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8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**

10  
11 GRACE NAVARRO on behalf of herself, and all  
12 others similarly situated, and the general public

13 Plaintiff,

14 v.

15 TARGET CORPORATION and DOES 1 to 50,  
16 Inclusive

17 Defendants.  
18

Civil Action No.

**CLASS ACTION COMPLAINT**

**CONSUMER FRAUD, BREACH OF  
EXPRESS & IMPLIED WARRANTIES,  
AND UNJUST ENRICHMENT**

**DEMAND FOR JURY TRIAL**

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1 Plaintiff, GRACE NAVARRO, on behalf of herself, the proposed Class and Subclasses  
2 defined below, and the public, brings this Class Action Complaint (“Class Action”) against  
3 Defendant, alleging the following upon Plaintiff’s personal knowledge, or where Plaintiff lacks  
4 personal knowledge, upon information and belief, including the investigation of counsel.

5 **I. INTRODUCTION**

6 1. This is a consumer fraud Class Action to redress the economic harms caused by  
7 Defendant’s sale of benzoyl peroxide acne treatment drug products (“BPO Products” or “Products”)  
8 without warning consumers the BPO Products contained unsafe levels of the potent human carcinogen  
9 benzene, and that the BPO Products were at risk of degrading further into benzene under normal use,  
10 handling, and storage conditions.

11 2. The BPO Products are “drugs” used to treat acne vulgaris (“acne”), formulated with a  
12 chemical called benzoyl peroxide (“BPO”), along with other inactive ingredients, to make acne  
13 treatment creams, washes, scrubs, and bars. Before being sold to the public, the Products must be  
14 made in conformity with current good manufacturing practices and must conform to quality, safety,  
15 and purity specifications. Defendant’s BPO Products did not.

16 3. BPO Products should not contain benzene, nor degrade into benzene, except under  
17 extraordinary circumstances.<sup>1</sup> A drug is “adulterated” if it consists in whole or in part of any filthy,  
18 putrid, or decomposed substance, is impure, or mixed with another substance.<sup>2</sup> Under the FDA Act, it  
19 is a crime to introduce or deliver “into interstate commerce any food, drug, device, tobacco product, or  
20 cosmetic that is adulterated or misbranded.”<sup>3</sup> If benzene is found in any on-market or post-market  
21 Product, the drug is unlawful and the drug manufacturer must contact the FDA to initiate a voluntary  
22 recall.<sup>4</sup>

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<sup>1</sup> Food and Drug Administration, *Q3C – Tables and List Guidance for Industry* (2017),  
26 <https://www.fda.gov/media/71737/download>.

27 <sup>2</sup> 21 U.S.C. § 351(a)(2011); *see also* § 351(b)-(d) (noting that a lack of purity or mixture with another substance  
also renders drug adulterated).

28 <sup>3</sup> 21 U.S.C. § 331(a)(2010).

<sup>4</sup> Food and Drug Administration. (Dec. 22, 2022). *FDA Alerts Drug Manufacturers to the Risk of Benzene in Certain Drugs*, <https://www.fda.gov/drugs/pharmaceutical-quality-resources/fda-alerts-drug-manufacturers-risk-benzene-contamination-certain-drugs> (last visited Feb. 9, 2024).

1 4. Throughout this Complaint, references to federal law and FDA regulation are merely to  
2 provide context and are not intended to raise a federal question of law. All claims alleged herein arise  
3 out of violations of state law, which in no way conflict, interfere with, or impose obligations that are  
4 materially different than those imposed by federal law.

5 5. The BPO Products marketed and sold to Plaintiff, the Class, and the public by the  
6 Defendant decomposed into benzene rendering them materially different than advertised, *i.e.*, by  
7 containing unsafe levels of benzene. Benzene is a known human carcinogen. Studies dating to the  
8 1800s have led to a consensus within the medical and scientific communities that benzene exposure,  
9 even in low amounts, increases the risk of blood cancers and other adverse effects.

10 6. In 2023, Valisure, LLC,<sup>5</sup> an independent, accredited laboratory that has developed  
11 analytical methods to test drugs and consumer products for public safety, tested a representative  
12 sample of BPO and non-BPO products and found the BPO Products had dangerous levels of benzene,  
13 many multiple times higher than allowed in any regulated drug.<sup>6</sup> Using industry standard gas  
14 chromatography and detection by mass spectrometry (“GC-MS”) instrumentation, with selected ion  
15 flow tube mass spectrometry (“SIFT-MS”) for detection of benzene released into the air around  
16 certain BPO Products, the Products were incubated to temperatures common during consumer use,  
17 handling, and storage and sampled for benzene.<sup>7</sup> Levels as high as 1600 parts per million (ppm) were  
18 found in common BPO Products.<sup>8</sup> Unexpectedly, researchers found that benzene was released into  
19 the surrounding air even when the BPO Products’ packaging was closed raising concern for even  
20

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21  
22 <sup>5</sup> Valisure is an independent third-party analytical laboratory that is accredited to International Organization for  
23 Standardization (“ISO/IEC”) 17025:2017 standards for chemical testing (PJLA Accreditation Number 94238). In  
24 response to rising concerns about drug shortages, generics, and overseas manufacturing, Valisure developed and validated  
25 methods to test medications and consumer products distributed in the United States. Valisure has tested a variety of drug  
26 and consumer healthcare products for benzene including sunscreens, antiperspirants, body sprays, hand sanitizers, and dry  
27 shampoos for benzene. Valisure’s testing results submitted to the FDA in its Citizen’s Petitions, were widely publicized in  
28 the media leading to numerous recalls of contaminated consumer products. *See* Valisure Citizen’s Petition on Benzoyl  
Peroxide (March 4, 2024), pp. 6-7, *see also* Valisure Detects Benzene in Sunscreen, <https://www.valisure.com/valisure-newsroom/valisure-detects-benzene-in-sunscreen>; Bruce Y. Lee, Forbes, FDA: P&G Recalls Antiperspirant Sprays Due To Cancer Risk Of Benzene (Nov. 24, 2021), <https://www.forbes.com/sites/brucelee/2021/11/24/fda-pg-recalls-antiperspirants-body-sprays-due-to-cancer-risk-of-benzene/?sh=69cf13c24f32>; *see also* Sandee LaMotte, CNN, Antiperspirant recall: What the finding of a cancer-causing chemical means for you (Dec. 1, 2021), <https://www.cnn.com/2021/12/01/health/deodorants-antiperspirants-recall-benzene-explainer-wellness/index.html>.

<sup>6</sup> Valisure FDA Citizen’s Petition on Benzoyl Peroxide (March 6, 2024).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at p.17.

1 more inhalation exposures—a particularly pernicious form of exposure to benzene.<sup>9</sup> For the non-BPO  
 2 products tested, benzene was not present, or at trace levels below 2 ppm.<sup>10</sup> Valisure filed a FDA  
 3 Citizen’s Petition on March 5, 2024 demanding an immediate recall of all BPO Products.<sup>11</sup> The  
 4 Petition is pending.<sup>12</sup>

5 7. The high levels of benzene found led Valisure to conduct a stability study on a diverse  
 6 market sweep of BPO Products and formulations. Valisure’s results show that on-market BPO  
 7 Products can form over 800 times the conditionally restricted FDA concentration limit of 2 ppm for  
 8 benzene, and the evidence suggests this problem applies broadly to BPO Products currently on the  
 9 market.<sup>13</sup> Valisure concluded that on-market BPO Products appear to be fundamentally unstable and  
 10 form unacceptably high levels of benzene when handled or stored at temperatures the Products will be  
 11 be exposed to during expected use and handling by consumers.<sup>14</sup>

12 8. Although the BPO Products have been found to have benzene, Defendant never listed  
 13 benzene among the ingredients, or anywhere on the Products’ labels, containers, advertising or on  
 14 Defendant’s websites. Defendant warned no one the Products had benzene or were at risk of benzene  
 15 contamination.

16 9. Defendant knew or should have known the BPO Products contain and/or degraded into  
 17 benzene when exposed to expected consumer use, handling, and storage conditions. BPO is known,  
 18 within the scientific community (but not among consumers) to degrade into benzene according to the  
 19 mechanism below:<sup>15</sup>

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21 <sup>9</sup> *Id.* at p. 23.

22 <sup>10</sup> *Id.* at p. 15 (“76 non-BPO products had no detectable benzene or values below 0.1ppm. 6 non-BPO products  
 23 contained traces of benzene below 2 ppm, which could be due to various inactive ingredients used in consumer products  
 that have been theorized to contain trace benzene”); *see also* Valisure, LLC, [https://www.valisure.com/valisure-  
 newsroom/valisure-detects-benzene-in-benzoyl-peroxide](https://www.valisure.com/valisure-newsroom/valisure-detects-benzene-in-benzoyl-peroxide) (last visited March 6, 2024).

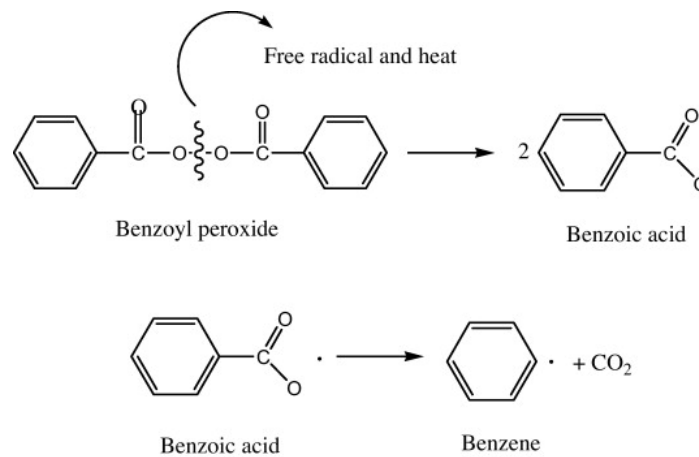
24 <sup>11</sup> Valisure BPO Citizen’s Petition (March 5, 2024).

