

Alex R. Straus, SBN 321366

Plaintiffs' Attorneys

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JONATHAN HOROWITZ and
DALIT COHEN, on behalf of
themselves and all others similarly
situated,

Plaintiffs,

v.

NEUTROGENA CORPORATION,
Defendant.

Case No.

CLASS ACTION COMPLAINT

Demand for Jury Trial

Plaintiffs Jonathan Horowitz and Dalit Cohen (“Plaintiffs”) bring this Class Action Complaint against Defendant Neutrogena Corporation (“Defendant”), individually and on behalf of all others similarly situated, and complain and allege upon personal knowledge as to themselves and their own acts and experiences and, as to all other matters, upon information and belief, including investigation conducted by their attorneys:

NATURE OF THE ACTION

1. This is a civil class action brought by Plaintiffs on behalf of all consumers who purchased Neutrogena Healthy Skin Firming Cream with Broad Spectrum (SPF 15) (the “Product”) for normal, household use. Plaintiffs seek damages and equitable remedies for themselves and the putative Class.

2. The Product is defective because, undisclosed to consumers, it contains benzophenone, a harmful chemical, known carcinogen, and endocrine disruptor. The

1 presence of benzophenone is caused by the Product's formulation, which uses
2 octocrylene as an active ingredient. Octocrylene is a chemical that degrades over time,
3 and this process causes an accumulation of benzophenone.

4 3. The presence of benzophenone has been demonstrated in animal testing
5 to lead to higher rates of cancer, including leukemia. Benzophenone can be absorbed
6 into the human body when applied topically.

7 4. Defendant gained consumers' trust over the course of several decades,
8 and caused consumers reasonable belief that Defendant's products, including the
9 Product, are made with quality materials and safe for their intended purpose.

10 5. Defendant formulates, designs, tests, manufactures, markets, advertises,
11 distributes, and sells the Product to consumers throughout the United States, including
12 in the State of California.

13 6. Defendant distributes and sells the Product through various authorized
14 retailers in-store and online.

15 7. Defendant represents that the Product is safe for its intended use.
16 Contrary to Defendant's representations, however, the Product contains an ingredient
17 not listed on its label, benzophenone, at the time of purchase, which increases over
18 time as one of its active ingredients, octocrylene, degrades into benzophenone.

19 8. Benzophenone is a carcinogen and an endocrine disruptor.
20 Benzophenone's presence in food products or food packaging is banned in the United
21 States.¹ Under California Proposition 65, there is no safe harbor for benzophenone in
22 any personal care products, including sunscreens, anti-aging creams, and
23 moisturizers.²

24 9. Feasible alternative formulations, designs and materials, such as mineral-
25 based sunscreen, were available to Defendant at the time the Product was formulated,

26 ¹ C. A. Downs, Joseph C. DiNardo, Didier Stien, Alice M. S. Rodrigues, and Philippe Lebaron, *Benzophenone*
27 *Accumulates over Time from the Degradation of Octocrylene in Commercial Sunscreen Products*, *Chemical*
28 *Research in Toxicology*, 2021 34 (4), 1046-1054.

² *Id.*

1 designed, and manufactured, and such alternative formulations and designs were and
2 are used by other manufacturers to produce and sell non-defective sunscreen.

3 10. Plaintiffs seek damages and equitable remedies for themselves, and for
4 the proposed Classes.

5 **JURISDICTION AND VENUE**

6 11. This Court has diversity jurisdiction over this matter pursuant to 28
7 U.S.C. § 1332(d) because: (1) there are 100 or more putative Class Members, (ii) the
8 aggregate amount in controversy exceeds \$5,000,000.00, exclusive of interest and
9 costs, and (iii) there is minimal diversity because Plaintiffs and Defendant are citizens
10 of different states. This Court also has subject matter jurisdiction over this matter
11 pursuant to 28 U.S.C. § 1332. This Court has supplemental jurisdiction over
12 Plaintiffs' state law claims pursuant to 28 U.S.C. § 1367.

13 12. This Court has general personal jurisdiction over Defendant because
14 Defendant has purposefully availed itself of the privilege of doing business within the
15 State of California, including within this District; has had continuous and systematic
16 general business contacts within the state, including within this District; and can be
17 said to have reasonably anticipated being haled into court in this forum.

18 13. This Court has specific personal jurisdiction over Defendant because this
19 action arises out of and relates to Defendant's contacts with this forum. Specifically,
20 Defendant knowingly directed the Product through the stream of commerce into this
21 District. Defendant has advertised and marketed within this District through the wires
22 and mail and via e-commerce websites through which residents of this state and
23 District can purchase the Product. Further, Defendant knowingly directs electronic
24 activity into this state and District with the intent to engage in business interactions
25 and has in fact engaged in such interactions. Moreover, Defendant makes the Product
26 available at retailers throughout this District.

27 14. In accordance with 28 U.S.C. § 1391, venue is proper in this District
28 because a substantial part of the conduct giving rise to Plaintiffs' claims occurred in

1 this District, Defendant transacts business in this District, and Defendant has
2 intentionally availed itself of the laws and markets within this District.

