that Defendant is financially responsible for notifying the  
27 Class members of the pendency of this suit;

28

- 1 C. declaring that Defendant has committed the violations of law alleged
- 2 herein;
- 3 D. providing for any and all injunctive relief the Court deems appropriate;
- 4 E. awarding statutory damages in the maximum amount for which the law
- 5 provides;
- 6 F. awarding monetary damages, including but not limited to any
- 7 compensatory, incidental, or consequential damages in an amount that
- 8 the Court or jury will determine, in accordance with applicable law;
- 9 G. awarding punitive or exemplary damages in accordance with proof and
- 10 in an amount consistent with applicable precedent;
- 11 H. awarding Plaintiff reasonable costs and expenses of suit, including
- 12 attorneys' fees;
- 13 I. awarding pre- and post-judgment interest to the extent the law allows;
- 14 and
- 15 J. for such further relief as this Court may deem just and proper.

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff hereby demands trial by jury on all claims so triable.

18 Date: December 1, 2021

Respectfully submitted,

19 /s/ George V. Granade

20 George V. Granade (SBN 316050)

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CLASS ACTION COMPLAINT

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