<sup>12</sup> Valisure’s Petition was still pending as of this Class Action’s filing.

25 <sup>13</sup> Valisure, LLC, (March 6, 2024), *Valisure Discovers Benzoyl Acne Treatment Products are Unstable and Form  
 Benzene*, <https://www.valisure.com/valisure-newsroom/valisure-detects-benzene-in-benzoyl-peroxide> (last visited March  
 6, 2024).

26 <sup>14</sup> *Id.*

27 <sup>15</sup> The disposition of benzoyl peroxide to form benzene. Benzoyl peroxide is known to thermally decompose to  
 form two molecules of benzoyloxy radicals that can further decompose to benzoic acid or phenyl radicals with liberation of  
 carbon dioxide. The phenyl radicals can then produce benzene. *See* Shang-Hao Liu, et al, *Thermal hazard evaluation of  
 the autocatalytic reaction of benzoyl peroxide using DSC and TAM III*, THERMOCHIMICA ACTA, Volume 605, Pages 68-76, ,  
 28 (2015), ISSN 0040-603, <https://www.sciencedirect.com/science/article/pii/S004060311500057X>.



10           10. Defendant misled Plaintiff, the Class, the Subclasses, and the public by representing the  
11 BPO Products only had the ingredients listed, and not benzene. Defendant misled Plaintiff, the Class,  
12 the Subclasses, and the public by representing the BPO Products were safe while concealing material  
13 health and safety information known to them, *e.g.*, the BPO Products degraded to benzene, or were  
14 contaminated with benzene. Defendant misled Plaintiff, the Class, the Subclasses, and the public by  
15 giving the BPO Products long expiration dates of 2-3 years, affirming to consumers the BPO Products  
16 were safe for use for years when Defendant knew or should have known the BPO Products degraded  
17 much sooner to benzene.

18           11. Defendant's statements and omissions of material health and safety information  
19 unreasonably placed Plaintiff, the Class, the Subclasses, and the public at risk of exposure to benzene  
20 without their knowledge and consent. Defendant's statements to Plaintiff, the Class, the Subclasses,  
21 and the public about the Products were false, misleading, unsubstantiated, and blatantly deceptive.

22           12. As a result of the Defendant's misconduct and consumer deception, the Plaintiff, the  
23 Class, the Subclasses, and the public were economically harmed, as they purchased a product that they  
24 otherwise would have never purchased. They were also physically harmed by being exposed to a  
25 known human carcinogen.

26           13. This Class Action is necessary to redress the economic harms caused to Plaintiff, the  
27 Class, and the Subclass members who bought the Products believing them to be safe and only  
28 containing the ingredients on the BPO Products' labels, containers, in advertising, and on Defendant's

1 websites. This Class Action is further necessary to expose Defendant's ongoing consumer fraud and to  
2 enjoin Defendant from continuing their misconduct and deception to protect the public.

3 14. Plaintiff brings this Class Action individually, and on behalf of those similarly situated,  
4 and seeks to represent a National Class of consumers and State Subclasses of consumers from  
5 California, Connecticut, Hawaii, Illinois, Maryland, Missouri, Massachusetts, Nevada, New York,  
6 Ohio, Pennsylvania, Rhode Island, and Washington (defined *infra*). Plaintiff seeks damages,  
7 reasonable attorneys' fees and costs, interest, restitution, other equitable relief, including an injunction  
8 and disgorgement of all benefits and profits Defendant received from misconduct.

9 **II. THE PARTIES**

10 15. Plaintiff Grace Navarro is a California resident, located in Fresno County who bought  
11 BPO Products including, but not limited to, Target Up & Up Acne Spot treatment, Walmart Equate  
12 Beauty Acne Facial Cleansing Wash, and Walgreens Maximum Strength Acne Foaming Wash from  
13 2013 to November 2023. Plaintiff has suffered economic damages and a result of Defendant's  
14 violations of the state laws alleged herein. Plaintiff would never have purchased Defendant's BPO  
15 Products had Defendant warned about the presence of benzene or that the Products could degrade into  
16 benzene.

17 16. Defendant Target Corporation ("Target") is a citizen of Minnesota with its principal  
18 place of business in Minneapolis, Minnesota. Target sells BPO Products under the brand name Up &  
19 Up. Target's Products include, *inter alia*: (1) Maximum Strength Acne Medication and (2) Acne Spot  
20 Treatment. At all relevant times, Target conducted business and derived substantial revenue from its  
21 manufacturing, advertising, marketing, distributing, and selling of the Products within the State of  
22 California.

23 17. Defendant and its agents promoted, marketed, and sold the Products in California and in  
24 this District. The unfair, unlawful, deceptive, and misleading advertising and labeling of the Products  
25 were prepared and/or approved by Defendant and its agents and were disseminated by Defendant and  
26 its agents through labeling and advertising containing the misrepresentations alleged and disseminated  
27 uniformly through advertising, packaging, containers, and via websites and social media.

28 \\\



**III. JURISDICTION AND VENUE**

1  
2 18. This Court has jurisdiction over this matter because the amount in controversy exceeds  
3 \$5 million satisfying 28 U.S.C. § 1332(d)(2) for subject matter jurisdiction. This Court has  
4 supplemental jurisdiction over any state law claims under 28 U.S.C. § 1367.

5 19. Venue is proper in the Eastern District of California under 28 U.S.C. § 1391(b) because  
6 a substantial part of the events or omissions giving rise to the claims occurred in this District and  
7 Defendant directed its deceptions to consumers in this District.

8 20. This Court has personal jurisdiction over the Defendant because Defendant transacts  
9 business in California, including in this District, has substantial aggregate contacts with the State of  
10 California, including in this District, engaged in misconduct that has and had a direct, substantial,  
11 reasonably foreseeable, and intended effect of injuring people in this District, and Defendant  
12 purposely availed itself of the benefits of doing business in the State of California, and in this District.  
13 Plaintiffs' claims arise out of and relate to the Defendant's actions and contacts with the State of  
14 California.

15 21. To the extent applicable, the Court also has pendant personal jurisdiction over claims  
16 alleged against Defendant that involve the same common nucleus of facts and actions that give rise to  
17 Plaintiff's claims that otherwise have proper personal jurisdiction within this Court.

18 **IV. GENERAL ALLEGATIONS**

19 22. Fifty million Americans suffer from acne annually.<sup>16</sup> Acne is the most common skin  
20 condition in the United States with a prevalence among adolescents of almost 95 percent.<sup>17</sup> Acne can  
21 begin as early as age seven and, for some, can persist through adulthood and into ages 50s and 60s.<sup>18</sup>  
22 Millions of acne sufferers seek treatment every year making it a billion-dollar industry and a key  
23 business segment for Defendant, who are among America's most prominent companies.

24 23. Some of Defendant's most profitable acne treatment products contain BPO. To make  
25 the finished BPO Products, BPO, a dry white powder, is mixed with other ingredients to create topical  
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<sup>16</sup> American Association of Dermatology, <https://www.aad.org/media> (visited October 24, 2023).

<sup>17</sup> JL Burton et al., *The prevalence of acne vulgaris in adolescence*, BR J DERMATOL, (1971);85(2):119-126.

<sup>18</sup> *Id.*

1 drug creams, cleansers, scrubs, and washes for use on the face and body. BPO is formulated into these  
2 Products at concentrations up to 10%.

3 24. Target is a big box general merchandise retailer of consumer goods and drug products.  
4 Target sells national brand products and its own private label products. Target generated total  
5 revenues of 24.8 billion during fiscal year 2023. Target’s private and exclusive brand products  
6 represent approximately one third of their overall sales and generally carry higher margins than  
7 equivalent national brand products.<sup>19</sup>

8 25. Target’s BPO Products are sold under its private label known as “Up & Up,” which is  
9 attractive to consumers seeking Products that are less expensive than the national sellers. Target’s Up  
10 & Up Maximum Strength Acne Medication and Up & Up Acne Spot Treatment products are all  
11 formulated with BPO and are widely marketed, available, sold, and used by children, teenagers, and  
12 adults throughout the United States and the world. The acne treatment industry is a highly competitive  
13 billion-dollar market. To remain relevant and top of mind, Target spends millions of dollars every  
14 year promoting the Up & Up private brand directly to consumers through its websites.

15 **A. DEFENDANT DID NOT COMPLY WITH FDA’S TESTING**  
16 **REQUIREMENTS BEFORE SELLING THE PRODUCTS TO THE PUBLIC**

17 26. Despite Defendant’s Up & Up brand popularity and income stream, Defendant did not  
18 adequately test the BPO Products before selling them to Plaintiff, the Class, the Subclasses, and the  
19 public. Defendant’s BPO Products are “drugs” regulated by the FDA. As with any regulated drug,  
20 Defendant must follow current good manufacturing practices (“CGMPs”), have scientifically sound  
21 specifications, and must have test procedures and processes to ensure the drug’s components (active  
22 and inactive ingredients), and finished products are safe. Both raw ingredient materials and finished  
23 batches must be tested before released to the public to confirm they meet specifications for identity,  
24 strength, quality, and purity.<sup>20</sup> If testing results of the raw materials or finished product do not  
25 conform with the specifications, the product cannot be sold to the public. Defendant must also re-test  
26  
27

28 <sup>19</sup> Target Corporation, (Jan. 28, 2023). *Form 10-K 2023*, <http://www.sec.gov/edgar.shtm>.