3 **PARTIES**

4 **A. Plaintiffs**

5 15. Plaintiff Jonathan Horowitz is a resident and citizen of La Habra,
6 California who purchased and used the Product within the relevant time period.

7 16. Plaintiff Dalit Cohen is a resident and citizen of Roslyn, New York who
8 purchased and used the Product within the relevant time period.

9 **B. Defendant**

10 17. Defendant, Neutrogena Corporation (hereinafter “Neutrogena”), is a
11 Delaware corporation with its headquarters in California. Neutrogena is authorized to
12 do business in New York. As one of the world’s leading brands of skin care, hair care,
13 and cosmetics, Neutrogena distributes its products, including the Product, throughout
14 the United States. Neutrogena’s line of sunscreen products, including the sunscreen
15 purchased by Plaintiffs and Class Members, are available at retail stores throughout
16 California and the United States.

17 18. Defendant manufactures, markets, advertises, and distributes the Product
18 throughout the United States. Defendant created and/or authorized the false,
19 misleading, omitting, and deceptive advertisements, packaging, and labeling of the
20 Product.

21 **FACTUAL ALLEGATIONS**

22 **A. Neutrogena**

23 19. Neutrogena has been a leader in the cosmetic market since it was founded
24 in 1930.³

25 20. Neutrogena products are sold at mass market retailers in the United
26 States, including Walmart and Target, in addition to being sold online at retailers such
27 as Amazon.

28 ³ See <https://www.neutrogena.com/the-bar/why-neutrogena.html> (last visited Dec. 8, 2021).

1 21. Neutrogena has consistently positioned itself as “the Dermatologist
2 Recommended skincare brand[.]”⁴

3 **B. Chemical Sunscreen**

4 22. There are two categories of sunscreen on the market: physical and
5 chemical.

6 23. Physical sunscreens work by reflecting the UV rays from the sun,
7 protecting the skin from the harmful rays. These formulations rely on the use of
8 ingredients such as zinc oxide and titanium dioxide to provide this
9 protection. Physical sunscreens create a barrier between the skin and the sun and
10 aren’t absorbed into the skin.⁵

11 24. Alternatively, chemical-based sunscreen contains various synthetic,
12 chemical active ingredients, including octocrylene, which protect the skin by
13 absorbing ultraviolet (“UV”) radiation and dissipating it as heat.⁶

14 25. Chemical sunscreens are absorbed into the skin and absorb the harmful
15 rays before they can penetrate deep enough to cause damage to the skin.⁷

16 26. The Product’s label shows that it contains 5% octocrylene, which is one
17 of its active ingredients:
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26 ⁴ <https://www.neutrogena.com/about-us.html> (last visited Dec. 8, 2021).

27 ⁵ See <https://thederreview.com/octocrylene/> (last visited Nov. 30, 2021).

28 ⁶ See <https://thederreview.com/octocrylene/> (last visited Dec. 8, 2021).

⁷ *Id.*

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27. In contrast with its disclose of octocrylene, Defendant does not disclose the existence of, or likelihood of the existence of, benzophenone.

C. Benzophenone

28. Benzophenone is a chemical whose presence is banned for food and food packaging.

29. Benzophenone is associated with a wide range of toxicities, including genotoxicity, carcinogenicity, and endocrine disruption.⁸

⁸ C. A. Downs, Joseph C. DiNardo, Didier Stien, Alice M. S. Rodrigues, and Philippe Lebaron, *Benzophenone Accumulates over Time from the Degradation of Octocrylene in Commercial Sunscreen Products*, *Chemical Research in Toxicology*, 2021 34 (4), 1046-1054.

1 30. Benzophenone is notorious for inducing dermatological pathologies,
2 including contact dermatitis, erythema, urticaria, and photoinduced dermatitis.⁹

3 31. In addition, benzophenone is on the Proposition 65 list in California
4 because exposure can increase the risk of cancer.¹⁰ Indeed, benzophenone has been
5 linked with higher rates of leukemia.¹¹

6 32. The personal care product industry has known for some time that
7 octocrylene is contaminated with benzophenone. When purchasing raw octocrylene
8 for sunscreen or personal care product manufacturing, the industry admits that
9 benzophenone is a contaminant found in octocrylene and “cannot be removed by its
10 entirety when octocrylene is being processed...”¹²

11 **D. Studies Show Benzophenone Accumulates and Increases in Octocrylene-**
12 **Containing Products**

13 33. The source of benzophenone in a product arises from two main sources:
14 (1) benzophenone contamination in the octocrylene used to manufacture the
15 commercial product and (2) accumulation of benzophenone from the degradation of
16 octocrylene as the product ages.¹³

17 34. In order to examine the potential degradation of octocrylene in sunscreen
18 products, one study tested for benzophenone in seventeen products purchased in
19 France and the United States, sixteen of which contained octocrylene.¹⁴ The study’s
20 authors tested each product upon purchase and again after being subjected to a U.S.