<sup>20</sup> 21 C.F.R. § 211.84 (1978); *see also* 21 C.F.R. § 211.160 (1978).

1 any Products subject to deterioration.<sup>21</sup> Any Products not made in conformity with the CMGPs is  
2 considered “adulterated” under 501(a)(2)(B) of the Food, Drug, and Cosmetic Act.<sup>22</sup>

3 27. Defendant must also do stability testing to understand the “shelf life” of the Products  
4 and to assign an expiration date. It is well known that certain chemical ingredients can degrade or  
5 change because of environmental, and storage conditions such as light, moisture, temperature, and  
6 humidity, or because of the passage of time. The stability testing should cover all expected distributor  
7 and consumer storage, handling, and use conditions and must be done using “reliable, meaningful, and  
8 specific test methods.”<sup>23</sup> If stability testing finds a drug product is not stable under expected storage or  
9 use conditions, degrades, or create toxic byproducts, the product cannot be sold to the public.

10 28. The CGMPs and stability test requirements are there to ensure drug products are safe  
11 for public use. These are the minimum requirements. Because the drug manufacturers are largely self-  
12 regulated, the FDA must rely on drug manufacturers, the public, and concerned citizens to report  
13 unsafe drugs. The FDA cannot force a drug manufacturer to recall a contaminated drug.<sup>24</sup>

14 **B. DEFENDANT KNEW OR SHOULD HAVE KNOWN THE BPO PRODUCTS**  
15 **DEGRADED TO BENZENE UNDER NORMAL USE, HANDLING, AND**  
16 **STORAGE**

17 29. Defendant knew or should have known the BPO Products degrade to benzene when  
18 exposed to heat. Defendant knew that, because of the chemical nature of the active and inactive  
19 ingredients, including BPO, the BPO Products were not stable and would degrade when exposed  
20 normal and expected use, handling, and storage conditions.

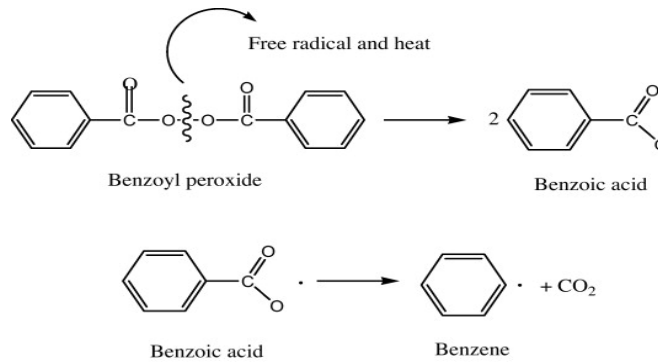
21  
22  
23  
24 <sup>21</sup> 21 C.F.R. § 211.160(b)(1)(1978).

25 <sup>22</sup> 21 C.F.R. § 225.1 (1976). Under 501(a)(2)(B) of the Federal Food, Drug, and Cosmetic Act a drug is  
26 considered “adulterated” (poorer in quality by adding another substance) if the methods used in, or the facilities or controls  
27 used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in  
28 conformity with CGMP; *see also* Food and Drug Administration, *Facts About the Current Good Manufacturing Practices*  
(CGMP); <https://www.fda.gov/drugs/pharmaceutical-quality-resources/facts-about-current-good-manufacturing-practices-cgmp> (last visited Feb. 11, 2024).

<sup>23</sup> 21 CFR 211.166.

<sup>24</sup> Food and Drug Administration, *Facts About the Current Good Manufacturing Practices (CGMP)*;  
<https://www.fda.gov/drugs/pharmaceutical-quality-resources/facts-about-current-good-manufacturing-practices-cgmp> (last  
visited Feb. 11, 2024).

30. It is well known that BPO degrades to benzene when exposed to heat over time. This process was first reported in the scientific literature as early as 1936.<sup>25</sup> BPO degrades into benzene according to the mechanism below.<sup>26</sup>



31. The degradation of BPO to benzene was known or should have been known to the Defendant, who promote themselves as expending substantial sums of money and resources to science and research. Defendant marketed themselves as mass merchandisers of quality drug and healthcare products. Defendant employed high-level scientists, chemists, and researchers to formulate and/or decide which drug products it will privately label and sell for public use. Defendant with these resources and expertise were aware of the well-known chemical processes that degrade their BPO Products into benzene when exposed to common use temperatures and conditions.

32. Defendant further knew or should have known that specific ingredients derived from hydrocarbons increased the risk the BPO Products would yield benzene.<sup>27</sup> At-risk ingredients include carbomers, mineral spirits, and other petroleum derived substances. These ingredients are red flags for risk of benzene contamination. The FDA published guidance in 2022 urging the industry to

<sup>25</sup> H. Erlenmeyer and W. Schoenauer, *Über die thermische Zersetzung von Di-acyl-peroxyden*, HELV. CHIM. ACTA, 19, 338 (1936), <https://onlinelibrary.wiley.com/doi/10.1002/hlca.19360190153> (last visited Feb. 5, 2024).

<sup>26</sup> Benzoyl peroxide is known to thermally decompose to form two molecules of benzoyloxy radicals that can further decompose to benzoic acid or phenyl radicals with liberation of carbon dioxide. The phenyl radicals can then produce benzene. See Shang-Hao Liu et al., *Thermal hazard evaluation of the autocatalytic reaction of benzoyl peroxide using DSC and TAM III*, THERMOCHIMICA ACTA, Volume 605, (2015), Pages 68-76, ISSN 0040-6031, <https://www.sciencedirect.com/science/article/pii/S004060311500057X> (last visited Feb. 5, 2024).

<sup>27</sup> Food and Drug Administration. (Dec. 22, 2022). *FDA Alerts Drug Manufacturers to the Risk of Benzene in Certain Drugs*.

1 reformulate drug products at risk of benzene contamination.<sup>28</sup> The FDA’s alert highlighted  
2 ingredients made from hydrocarbons, including carbomers (thickening agents), urging drug  
3 manufacturers to test products containing them for benzene contamination.<sup>29</sup> Many of the Defendant’s  
4 Products contain hydrocarbons and carbomers but none have been recalled due to benzene  
5 contamination.

6 33. Defendant knew or should have known through their own research, development,  
7 formulation, evaluation, selection, and testing of BPO Products whether they were chemically and  
8 physically stable. Defendant was required not only to adequately test the BPO Products for safety and  
9 stability before selling them to the public, but also to monitor their internal practices, processes, and  
10 specifications to make sure they kept pace with science and emerging methodologies. Defendant  
11 knew or should have known from expiration and stability studies examining the “shelf life” of the  
12 BPO Products, the chemical changes took place because of normal and expected environmental, use,  
13 and storage conditions.

14 34. Defendant knew or should have known the BPO Products would be handled, used, and  
15 stored by distributors, sellers, and consumers under various temperatures that affect chemical stability.  
16 Defendant knew or should have known the BPO Products would travel by commercial carriers and  
17 distributors in varying storage conditions and would be stored by consumers in handbags, backpacks,  
18 bathrooms, showers, lockers, and in vehicles during warm months where the BPO Products would be  
19 exposed to heat. Defendant knew or should have known consumers would apply the benzene  
20 contaminated BPO Products to their faces and bodies and would also use the BPO Products in heated  
21 showers as scrubs and washes. Defendant knew or should have known the BPO Products would be  
22 used and applied to the skin at normal body temperatures, and elevated temperatures following  
23 showers or baths, after physical activity, and after the BPO Products sat in warm temperatures or hot  
24 vehicles.

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27 <sup>28</sup> Food and Drug Administration. *Reformulating Drug Products That Contain Carbomers*  
28 *Manufactured With Benzene* (December 27, 2023), <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/reformulating-drug-products-contain-carbomers-manufactured-benzene>.

<sup>29</sup> *Id.*; see also December 22, 2022 FDA Alert at 1.

1 35. These storage, use, and handling conditions were known or should have been known to  
2 Defendant before the BPO Products were marketed and sold to Plaintiff, the Class, and Subclass  
3 members. Defendant knew or should have known the BPO Products degrade to benzene under these  
4 conditions exposing consumers to benzene. Defendant further knew or should have known that,  
5 because of the known degradation of BPO to benzene, their BPO Products were contaminated with  
6 benzene by the time they reached consumers, but they sold them to Plaintiff, the Class, the Subclass,  
7 and the public anyway, without warning of the risk of exposure. Moreover, the 2–3-year shelf life  
8 printed on the BPO Products told consumers they were safe for use for years, when they were not.

9 **C. DEFENDANT KNEW OR SHOULD HAVE KNOWN BENZENE WAS**  
10 **FOUND IN OTHER CONSUMER PRODUCTS THEY SOLD BUT DID NOT**  
11 **TEST THEIR BPO PRODUCTS**

12 36. Defendant was aware or should have been aware of benzene contamination in other on-  
13 market drug and healthcare products when they marketed and sold the BPO Products to Plaintiff, the  
14 Class, the Subclass and the public but did not test the BPO Products for benzene contamination.  
15 Indeed, Target sells many national brand products, including sunscreens, that have been the subject of  
16 benzene contamination.

17 37. In 2020, the FDA started working with companies to identify benzene in products,  
18 which resulted in product recalls of hand sanitizers, sunscreens, and deodorants. In 2021, an  
19 independent chemical analysis by Valisure of hundreds of sunscreens and after-sun care products from  
20 69 brands found 27 percent of the batches had significant levels of benzene above the FDA 2 ppm  
21 limit.<sup>30</sup> Johnson and Johnson’s Aveeno and Neutrogena sunscreen lines sold by Target were among  
22 the most benzene contaminated and were recalled.<sup>31</sup> CVS’s private brand after-sun care products were  
23 also highly contaminated with benzene. By 2021, Defendant was well aware of benzene  
24 contamination issues in products it sold and in products of its competitors but continued to advertise  
25 and sell the BPO Products without testing them for benzene.

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27 \_\_\_\_\_  
28 <sup>30</sup> Valisure Citizen Petition on Benzene in Sunscreen and After-sun Care Products, May 24, 2021.

<sup>31</sup> Press Release. (July 14, 2021), Johnson & Johnson Consumer Inc. Johnson & Johnson Consumer Inc. *Voluntarily Rec of Specific Neutrogena and Aveeno Aerosol Sunscreen Products Due to the Presence of Benzene.*

**D. DEFENDANT IGNORED FDA’S BENZENE ALERT TO TEST BPO PRODUCTS**

38. In 2022, the FDA issued a safety alert warning drug manufacturers of the risk of benzene contamination in certain drug products and drug components. The FDA reiterated the risk benzene exposure poses to public health and the drug manufacturers’ obligations to test drug products under the U.S. Code of Federal Regulations, Title 21:

FDA reminds manufacturers they are required to establish scientifically sound and appropriate specifications and test procedures to assure drug components (active and inactive ingredients) and finished drug products conform to appropriate quality specifications (21 C.F.R. 211.84, 21 C.F.R. 211.160). This includes testing of raw materials and finished batches (21 C.F.R. 211.165) prior to release to ensure they meet appropriate specifications for identity, strength, quality, and purity.<sup>32</sup>

39. The FDA warned drug manufacturers that any drug products or components at risk of benzene contamination should be tested, and any batches with benzene above 2 ppm should not be released to the public.<sup>33</sup> The FDA further warned that, if any drug or drug component was subject to deterioration, drug manufacturers must have re-testing procedures in place to ensure continued purity and stability. The FDA recommended risk assessments to evaluate the possibility of benzene contamination in the drug products or components.<sup>34</sup> If any drug product in circulation was found to have benzene over 2ppm, the FDA directed that drug manufacturers contact the FDA to discuss a voluntarily recall.<sup>35</sup>

40. To date, none of the Defendant’s Products have been recalled due to benzene contamination.

**E. RECENT TESTING FOUND COMMON BPO PRODUCTS CONTAIN DANGEROUS LEVELS OF BENZENE IN EXCESS OF REGULATORY LIMITS**

41. Testing by Valisure in 2023 found common acne treatment products formulated with BPO are not only contaminated with benzene but have levels dangerous to public health. Valisure is

<sup>32</sup> Federal Drug Administration. (Dec. 22, 2022). *FDA Alerts Drug Manufacturers to the Risk of Benzene in Certain Drugs*, 1.

<sup>33</sup> *Id.*, 3.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*, 2.



1 an accredited independent laboratory who has developed validated analytical methods<sup>36</sup> to test drugs  
 2 and consumer products to address rising concerns about public safety. Valisure has tested a wide  
 3 variety of drugs and products for benzene including sunscreens, antiperspirants, hand sanitizers, and  
 4 dry shampoos. Their work has led to widely publicized product recalls protecting the public from  
 5 dangerous and carcinogenic consumer products.<sup>37</sup>

6 42. In 2023, Valisure tested 175 finished acne treatment products to determine whether any  
 7 had benzene. Of the 175 products tested, 99 were formulated with BPO, 58 had active ingredients  
 8 (either individually or in combination) of salicylic acid, sulfur, adapalene, azelaic acid, niacinamide  
 9 and zinc, and 18 had no drug ingredients.<sup>38</sup> 83 of the BPO Products were purchased over the counter  
 10 from major retailers and 16 were prescription products purchased from licensed wholesalers.<sup>39</sup> The  
 11 BPO Products included popular Products: Proactiv 2.5% BPO Cream, Target Up & Up 2.5% BPO  
 12 Cream, Equate Beauty 10% BPO Cream, Equate BPO Cleanser, Neutrogena 10% BPO Cleanser,  
 13 Clearasil 10% BPO Cream, CVS Health 10% BPO Face Wash, Walgreens 10% BPO Cream, La  
 14 Roche Posay BPO Cream, and Clean & Clear 10% BPO Lotion.

15 43. Valisure used three incubation temperatures to evaluate the effects of common  
 16 distributor and consumer use, handling, and storage conditions on benzene formation. 37°C/98.6°F  
 17 was used for human body temperature, 50°C/122°F was used to evaluate shelf-life performance as an

19 <sup>36</sup> Valisure’s test methods largely mirror those utilized by FDA’s own “Drug Quality Sampling and Testing”  
 20 (“DQST”) Program. Valisure FDA Citizen’s Petition at 4.

21 <sup>37</sup> See Valisure May 24, 2021 Citizen Petition on Benzene in Sunscreen and After-sun Care Products,  
 22 <https://www.valisure.com/valisure-newsroom/valisure-detects-benzene-in-sunscreen>); Valisure’s Citizen Petition on Hand  
 23 Sanitizer Products Containing Benzene Contamination (filed March 24, 2021),  
 24 <https://www.regulations.gov/document/FDA-2021-P-0338-0001>), Valisure’s Citizen Petition on Benzene in Sunscreen and  
 25 After-sun Care Products (filed May 24, 2021), <https://www.regulations.gov/document/FDA-2021-P-0497-0001>),  
 26 Valisure’s Citizen Petition on Benzene in Body Spray Products (filed November 3, 2021),  
 27 <https://www.regulations.gov/document/FDA-2021-P-1193-0001>), Valisure’s Citizen Petition on Benzene in Dry Shampoo  
 28 Products (filed October 31, 2022), <https://www.regulations.gov/document/FDA-2022-P-2707-0001>) see also CNET, Dry  
 Shampoo Recall: What Is Benzene and Which Brands Are Affected [https://www.cnet.com/health/personal-care/dry-  
 shampoo-recall-what-is-benzene-and-which-brands-are-affected/](https://www.cnet.com/health/personal-care/dry-shampoo-recall-what-is-benzene-and-which-brands-are-affected/) (identifying 19 types of dry shampoo have been recalled  
 due to benzene content); Ryan Basen, Medpage Today, After Valisure Petition, Ol’ Dirty Benzene Forces Another Recall  
 (November 30, 2021), <https://www.medpagetoday.com/special-reports/exclusives/95929> (“After Valisure Petition, Ol’  
 Dirty Benzene Forces Another Recall”); Bruce Y. Lee, Forbes, FDA: P&G Recalls Antiperspirant Sprays Due To Cancer  
 Risk Of Benzene (Nov. 24, 2021), [https://www.forbes.com/sites/brucelee/2021/11/24/fda-pg-recalls-antiperspirants-body-  
 sprays-due-to-cancer-risk-of-benzene/?sh=69cf13c24f32](https://www.forbes.com/sites/brucelee/2021/11/24/fda-pg-recalls-antiperspirants-body-sprays-due-to-cancer-risk-of-benzene/?sh=69cf13c24f32); see also Sandee LaMotte, CNN, Antiperspirant recall: What the  
 finding of a cancer-causing chemical means for you (Dec. 1, 2021), [https://www.cnn.com/2021/12/01/health/deodorants-  
 antiperspirants-recall-benzene-explainer-wellness/index.html](https://www.cnn.com/2021/12/01/health/deodorants-antiperspirants-recall-benzene-explainer-wellness/index.html).

<sup>38</sup> See Valisure Citizen’s Petition on Benzoyl Peroxide (March 4, 2024).

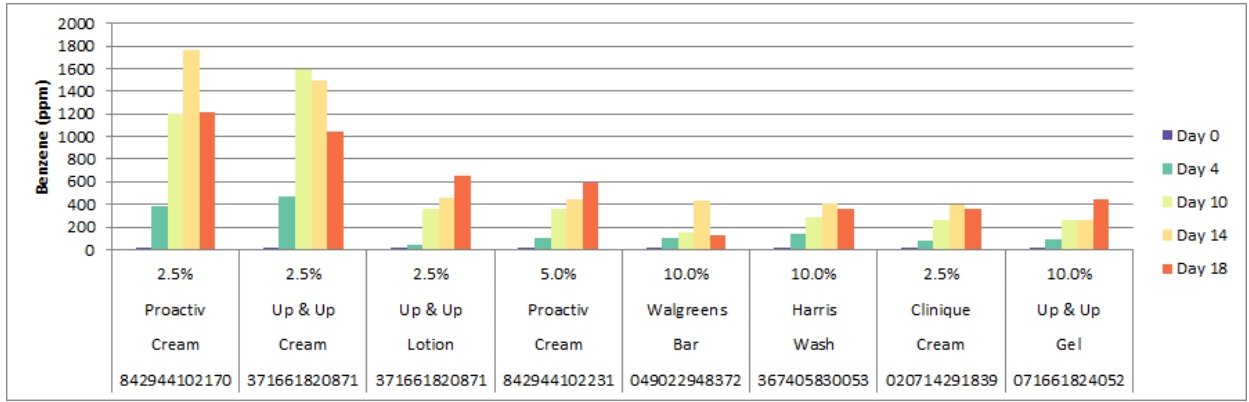
<sup>39</sup> *Id.*



1 accelerated stability testing temperature used by the pharmaceutical industry,<sup>40</sup> and 70°C/158°F to  
 2 model storage in a hot vehicle.<sup>41</sup> The BPO Products were incubated at 37°C for four weeks and 50°C  
 3 for three weeks and benzene concentration was measured at certain time intervals using GC-MS.  
 4 Benzene findings were plotted in real time and reported in parts per million (“ppm”). The results  
 5 below were submitted to the FDA in Valisure’s March 5, 2024 Citizen’s Petition on Benzoyl  
 6 Peroxide.<sup>42</sup>