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22 ⁹ *Id.*

23 ¹⁰ https://www.p65warnings.ca.gov/sites/default/files/downloads/factsheets/benzophenone_fact_sheet.pdf
(last visited Dec. 8, 2021).

24 ¹¹ <https://pubmed.ncbi.nlm.nih.gov/16741556/> (last visited Dec. 8, 2021)

25 ¹² *Frequently asked questions: benzophenone and octocrylene California Prop 65 ingredients*, Rodan + Fields, San
26 Francisco, CA. https://www.rodanandfields.com/images/Archives/FAQs_Benzophenone.pdf (last visited Dec. 8, 2021).

27 ¹³ C. A. Downs, Joseph C. DiNardo, Didier Stien, Alice M. S. Rodrigues, and Philippe Lebaron,
Benzophenone Accumulates over Time from the Degradation of Octocrylene in Commercial Sunscreen
28 *Products*, *Chemical Research in Toxicology*, 2021 34 (4), 1046-1054.

¹⁴ *Id.*

1 FDA accelerated aging protocol meant to reflect a single year of shelf life. In addition,
2 the authors tested two single ingredient sources of octocrylene.

3 35. The results revealed that each of the sixteen products containing
4 octocrylene also had benzophenone at the time of purchase, and that the level of
5 benzophenone grew after aging. In contrast, the product without octocrylene did not
6 show any detectable amount of benzophenone at the time of purchase and after aging.
7 Furthermore, benzophenone was detected in the pure octocrylene as well.

8 36. The results of the study demonstrate that sunscreen products containing
9 octocrylene are purchased with demonstrated levels of benzophenone and that the
10 octocrylene in sunscreen products further degrades over time and results in higher
11 levels of benzophenone.

12 37. In a separate study, different authors also examined whether octocrylene-
13 containing products develop benzophenone over time.¹⁵ These authors examined both
14 raw octocrylene and thirty-nine skincare products, of which twenty-eight contained
15 octocrylene. The study showed that all twenty-eight products containing octocrylene
16 had demonstrable levels of benzophenone at the time of purchase, and that the levels
17 of benzophenone significantly increased over time. The authors concluded that the
18 increased levels of benzophenone was likely due to the degradation of octocrylene.

19 38. Further, Plaintiffs commissioned their own independent testing
20 performed by a third-party lab. The results of the test found benzophenone in the
21 Product.

22 **E. Defendant's Representations**

23 39. Defendant positions itself as a trustworthy, safe, and responsible
24 company to consumers. In order to convey this message, Defendant issues several
25 principles that guide "Our Safety & Care Commitment" which "reflect your highest
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27 ¹⁵ Kenn Foubert *et al.*, *The presence of benzophenone in sunscreens and cosmetics containing the organic*
28 *UV filter octocrylene: A laboratory study*, Contact Dermatitis, July 2021, 69-77 (available at
<https://onlinelibrary.wiley.com/doi/pdf/10.1111/cod.13845>)

1 expectations of us and all that we expect of ourselves.”¹⁶ These principles include
2 “Safety starts with ingredients”, “Safety never ends”, “Science isn’t set in stone”, and
3 “We alone shouldn’t be the last word on safety.”¹⁷

4 40. Under “Good enough is not enough”, Defendant commits to following
5 best practices: “We not only follow individual country regulations, but also look to
6 incorporate the best thinking and practices from top authorities for skincare products
7 around the world.”¹⁸

8 41. Under “Safety starts with ingredients”, Defendant describes the “high
9 bar” for its ingredients: “Our ingredients are screened for quality, manufacturing
10 process, government regulations, published research, and our ingredient safety
11 databases.”¹⁹ Defendant emphasizes the importance of safety and its ingredients under
12 “Safety goes beyond the ingredient list”: “It’s also a matter of how our ingredients are
13 used, our manufacturing safeguards, how the products are used, and testing
14 requirements for our products.”²⁰

15 42. Defendant commits to ongoing testing of its products, including the
16 Product: “Safety doesn’t end with placing the products on the shelf. Our experts are
17 continuously monitoring and adjusting the process based on the latest research,
18 guidance, regulations, customer, and consumer feedback.”²¹ Defendant re-emphasizes
19 this same point: “we continually check the latest data on our ingredients. When
20 necessary we update our products to make sure they are still safe.”²²

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23 ¹⁶ <https://www.neutrogena.com/producttesting.html> (last visited Dec. 8, 2021).

24 ¹⁷ *Id.*

25 ¹⁸ *Id.*

26 ¹⁹ *Id.*

27 ²⁰ *Id.*

28 ²¹ *Id.*

²² *Id.*

1 43. Defendant’s website further represents that:

2 At Neutrogena®, safety is paramount. What we include in our
3 products is just as important as what we exclude from them. We
4 strive to avoid unnecessary and harsh ingredients and we prioritize
5 ingredients that are not only safe for your skin, but also safe for
6 the planet, throughout the lifecycle of our products. We are
7 committed to ingredient transparency so you can make informed
8 decisions for your skin health.²³

9 44. Despite the representations that Defendant is committed to following
10 “best practices”, that they screen their ingredients, adhere to ongoing testing of their
11 ingredients, and engage in “ingredient transparency,” nothing on the Product label
12 insinuates, states, or warns that the Product contains benzophenone, or that the
13 octocrylene in the Product degrades over time and results in an accumulation of
14 benzophenone.

15 45. Based on its stated commitments, Defendant either knew or should have
16 known that the Product contains benzophenone and that the octocrylene in the Product
17 degrades and produces an accumulation of benzophenone.

18 **PLAINTIFFS’ FACTUAL ALLEGATIONS**

19 **Jonathan Horowitz**

20 46. Plaintiff Horowitz purchased the Product on or around April 15, 2021, at
21 a Walmart store located in Lahabra, California and paid approximately \$20.00 for the
22 Product.

23 47. Nowhere on the packaging did Defendant disclose that the octocrylene
24 in the Product degrades over time and results in an accumulation of benzophenone.

25 48. Nowhere on the packaging did Defendant disclose that the Product
26 contains, or is likely to contain, benzophenone at the time of purchase.

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28 ²³ See <https://www.neutrogena.com/our-promise.html> (last visited Dec. 8, 2021).

1 **New York Subclass:** During the fullest period allowed by law, all
2 persons in the State of New York who purchased the Product for personal
3 use and not for resale within the State of New York.

4 57. Members of the classes described are referred to as “Class Members” or
5 members of the “Classes.”

6 58. The following are excluded from the Classes: (1) any Judge presiding
7 over this action and members of his or her family; (2) Defendant, Defendant’s
8 subsidiaries, parents, successors, predecessors, and any entity in which Defendant or
9 its parent has a controlling interest (as well as current or former employees, officers,
10 and directors); (3) persons who properly execute and file a timely request for exclusion
11 from the Class; (4) persons whose claims in this matter have been finally adjudicated
12 on the merits or otherwise released; (5) Plaintiffs’ counsel and Defendant’s counsel;
13 and (6) the legal representatives, successors, and assigns of any such excluded
14 persons.

15 59. Certification of Plaintiffs’ claims for class-wide treatment is appropriate
16 because Plaintiffs can prove the elements of their claims on a class-wide basis using
17 the same evidence as would be used to prove those elements in individual actions
18 alleging the same claims.

19 60. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The members
20 of the Classes are so numerous that individual joinder of all Class Members is
21 impracticable. On information and belief, Class Members number in the thousands to
22 millions. The precise number or identification of members of the Classes are presently
23 unknown to Plaintiffs but may be ascertained from Defendant’s books and records.
24 Class Members may be notified of the pendency of this action by recognized, Court-
25 approved notice dissemination methods, which may include U.S. mail, electronic
26 mail, Internet postings, and/or published notice.

27 61. **Commonality and Predominance – Federal Rule of Civil Procedure**
28 **23(a)(2) and 23(b)(3).** Common questions of law and fact exist as to all members of

1 the Classes, which predominate over any questions affecting individual members of
2 the Classes. These common questions of law or fact include, but are not limited to, the
3 following:

- 4 a) Whether the Product contains benzophenone at the time of purchase;
- 5 b) Whether the Product accumulates benzophenone over time;
- 6 c) Whether Defendant omitted or failed to disclose material information
7 to Plaintiffs and Class Members regarding the Product;
- 8 d) Whether the Product is defectively designed, formulated, and/or
9 manufactured;
- 10 e) Whether Defendant knew or reasonably should have known about the
11 harmful level of benzophenone in the Product prior to distributing and
12 selling them to Plaintiffs and Class Members;
- 13 f) Whether the marketing, advertising, packaging, labeling, and other
14 promotional materials for the Product is deceptive;
- 15 g) Whether Defendant's actions violate the consumer protection statutes
16 invoked herein;
- 17 h) Whether Defendant breached the implied warranty of merchantability
18 relating to the Product;
- 19 i) Whether Defendant breached an express warranty to Plaintiffs and
20 Class Members;
- 21 j) Whether Defendant was unjustly enriched at the expense of the
22 Plaintiffs and Class Members;
- 23 k) Whether Plaintiffs and Class Members are entitled to damages,
24 including compensatory, exemplary, and statutory damages, and the
25 amount of such damages;
- 26 l) Whether Plaintiffs and the other Class Members have been injured
27 and the proper measure of their losses as a result of those injuries; and
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1 m) Whether Plaintiffs and the Class Members are entitled to injunctive,
2 declaratory, or other equitable relief.

3 62. Defendant engaged in a common course of conduct giving rise to the
4 legal rights sought to be enforced by Plaintiffs, on behalf of themselves and the other
5 Class Members. Similar or identical statutory and common law violations, business
6 practices, and injuries are involved. Individual questions, if any, pale by comparison,
7 in both quality and quantity, to the numerous common questions that dominate this
8 action.