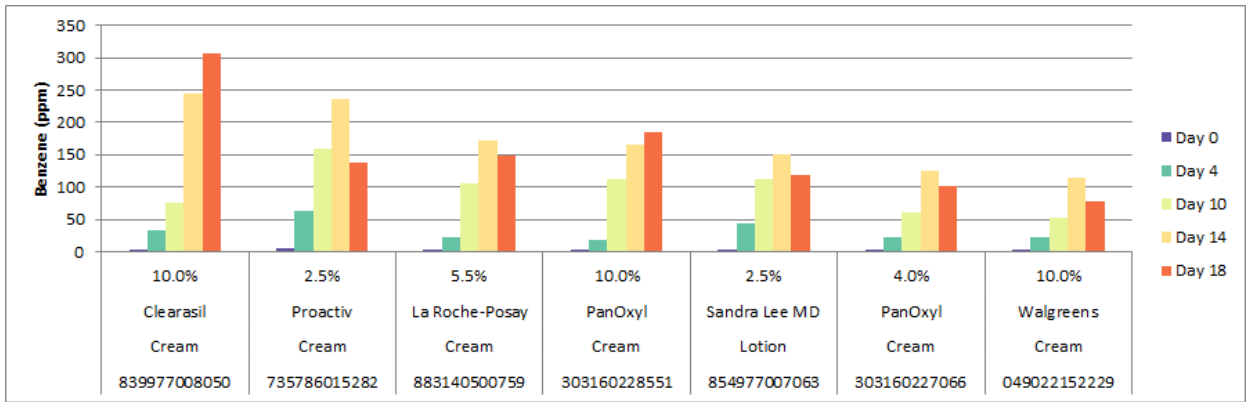
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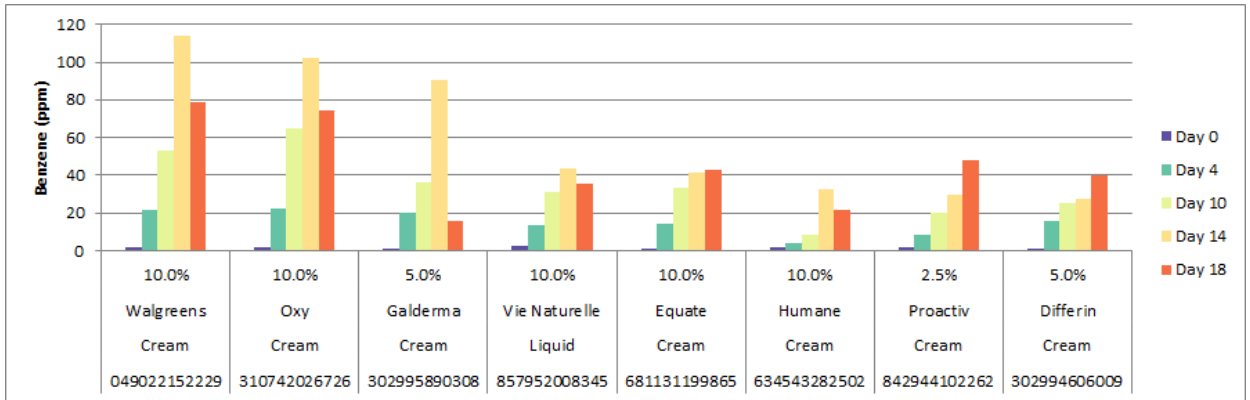
25 <sup>40</sup> Ghimire, Prakash et al., *Guidelines on Stability Studies of Pharmaceutical Products and Shelf Life Estimation*.  
 INTERNATIONAL JOURNAL OF ADVANCES IN PHARMACY AND BIOTECHNOLOGY, (2020). 06. 15-23. 10.38111/ijapb.20200601004.

26 <sup>41</sup> Grundstein A, Meentemeyer V, Dowd J. *Maximum vehicle cabin temperatures under different meteorological*  
 27 *conditions*. Int J Biometeorol. 2009 May;53(3):255-61. doi: 10.1007/s00484-009-0211-x. Epub 2009 Feb 21. PMID:  
 19234721.

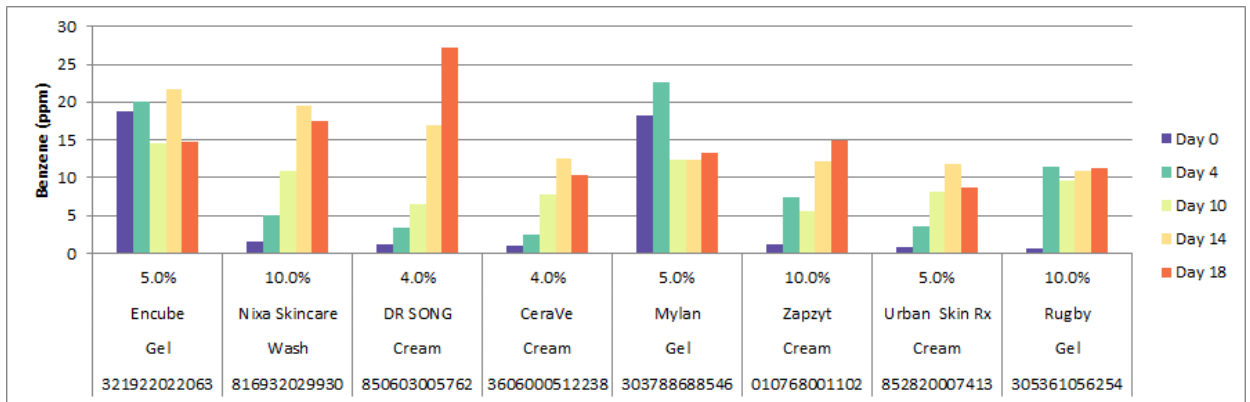
28 <sup>42</sup> Valisure, LLC, (March 6, 2024), *Valisure Discovers Benzoyl Acne Treatment Products are Unstable and Form*  
*Benzene*, <https://www.valisure.com/valisure-newsroom/valisure-detects-benzene-in-benzoyl-peroxide> (last visited March  
 6, 2024).

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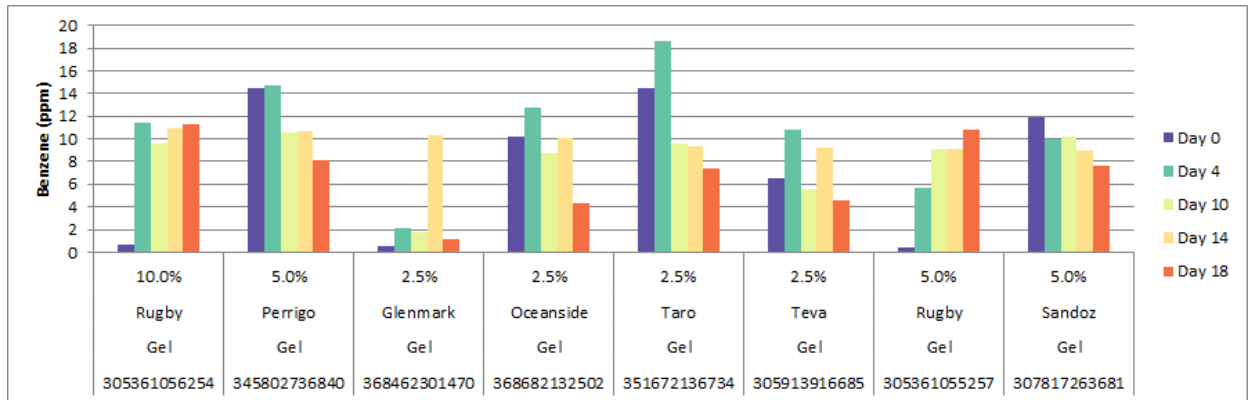
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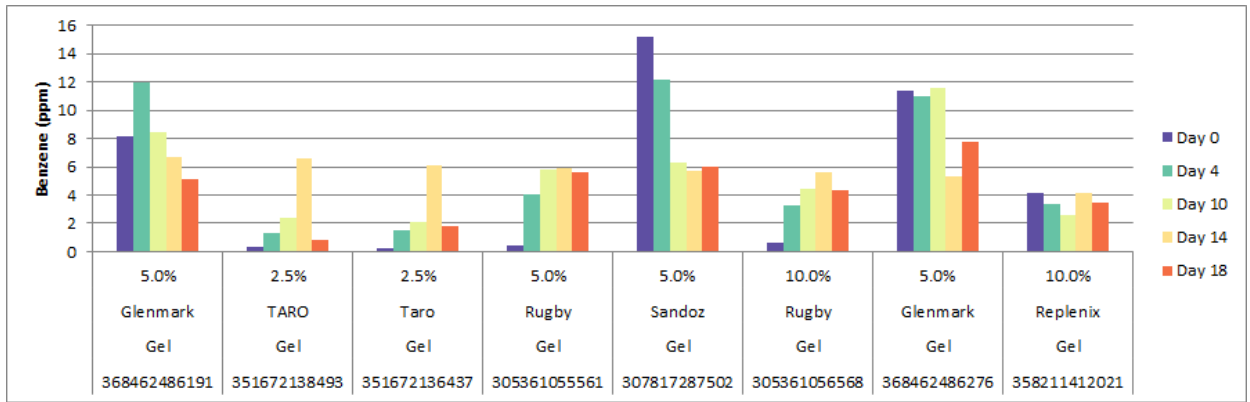


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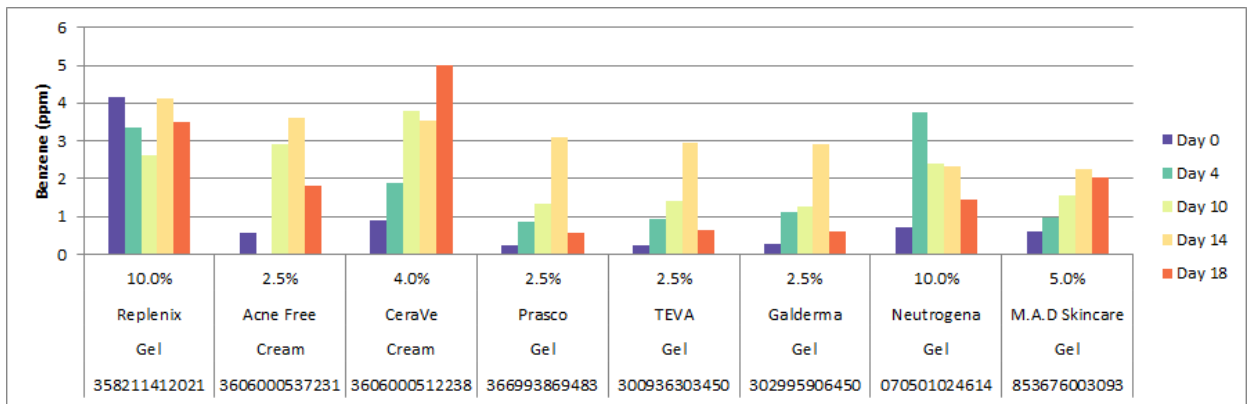


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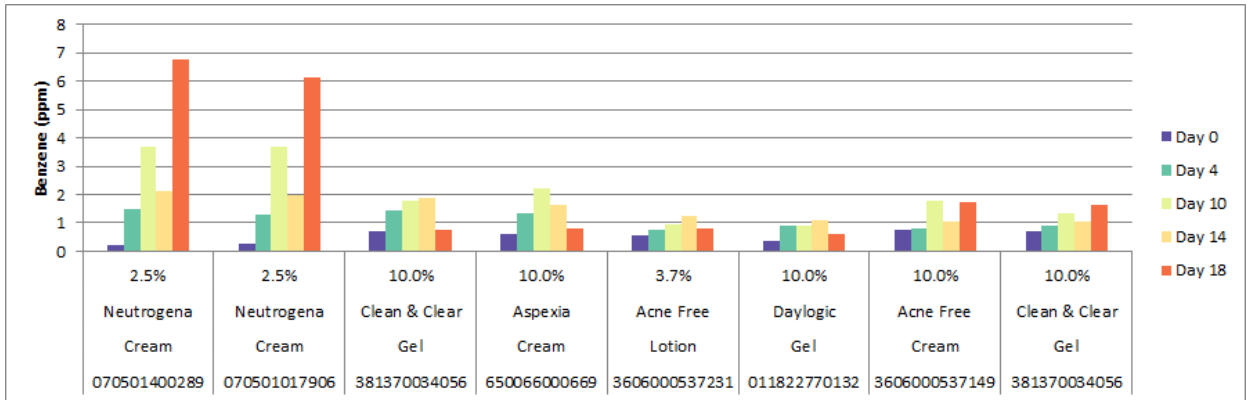
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44. Valisure found the BPO formulated products were not chemically stable and yielded benzene at levels well over 2 ppm, the maximum amount allowed in any U.S. regulated drug. Some of the benzene levels were 800 times higher than 2 ppm reaching as high as 1700 ppm.<sup>43</sup> The

<sup>43</sup> *Id.*

1 concentration of BPO in the Products did not influence the benzene levels, e.g., Target's Up & Up  
2 BPO Lotion and Proactiv's 10% BPO Cream yielded similar benzene results in the range of 600 ppm.  
3 Unexpectedly, Valisure found that benzene vapors leaked from some of the tested Products'  
4 packaging contaminating the surrounding air even when the packaging was closed raising concern for  
5 additional inhalation exposures.<sup>44</sup>

6 45. Valisure concluded that all on-market BPO acne formulations are be fundamentally  
7 unstable and form unacceptably high levels of benzene under normal use, handling, and storage  
8 temperatures, but no such evidence was observed for acne treatment products not formulated with  
9 BPO.<sup>45</sup> The finding that additional benzene leaked into the surrounding air from the products'  
10 containers means the total consumer benzene exposure would be even more dangerous than the levels  
11 reported.

12 46. Valisure filed a Citizen's Petition on Benzoyl Peroxide on March 5, 2024<sup>46</sup> with the  
13 FDA requesting the FDA Commissioner to immediately demand a recall of all BPO Products  
14 formulated with BPO and further to require that drug manufacturers do independent chemical  
15 verification.

16 **F. DEFENDANT EXPOSED PLAINTIFF, THE CLASS, AND THE PUBLIC TO**  
17 **BENZENE, A KNOWN HUMAN CARCINOGEN, WITHOUT THEIR**  
18 **KNOWLEDGE**

19 47. Although benzene has been found in the BPO Products and released into the  
20 surrounding air from the packaging, Defendant did not list benzene among the Products' ingredients,  
21 on the Products' label or container, or anywhere in their advertising or on their websites. Defendant  
22 did not (and still do not) warn that the Products contain benzene, are at risk of benzene contamination,  
23 or that the product could cause consumers to be exposed to benzene even when sealed.

24 48. Benzene is a carcinogen that has been among the most studied toxins over the last 100  
25 years due to its wide use during the industrial revolution, extreme danger, and known ability to cause  
26 cancer and death in humans and animals. The medical literature linking benzene to blood cancers is

27  
28 <sup>44</sup> *Id.*

<sup>45</sup> *Id.*

<sup>46</sup> As of the date of filing this Class Action, Valisure's FDA Petition is still pending.

1 vast dating to the 1930s.<sup>47</sup> Benzene is the foundation component for many chemicals used to make  
2 plastics, resins, synthetic fibers, paints, dyes, detergents, drugs, and pesticides. In the past, benzene  
3 was widely used as a solvent in industrial paints, paint removers, adhesives, degreasing agents,  
4 denatured alcohol, and rubber cements. Benzene use has declined due to the proliferation of worker  
5 studies and an ever-growing body of evidence confirming benzene's contribution to blood cancers.

6 49. Benzene has no known safe level of exposure.<sup>48</sup> Benzene causes central nervous system  
7 depression and destroys bone marrow, leading to injury in the hematopoietic system.<sup>49</sup> The  
8 International Agency for Research on Cancer ("IARC") classifies benzene as a "Group 1 Carcinogen"  
9 that causes cancer in humans, including acute myelogenous leukemia ("AML").<sup>50</sup> AML is the  
10 signature disease for benzene exposure with rates of AML particularly high in studies of workers  
11 exposed to benzene.<sup>51</sup>

12 50. Benzene exposure is cumulative and additive. There is no safe level of exposure to  
13 benzene, and all exposures constitute some risk in a linear, if not supralinear, and additive fashion."<sup>52</sup>

14 51. The Agency for Toxic Substances and Disease Registry's ("ATSDR") "Tox Facts" for  
15 benzene warns that people can be exposed to benzene vapors from benzene-containing products and  
16 that benzene harms the blood marrow, causing leukemia and anemia, and affects the immune system  
17 leaving victims vulnerable to infection.<sup>53</sup>

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21 <sup>47</sup> See Hamilton A., *Benzene (benzol) poisoning*, ARCH PATHOL, (1931):434-54, 601-37; Hunter FT, *Chronic*  
22 *exposure to benzene (benzol). Part 2: The clinical effects*. J. IND. HYG TOXICOL, (1939):21 (8) 331-54; Mallory TB, et  
23 *al., Chronic exposure to benzene (benzol). Part 3: The pathological results*. J. IND. HYG TOXICOL, (1939):21 (8) 355-93; Erf LA,  
24 Rhoads CP., *The hematological effects of benzene (benzol) poisoning*. J. IND. HYG TOXICOL, (1939):21 421-35; American  
25 Petroleum Institute, *API Toxicological Review: Benzene*, NEW YORK, (1948); Infante PF, Rinsky RA, Wagoner JK, et al.,  
26 *Leukemia in benzene workers*, LANCET, (1977);2 (8028): 76-78.

27 <sup>48</sup> Harrison R, Saborit, J., *WHO Guidelines for Indoor Air Quality – Selected Pollutants*, (2010); see also Smith,  
28 Martyn T. (2010). Advances in Understanding Benzene Health Effects and Susceptibility. *Annual Review of Public*  
*Health*, (2010) Vol. 31:133-148.

<sup>49</sup> FDA Toxicological Data for Class 1 Solvents, Appendix 4, *Benzene*,  
<https://www.fda.gov/media/71738/download>.

<sup>50</sup> International Agency for Research on Cancer. *Benzene, IARC Monographs on the Evaluation of Carcinogenic*  
*Risks to Humans, Volume 120*, LYON, France: World Health Organization, (2018).