9 63. **Typicality – Federal Rule of Civil Procedure 23(a)(3).** Plaintiffs’
10 claims are typical of the claims of the other Class Members, as each class member
11 was subject to the same omission of material fact and misrepresentations regarding
12 the presence of benzophenone in the Product. Plaintiffs shares the aforementioned
13 facts and legal claims or questions with Class Members, and Plaintiffs and all Class
14 Members have been similarly affected by Defendant’s common course of conduct
15 alleged herein. Plaintiffs and all Class Members sustained monetary and economic
16 injuries including, but not limited to, ascertainable loss arising out of Defendant’s
17 deceptive omission of material fact and misrepresentations regarding the presence of
18 benzophenone in the Product.

19 64. **Adequacy of Representation – Federal Rule of Civil Procedure**
20 **23(a)(4).** Plaintiffs are adequate representatives of the Classes because they are
21 members of the Classes and their interests do not conflict with the interests of the
22 Class Members they seek to represent. Plaintiffs have also retained counsel competent
23 and experienced in complex commercial and class action litigation. Plaintiffs and their
24 counsel intend to prosecute this action vigorously for the benefit of all Class Members.
25 Accordingly, the interests of the Class Members will be fairly and adequately
26 protected by Plaintiffs and their counsel.

27 65. **Insufficiency of Separate Actions – Federal Rule of Civil Procedure**
28 **23(b)(1).** Absent a class action, Class Members will continue to suffer the harm

1 described herein, for which they would have no remedy. Even if separate actions could
2 be brought by individual consumers, the resulting multiplicity of lawsuits would cause
3 undue burden and expense for both the Court and the litigants, as well as create a risk
4 of inconsistent rulings and adjudications that might be dispositive of the interests of
5 similarly situated consumers, substantially impeding their ability to protect their
6 interests, while establishing incompatible standards of conduct for Defendant.
7 Accordingly, the proposed Classes satisfies the requirements of Fed. R. Civ. P.
8 23(b)(1).

9 **66. Declaratory and Injunctive Relief – Federal Rule of Civil Procedure**
10 **23(b)(2).** Defendant has acted or refused to act on grounds generally applicable to
11 Plaintiffs and all Members of the Classes, thereby making appropriate final injunctive
12 relief and declaratory relief, as described below, with respect to the Classes as a whole.

13 **67. Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class action
14 is superior to any other available means for the fair and efficient adjudication of this
15 controversy, and no unusual difficulties are likely to be encountered in the
16 management of this class action. The damages or other financial detriment suffered
17 by Plaintiffs and the Class Members are relatively small compared to the burden and
18 expense that would be required to individually litigate their claims against Defendant,
19 so it would be impracticable for Class Members to individually seek redress for
20 Defendant’s wrongful conduct. Even if Class Members could afford individual
21 litigation, the court system could not. Individualized litigation creates a potential for
22 inconsistent or contradictory judgments and increases the delay and expense to all
23 parties and the court system. By contrast, the class action device presents far fewer
24 management difficulties, and provides the benefits of single adjudication, economy of
25 scale, and comprehensive supervision by a single court.

COUNT I

**Violation of the California’s Consumer Legal Remedies Act (“CLRA”)
California Business and Professions Code §§ 1750, *et seq.*
(Plaintiff Horowitz Individually and on Behalf of the California Subclass)**

68. Plaintiff Horowitz hereby re-alleges and incorporates all allegations contained in the preceding paragraphs as if fully set forth herein.

69. Defendant’s conduct constitutes violations under California’s Consumer Legal Remedies Act, Cal. Civ. Code § 1750, *et seq.* The CLRA proscribes “unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or which results in the sale or lease of goods or services to any consumer.”

70. Defendant’s conduct falls within the meaning of this statute because it caused transactions to occur resulting in the sale or lease of goods or services to consumers – namely, the sale of the Product to Plaintiff Horowitz and the California Subclass. Sunscreens are considered goods within the meaning of the statute under Civil Code § 1761(a) and Defendant’s sale of the Product is considered a service under Civil Code § 1761(b).

71. Plaintiff Horowitz and California Subclass Members are consumers pursuant to the CLRA.

72. Defendant violated the CLRA by way of the following provisions:

- In violation of Civil Code § 1770(a)(5), Defendant represented (and continue to represent) that its goods have characteristics which they do not have – that, in exchange for each payment, Plaintiff Horowitz and the members of the Class receive sunscreen which is functioning as intended and which is not contaminated with benzophenone;
- In violation of Civil Code § 1770(a)(14), Defendant represented (and continue to represent) that a consumer has rights, remedies and/or obligations which they did not have – that Plaintiff Horowitz and members of the Class receive sunscreen which is functioning as intended

1 and which is not contaminated with benzophenone, and that Defendant
2 is capable of correcting defects when it is not;

3 73. Defendant also engaged in unfair competition or unfair or deceptive acts
4 or practices in violation of Civil Code § 1770(a)(5) and (a)(7) when it represented
5 through its advertising, warranties, and other express representations that the Product
6 has benefits or characteristics that it did not actually have, namely that the Product
7 was safe to use and failing to disclose that the Product was contaminated
8 benzophenone.