<sup>51</sup> American Cancer Association, *Benzene and Cancer Risk*, [https://www.cancer.org/cancer/risk-](https://www.cancer.org/cancer/risk-prevention/chemicals/benzene.html)  
[prevention/chemicals/benzene.html](https://www.cancer.org/cancer/risk-prevention/chemicals/benzene.html) (last visited October 20, 2023).

<sup>52</sup> Smith, Martyn T., *Annual Review of Public Health*, ADVANCES IN UNDERSTANDING BENZENE HEALTH EFFECTS AND  
SUSCEPTIBILITY (2010) Vol. 31:133-148.

<sup>53</sup> Agency for Toxic Substances and Disease Registry, *Benzene – Tox Facts*, CAS # 71-43-2.

1 52. According to the FDA, benzene in small amounts over long periods of time can  
2 decrease the formation of blood cells and long-term exposure through inhalation, oral intake, and skin  
3 absorption may result in cancers such as leukemia and other blood disorders.<sup>54</sup>

4 53. Benzene is a major industrial chemical made from coal and oil that is heavily regulated  
5 by the EPA as an important environmental pollutant that negatively affects the soil, air, and  
6 groundwater. Waste and air emissions containing benzene are considered hazardous waste. The coal,  
7 oil, paint, and chemical industries are heavily regulated due to the emission of carcinogens including  
8 benzene from refining and other industries processes involving benzene and benzene byproducts,  
9 which can end up in the air, water, and food supply.

10 54. Benzene is heavily regulated to protect public health and should not be in drug  
11 products, especially ones such as acne treatment that are used daily by children and teenagers for  
12 many years. The FDA drug guidelines specify that benzene must not be used to make drugs products  
13 because of the unacceptable toxicity and deleterious environmental effects.<sup>55</sup> The FDA allows one  
14 limited exception – where the use of benzene in a drug product is unavoidable to produce a drug  
15 product with a significant therapeutic advance. In that instance, benzene must be restricted to two  
16 parts per million (ppm).<sup>56</sup> Defendant’s BPO Products do not meet this rare exception.

17 55. Benzene is heavily regulated in the workplace. The U.S. Occupational Safety and  
18 Health Administration (“OSHA”) set an eight-hour exposure standard of 1 ppm.<sup>57</sup> The National  
19 Institute for Occupational Safety and Health (“NIOSH”) established a recommended exposure level  
20 (REL) of 0.1 ppm (15-minute ceiling limit). Subsequent exposure studies known as the “China  
21 studies” confirmed cancer at levels below 1 ppm.<sup>58</sup> The benzene levels created from Defendant’s  
22 BPO Products are many times higher than the levels reported in these worker studies and the  
23 acceptable limits set by regulators.

24 <sup>54</sup> Federal Drug Administration. (June 9, 2022). *Frequently Asked Questions*: [https://www.fda.gov/drugs/drug-](https://www.fda.gov/drugs/drug-safety-and-availability/frequently-asked-questions-benzene-contamination-drugs)  
25 [safety-and-availability/frequently-asked-questions-benzene-contamination-drugs](https://www.fda.gov/drugs/drug-safety-and-availability/frequently-asked-questions-benzene-contamination-drugs).

26 <sup>55</sup> Food and Drug Administration, *Q3C – Tables and Lists Guidance for Industry*,  
<https://www.fda.gov/media/71737/download> (last visited September 26, 2023).

27 <sup>56</sup> *Id.*

<sup>57</sup> OSHA. Occupational exposure to benzene: Final rule. Fed. Reg. 1987;52-34460-578.

28 <sup>58</sup> See Lan Q, Zhang L et al., *Hematotoxicity in Workers Exposed to Low Levels of Benzene*, SCIENCE, (December 3,  
2004); Costa-Amaral I, V. B. L., *Environmental Assessment and Evaluation of Oxidative Stress and Genotoxicity*  
*Biomarkers Related to Chronic Occupational Exposure to Benzene*, INT J ENVIRON RES PUBLIC HEALTH, (2019) Jun; 16(12):  
2240.

1 56. Benzene can also pass from the mother's blood to a developing fetus causing the baby  
2 to be exposed to benzene.<sup>59</sup> Animal studies have shown low birth weights, delayed bone formation,  
3 and damage to the bone marrow of developing offspring when pregnant animals breathed benzene.<sup>60</sup>

4 57. Plaintiff and the Class were exposed to benzene from the BPO Products by inhalation  
5 and dermal absorption. Benzene can be absorbed into the body via inhalation, skin absorption,  
6 ingestion, and/or eye contact.<sup>61</sup> Plaintiff and the Class applied the BPO Products to areas of the skin  
7 including the face, neck, chest, and back one to three times per day and used the BPO Products as  
8 washes or scrubs in heated showers. Plaintiff and the Class were also exposed to benzene leaked from  
9 contaminated BPO Products.

10 **G. DEFENDANT IS POPULAR RETAILER OF DRUG AND CONSUMER**  
11 **GOODS BUT CONCEALED FROM ITS CONSUMERS ITS FAILURE TO**  
12 **TEST THE BPO PRODUCTS FOR SAFETY**

13 58. Defendant's BPO Products degrade to benzene, during normal and expected handling,  
14 use, or storage but Defendant did not warn Plaintiff, the Class, the Subclass, and the public about  
15 benzene contamination or the health risks of exposure. Instead, Defendant made broad sweeping  
16 claims that the BPO Products were safe, researched, tested, validated, backed by science, and  
17 approved by dermatologists. Defendant sell other national brand BPO Products in their stores and on  
18 line and advertise these brands similar claims of safety.

19 59. Defendant directly marketed to consumers through print and its websites. Target told  
20 Plaintiffs, the Class, and the Subclasses its Up & Up BPO Acne Spot Treatment is "comparable to  
21 Neutrogena On The Spot Treatment."<sup>62</sup> Target said nothing about benzene in the Up & Up product or  
22 that the Product degraded to benzene under normal use and storage.

23 60. Defendant's misrepresentations and omissions misled Plaintiff, the Class, the Subclass,  
24 and the public regarding the safety, stability, and quality of the BPO Products. Defendant's broad  
25 claims of safety in their marketing, social media, and on websites gave Plaintiff, the Class, the

26 <sup>59</sup> *Id.*

27 <sup>60</sup> *Id.*

28 <sup>61</sup> Centers for Disease Control and Prevention, *The National Institute for Occupational Safety and Health Pocket Guide to Chemical Hazards, Benzene Exposure Limits*, <https://www.cdc.gov/niosh/npg/npgd0049.html>.

<sup>62</sup> Target, *Acne Spot Treatment*, <https://www.target.com/p/acne-spot-treatment-75oz-up-38-up-8482> (last visited November 6, 2023).

1 Subclass, and the public a false sense of safety leading them to believe the BPO Products were safe.  
2 Defendant made these statements uniformly to Plaintiff, the Class, the Subclass, and the public, while  
3 shirking their responsibility to do adequate and meaningful testing before selling them to the public.  
4 Defendant's statements and affirmations were false, misleading, unsubstantiated, and blatantly  
5 deceptive.

6 **H. DEFENDANT DID NOT WARN CONSUMERS THE BPO PRODUCTS**  
7 **WERE AT RISK OF BENZENE CONTAMINATION**

8 61. Defendant represented to the Plaintiff, the Class, the Subclass, and the public, that each  
9 of their BPO Products had only the ingredients listed on the label and package, but none of them  
10 identified benzene anywhere on the Products' labels, containers, packaging, or advertising.

11 62. Defendant's Up & Up BPO Acne Spot Treatment was advertised as containing BPO  
12 and carbomer, an ingredient identified by the FDA as "at risk" of yielding benzene.<sup>63</sup> Benzene was not  
13 listed as an ingredient or contaminant on the Product's label, container, or packaging. Target  
14 attempted to disclaim responsibility of the Products by stating on its website that it is not the  
15 manufacturer. However, manufacturer information does not appear anywhere on any labels or on  
16 Defendant's website. Interestingly, when Valisure tested Target's Up & Up 2.5% BPO Cream, it  
17 found it had one of the largest amounts of benzene concentration reported of all 99 BPO Products  
18 tested.<sup>64</sup>

19 63. Defendant's statements about the BPO Products' ingredients were false, deceptive, and  
20 misleading. Defendant's statements were meant to convey to Plaintiff, the Class, the Subclasses, and  
21 the public the Products were safe and did not contain carcinogens such as benzene. Defendant made  
22 these statements and omitted benzene from all advertising, labeling, and packaging when they knew  
23 or should have known the statements were false, misleading, and deceptive. Reasonable consumers,  
24 relying on Defendant's statements reasonably believed the BPO Products were safe and did not  
25 contain benzene.

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28 <sup>63</sup> Target, *Up & Up Acne Spot Treatment*, <https://www.target.com/p/acne-spot-treatment-75oz-up-38-up-8482/-/A-51247402> (last visited October 25, 2023).

<sup>64</sup> Valisure Citizen's Petition (March 4, 2024), at 17.



**I. DEFENDANT DIRECTLY MARKETED ITS BPO PRODUCTS TO CHILDREN AND TEENAGERS**

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64. Defendant's BPO Products are widely used by children and teenagers as a standalone treatment or in combination with other BPO Products. Defendant knew that adolescents are the largest users with users as young as 7-10 years old. Defendant recommended that consumers, including children, use the BPO Products one to three times a day, over many months or longer for persistent acne. Defendant knew that some consumers would use the BPO Products for many years starting in their teens. There is no cure for acne. Defendant knew that consumers with chronic acne would use their BPO Products several times a day throughout their lifetime.