9 74. Defendant is aware that its representations are false and misleading –
10 specifically, Defendant continued to sell the Product into the stream of commerce even
11 after it had knowledge that the Product was contaminated with benzophenone.

12 75. Plaintiff Horowitz and California Subclass have suffered injury-in-fact
13 and actual damages resulting from Defendant’s omissions and misrepresentations
14 because Defendant knew that the Product was contaminated with benzophenone.

15 76. On December 14, 2021, prior to the filing of this Complaint, Plaintiff
16 Horowitz and Class Members put Defendant on written notice of their claims arising
17 from violations of numerous provisions of California law, including the California
18 Consumers Legal Remedies Act (“CLRA”), California Civil Code § 1770, *et seq.*, as
19 well as other causes of action. Plaintiff Horowitz will amend his Complaint to add
20 claims for monetary damages if Neutrogena fails to take the corrective actions.

21 77. Plaintiff Horowitz’s declaration stating facts showing that venue in this
22 District is proper pursuant to Cal. Civ. Code § 1780(c) is attached hereto as Exhibit
23 A.

24 78. In accordance with Civil Code § 1780(a), Plaintiff Horowitz and the
25 other California Subclass Members seek injunctive and equitable relief for
26 Defendant’s violations of the CLRA, including an injunction to enjoin Defendant from
27 continuing its deceptive advertising and sales practices.

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1 87. At the time of their misrepresentations and/or omissions, Defendant was
2 either aware that the Product was defective and unsafe, or was aware that it lacked the
3 information and/or knowledge required to make such a representation truthfully.
4 Defendant concealed, omitted, and failed to disclose this information to Plaintiff
5 Horowitz and California Subclass Members.

6 88. Defendant's descriptions of the Product were false, misleading, and
7 likely to deceive Plaintiffs and other reasonable consumers.

8 89. Defendant's conduct therefore constitutes deceptive or misleading
9 advertising.

10 90. Plaintiff has standing to pursue claims under the FAL as he reasonably
11 reviewed and relied on Defendant's packaging, advertising, representations, and
12 marketing materials regarding the Product, when selecting and purchasing the
13 Product.

14 91. In reliance on the statements made in Defendant's advertising and
15 marketing materials, and Defendant's omissions and concealment of material facts
16 regarding the quality and use of the Product, Plaintiff Horowitz and California
17 Subclass Members purchased the Product.

18 92. Had Defendant disclosed the true defective nature of the Product,
19 Plaintiff and California Subclass Members would not have purchased the Product or
20 would have paid substantially less for it.

21 93. As a direct and proximate result of Defendant's actions, as set forth
22 herein, Defendant has received ill-gotten gains and/or profits, including but not
23 limited to money from Plaintiff Horowitz and California Subclass Members who paid
24 for the Product.

25 94. Plaintiff Horowitz and California Subclass Members seek injunctive
26 relief, restitution, and disgorgement of any monies wrongfully acquired or retained by
27 Defendant and by means of their deceptive or misleading representations, including
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1 monies already obtained from Plaintiff and California Class Members as provided for
2 by the California Business and Professions Code §§ 17500, *et seq.*

3
4 **COUNT III**
5 **Violations of The California Unfair Competition Law (“UCL”),**
6 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***
7 **(Plaintiff Horowitz Individually and on Behalf of the California Subclass)**

8 95. Plaintiffs hereby re-alleges and incorporates all allegations contained in
9 the preceding paragraphs as if fully set forth herein.

10 96. Plaintiff Horowitz brings this cause of action against Defendant
11 individually and on behalf of the California Class.

12 97. Defendant is a “person” as defined by Cal. Bus. & Prof. Code § 17201.

13 98. Plaintiff Horowitz and California Class Members who purchased
14 Defendant’s Product suffered an injury by virtue of buying defective sunscreen
15 products in which Defendant misrepresented and/or omitted the Product’s true quality,
16 reliability, safety, and use.

17 99. Had Plaintiff Horowitz and California Class Members known that
18 Defendant materially misrepresented the Product and/or omitted material information
19 regarding its defective Product and its safety, which contains benzophenone, they
20 would not have purchased the Product.

21 100. Defendant’s conduct, as alleged herein, violates the laws and public
22 policies of California and the federal government, as set out in the preceding
23 paragraphs of this complaint.

24 101. There is no benefit to consumers or competition by allowing Defendant
25 to deceptively label, market, and advertise its Product.

26 102. Plaintiff Horowitz and California Class Members who purchased
27 Defendant’s Product had no way of reasonably knowing that the Product was
28 deceptively packaged, marketed, advertised, and labeled, was defective, not safe, and
unsuitable for its intended use. Thus, Plaintiff Horowitz and California Subclass
Members could not have reasonably avoided the harm they suffered.

1 110. Defendant's deceptive acts and practices were intended to mislead
2 consumers in a material way in the process of purchasing Defendant's Product, and a
3 reasonable consumer would be misled by their deceptive acts and practices.

4 111. All of Defendant's deceptive acts and practices constitute conduct
5 directed at consumers.

6 112. Defendant intended that Plaintiff Cohen and each of the other members
7 of the New York Subclass would rely upon its deceptive conduct and false advertising,
8 and consumers, including Plaintiff Cohen and putative New York Subclass Members,
9 did in fact rely upon deceptive conduct.

10 113. Defendant's foregoing deceptive and unfair acts and practices, including
11 its omissions, were and are deceptive acts or practices in violation of the N.Y. Gen.
12 Bus. Law § 349, in that Defendant manufactured, labeled, packaged, marketed,
13 advertised, distributed, and/or sold the Product without any mention of the fact that
14 the Product contains the carcinogen benzophenone.

15 114. Defendant's unconscionable, deceptive, and/or unfair practices caused
16 actual damages to Plaintiff Cohen and the New York Subclass Members, who were
17 unaware that the Product contained benzophenone.

18 115. As a direct and proximate result of Defendant's deceptive acts and
19 practices, including its omissions, Plaintiff Cohen and New York Subclass Members
20 have been damaged as alleged herein and are thus entitled to recover actual damages
21 to the extent permitted by law in an amount to be proven at trial.

22 116. In addition, Plaintiff Cohen and New York Subclass Members seek
23 equitable and injunctive relief against Defendant on terms that the Court considers
24 reasonable, in addition to reasonable attorneys' fees and costs.

25 117. In addition, Defendant's conduct showed malice, motive, and the
26 reckless disregard of the truth such that an award of punitive damages is appropriate.

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COUNT V
Violation of New York General Business Laws § 350
(Plaintiff Cohen Individually and on Behalf of the New York Subclass)

118. Plaintiff Cohen hereby re-alleges and incorporates all allegations contained in the preceding paragraphs as if fully set forth herein.

119. N.Y. Gen. Bus. Law § 350 prohibits “[f]alse advertising in the conduct of any business, trade or commerce or in the furnishing of any service[.]”

120. Defendant’s actions occurred in the conduct of business, trade, or commerce.

121. Defendant’s foregoing acts and practices, including their advertising, were directed at consumers.

122. Defendant’s conduct, as described in the Complaint, constitutes “false advertising” within the meaning of the N.Y. Gen. Bus. Law § 350, as Defendant publicly disseminating misleading false advertisements through advertising and marketing the Product, failing to disclose that the Product contains benzophenone, a known carcinogen.

123. Defendant’s foregoing, consumer-oriented, unfair or deceptive acts and practices, including its advertising, representations, and omissions, constitutes false and misleading advertising in a material way in violation of the N.Y. Gen. Bus. Law § 350.

124. Defendant’s false, misleading, and deceptive advertising and representations include misrepresenting and misleadingly marketing and labeling the Product was fit for its intended purpose of safely protection against ultraviolet rays and failing to disclose that the Product contains the carcinogen benzophenone.

125. Defendant’s false, misleading, and deceptive advertising and representations of fact were and are directed at consumers.

1 126. Defendant's false, misleading, and deceptive advertising and
2 representations of fact were and are likely to mislead a reasonable consumer acting
3 reasonably under the circumstances.

4 127. Defendant's false, misleading, and deceptive advertising and
5 representations of fact have resulted in consumer injury or harm to the public interest.

6 128. Defendant intended that Plaintiff Cohen and the other members of the
7 New York Subclass would rely upon their deceptive conduct and false advertising,
8 and a reasonable person would in fact be misled by this deceptive conduct. Defendant
9 engaged in misleading and deceptive advertising that failed to disclose that the
10 Product contains benzophenone. Defendant chose to label the Product in this way to
11 impact consumer choices and gain market dominance, as it is aware that all consumers
12 who purchased the Product would be unwilling or less likely to buy the Product if
13 those consumers knew the Product contained benzophenone, a harmful carcinogen
14 known to cause cancer. Thus, Defendant's advertising and labeling was an unfair,
15 untrue, and misleading practice.

16 129. Consumers, including Plaintiff Cohen and New York Subclass members
17 either would not have purchased the Product or would have paid less for them had the
18 known that the Product contains benzophenone.

19 130. As a direct and proximate result of Defendant's deceptive acts and
20 practices, including its use or employment of false advertising, Plaintiff Cohen and
21 each of the other members of the New York Subclass have sustained actual damages
22 in an amount to be proven at trial.

23 131. In addition, Plaintiff Cohen and New York Subclass members seek
24 equitable and injunctive relief against Defendant on terms that the Court considers
25 reasonable, in addition to reasonable attorneys' fees and costs.

26 132. In addition, Defendant's conduct showed malice, motive, and the
27 reckless disregard of the truth such that an award of punitive damages is appropriate.
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COUNT VI

Breach of Express Warranty

**(On Behalf of Plaintiffs Individually, the National Class and,
Alternatively, the California and New York Subclasses)**

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133. Plaintiffs hereby re-alleges and incorporates all allegations contained in the preceding paragraphs as if fully set forth herein.

134. Plaintiffs, and each member of the National Class, formed a contract with Defendant at the time Plaintiffs and each member of the National Class purchased the Product.

135. The terms of the contract include the promises and affirmations of fact made by Defendant on the Product's packaging and through marketing and advertising, as described above.

136. This labeling, marketing, and advertising constitute express warranties and became part of the basis of the bargain and are part of the standardized contract between Plaintiffs and the members of the National Class and Defendant.

137. As set forth above, Defendant purports through its advertising, labeling, marketing, and packaging, to create an express warranty that the Product is safe for its intended use.

138. Plaintiffs and the members of the National Class performed all conditions precedent to Defendant's liability under this contract when they purchased the Product.

139. Defendant breached express warranties about the Product and its qualities because Defendant's Product contained the harmful chemical benzophenone at the time of purchase and the chemical octocrylene which degrades over time resulting in an accumulation of benzophenone and the Product does not conform to Defendant's affirmations and promises described above.

140. Plaintiffs and each of the members of the National Class would not have purchased the Product had they known the true nature of the harmful chemicals in the Product.

1 of sale stemming from their overpayment for the Product that contained
2 benzophenone.

3 149. As a direct and proximate result of Defendant's breach of the warranties
4 of merchantability, Plaintiffs and the other Class Members have been damaged in an
5 amount to be proven at trial.

6 **COUNT VIII**

7 **Unjust Enrichment**

8 **(In the Alternative and on Behalf of Plaintiffs, the National Class and,
9 Alternatively, the California and New York Subclasses)**

10 150. Plaintiffs hereby re-alleges and incorporates all allegations contained in
11 the preceding paragraphs as if fully set forth herein.

12 151. Plaintiffs and the other members of the National Class conferred benefits
13 on Defendant by purchasing the Product.

14 152. Defendant has been unjustly enriched in retaining the revenues derived
15 from the purchase of the Product by Plaintiffs and the other members of the National
16 Class.

17 153. Retention of those monies under these circumstances is unjust and
18 inequitable because Defendant's labeling of the Product was misleading to consumers,
19 which caused injuries to Plaintiffs and the other members of the National Class
20 because they would have not purchased the Product if Defendant's had disclosed that
21 the Product contained harmful chemicals.

22 154. Because Defendant's retention of the non-gratuitous benefits conferred
23 on it by Plaintiffs and the other members of the National Class is unjust and
24 inequitable, Defendant must pay restitution to Plaintiffs and the other members of the
25 National Class for its unjust enrichment, as ordered by the Court.

26 **JURY DEMAND**

27 155. Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a
28 trial by jury of all claims in this Complaint so triable.

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REQUEST FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of the Class Members, pray for judgment and relief against Defendant as follows:

- a) For an order declaring: (i) this is a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of the proposed Classes described herein; and (ii) appointing Plaintiffs to serve as representatives for the Classes and Plaintiffs’ counsel to serve as Class Counsel;
- b) For an order enjoining Defendant from continuing to engage in the unlawful conduct set forth herein;
- c) For an order awarding restitution of the monies Defendant wrongfully acquired by its illegal and deceptive conduct;
- d) For an order requiring disgorgement of the monies Defendant wrongfully acquired by its illegal and deceptive conduct;
- e) For compensatory and punitive damages, including actual and statutory damages, arising from Defendant’s wrongful conduct and illegal conduct;
- f) For an award of reasonable attorneys’ fees and costs and expenses incurred in the course of prosecuting this action; and
- g) For such other and further relief as the Court deems just and proper.

Dated: December 16, 2021

Respectfully submitted,

By:

**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN PLLC**

/s/ Alex R. Straus
Alex R. Straus, Esq. (SBN 321366)
280 South Beverly Place
Beverly Hills, CA 90212

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Tel.: (917) 471-1894
Fax: (310) 496-3176
Email: astraus@milberg.com

Nick Suciu, III*
nsuciu@milberg.com
**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN, PLLC**
6905 Telegraph Rd., Suite 115
Bloomfield Hills, MI 48301
Tel.: (313) 303-3472
Fax: (865) 522-0049

Jennifer Czeisler*
Russell Busch*
Virginia Ann Whitener*
jczeisler@milberg.com
rbusch@milberg.com
gwhitener@milberg.com
**MILBERG COLEMAN BRYSON
PHILLIPS GROSSMAN, PLLC**
800 S. Gay Street, Suite 1100
Knoxville, TN 37929
Tel.: (865) 247-0080
Fax: (865) 522-0049

* *Pro Hac Vice* Application forthcoming

Attorneys for Plaintiffs

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Neutrogena Healthy Skin Firming Cream Contains Carcinogen Benzophenone, Class Action Alleges](#)