65. Defendant aggressively marketed the BPO Products directly to children and teenagers knowing, or they should have known, the BPO Products degrade to benzene under normal use and storage conditions. Many of Defendant's online and print advertisements featured children, teenagers, eye-catching props, music, and colors meant to attract teens and pre-teens, and appeal to their preferences, activities, and interests.

66. Defendant's marketing of BPO Products without mentioning benzene, the risk of benzene exposure, or testing for benzene waste and continues to be misleading, fraudulent, deceptive, and dangerous.

**V. PUNITIVE DAMAGES ALLEGATION**

67. Defendant's conduct was done with malice and reckless disregard for human life. Defendant knew the BPO Products degraded to benzene when exposed to heat under normal consumer use, handling, and storage conditions. Defendant further knew that benzene is a known human carcinogen that is not supposed to be in the BPO Products due to the grave risk of harm to consumers. Defendant disregarded this information and the known risks of benzene exposure and deliberately omitted benzene from the list of ingredients, the BPO Products' labels, and their social media and websites where information about the BPO Products is found. Defendant consciously and deliberately crafted the BPO Products' marketing, labels, packaging, containers, and warnings intending to mislead Plaintiff, the Class, the Subclasses, and the public, and lead them to believe the BPO Products were safe and carcinogen-free.

1 68. Defendant is a popular general merchandiser of consumer goods and drug products that  
2 presented itself as consumer conscious and skilled in selling safe and reliable Products, while at the  
3 same time withholding material information Defendant knew was essential to informed consumer  
4 decision making. Defendant knew that, by their conduct, they were robbing Plaintiff, the Class, the  
5 Subclasses, and the public of their right to choose safe products.

6 69. Defendant was on notice of benzene findings in consumer products they sold, which  
7 lead to widely publicized product recalls. Defendant was on notice of the FDA's concerns of benzene  
8 contamination in drug and consumer products and received the FDA's 2022 directive to test Products  
9 for benzene contamination. Defendant disregarded these notices and continued to market and sell the  
10 BPO Products to the public without testing them for benzene.

11 70. Defendant knew its decisions and chosen course of conduct was risky and would cause  
12 consumers to be exposed to benzene. Defendant's conduct was not by accident, but was deliberate,  
13 calculated, and informed. Defendant knew they could sell more BPO Products and earn more money  
14 by concealing material human health and safety information. Defendant further knew that testing the  
15 BPO Products for benzene would yield findings of benzene requiring recalls and/or a shutdown of  
16 causing significant losses of income. Defendant's goals were met not only because of their false and  
17 deceptive advertising, labeling, and packaging, but through a comprehensive scheme of aggressive  
18 marketing and image branding leading consumers to believe they were consumer conscious retailers  
19 dedicated to safety. Defendant's conduct and concealment of material health and safety information  
20 was done to further their own monetary gain and with conscious disregard of the Plaintiff, the Class,  
21 the Subclasses, and the public's right to choose safe products. Defendant's conduct was intentional,  
22 calculated, blatantly deceptive, unscrupulous, and offensive to consumer health and public policy. To  
23 redress the harms caused by Defendant's conduct, Plaintiff, on behalf herself, the Class, and  
24 Subclasses, seek punitive damages against the Defendant.

25 **VI. PLAINTIFF SPECIFIC ALLEGATIONS**

26 71. Plaintiff Grace Navarro is a California resident who places a high priority on health and  
27 safety, and on the adverse health consequences of exposure to carcinogens such as benzene. In  
28 shopping for drug products for her skin and face, Plaintiff Grace Navarro was particularly concerned

1 about cost effectiveness and warning signs on labels. Based on the statements made by Defendants,  
2 their widely recognized name, and lack of information that the BPO Products contained carcinogens  
3 such as benzene, Plaintiff believed the BPO Products were safe to put on her skin. Defendants'  
4 representations and omissions of human health and safety information were material to Plaintiff.

5 72. Plaintiff Navarro bought Target Up & Up Acne Spot treatment, Walmart Equate Beauty  
6 Acne Facial Cleansing Wash, Walgreens Maximum Strength Acne Foaming Wash and used it from  
7 2013 to November 2023 for cleaning out her pores and to avoid breakouts. Plaintiff also bought 10%  
8 Benzoyl Peroxide PanOxyl Acne Foaming Wash and used it from June 2022 and September 2022.  
9 Plaintiff was unaware when she bought the BPO Product that it was contaminated with benzene. Had  
10 Defendants been truthful and told Plaintiff she would be exposed to benzene and/or be at increased  
11 risk of cancer, she would not have purchased Target Up & Up Acne Spot treatment, Walmart Equate  
12 Beauty Acne Facial Cleansing Wash, Walgreens Maximum Strength Acne Foaming Wash, and 10%  
13 Benzoyl Peroxide PanOxyl Acne Foaming Wash.

14 73. Plaintiff Navarro suffered an ascertainable economic loss because of Defendant's  
15 statements and misrepresentations in that he bought the BPO Products he would not have bought but  
16 for Defendant's statements and misrepresentations.

## 17 **VII. CLASS ACTION ALLEGATIONS**

18 74. Plaintiff brings this case on behalf of herself, and all others similarly situated as a Class  
19 Action under Rule 23 of the Federal Rules of Civil Procedure. Plaintiff seeks to represent a National  
20 Class of consumers who bought the Products, and State Subclasses of consumers from the states  
21 identified below. Excluded from this Class are Defendant, their employees, co-conspirators, officers,  
22 directors, legal representatives, heirs, successors, and affiliated companies; Class counsel and their  
23 employees; and judicial officers and their immediate families as court staff assigned to the case.

24 75. The Class does not seek damages for physical injuries, although Plaintiff was physically  
25 harmed by being exposed to benzene.

26 76. The Class will include a National Class to include all persons who bought for use, and  
27 not resale, the Products within the United States.

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1 77. The State Subclasses will include all persons who bought for use, and not resale, the  
2 Products within California, Connecticut, Hawaii, Illinois, Maryland, Massachusetts, Missouri, New  
3 York, Nevada, Ohio, Pennsylvania, Rhode Island, and Washington.

4 78. This action has been brought and may be properly maintained as a Class Action under  
5 Rule 23 of the Federal Rules of Civil Procedure because there is a well-defined community of interest  
6 and the proposed Class meets the class action requirements under Rule 23 of numerosity,  
7 commonality, typicality, and adequacy of representation.

8 79. Defendant engaged in a common course of conduct giving rise to the legal rights sought  
9 to be enforced by Plaintiff, on behalf of herself, and the other Class members. Similar or identical  
10 statutory and common law violations, business practices, and injuries are involved.

11 80. **Numerosity.** Plaintiff believes there are millions of Class members throughout the  
12 United States, and there are tens of thousands of Subclass members in each of the listed states, making  
13 the Class and state Subclasses so numerous and geographically dispersed that joinder of all members  
14 is inconvenient and impracticable.

15 81. **Commonality.** There are questions of law and fact common to all Class and Subclass  
16 members that predominate over questions which affect only individual Class members. All Class and  
17 Subclass members were deceived and misled by Defendant through the same advertising, online  
18 representations, labeling, and packaging, which do not mention benzene and misrepresent the  
19 characteristics, ingredients, and safety of the BPO Products. All Class and Subclass members bought  
20 Defendant's BPO Products and have suffered an economic loss because of Defendant's deceptions  
21 and omissions. Thus, there is a well-defined community of interest in the questions of law and facts  
22 common to all Class and Subclass members. Other common questions of law and fact in this dispute  
23 include, without limitation:

- 24 a. Whether Defendant's BPO Products degrade to benzene under common distributor and  
25 consumer handling, use, and storage conditions.
- 26 b. Whether Defendant tested the BPO Products for benzene before selling them to Plaintiff,  
27 the Class, and the public.
- 28 c. When Defendant knew or should have known the BPO Products degraded to benzene.

- 1 d. When Defendant knew or should have known the BPO Products contain benzene.
- 2 e. Whether Defendant's advertising omitting benzene was deceptive, fraudulent, or unfair.
- 3 f. Whether Defendant's advertising omitting benzene was likely to deceive reasonable
- 4 consumers.
- 5 g. Whether Defendant's conduct violated California's Unfair Competition Law, Bus. &
- 6 Prof. Code § 17200 *et seq.*
- 7 h. Whether Defendant's conduct violated California consumer protection laws.
- 8 i. Whether Defendant's conduct violated Connecticut consumer protection laws.
- 9 j. Whether Defendant's conduct violated Hawaii consumer protection laws.
- 10 k. Whether Defendant's conduct violated Illinois consumer protection laws.
- 11 l. Whether Defendant's conduct violated Massachusetts consumer protection laws
- 12 including Mass. Gen. Laws Ann. Ch. 93A, § 1 *et seq.*
- 13 m. Whether Defendant's conduct violated Maryland consumer protection laws.
- 14 n. Whether Defendant's conduct violated Missouri consumer protection laws including Mo.
- 15 Rev. Stat. § 407, *et seq.*
- 16 o. Whether Defendant's conduct violated Nevada consumer protection laws including
- 17 Deceptive Trade Practice Act, NEV. REV. STATUTES, Title 52, Chapter 598 *et seq.*
- 18 p. Whether Defendant's conduct violated New York consumer protection laws including
- 19 New York Deceptive Trade Practices Law, NY Gen. Bus. §349(a) and NY Gen. Bus. §§
- 20 350 *et seq.*
- 21 q. Whether Defendant's conduct violated Pennsylvania consumer protection laws.
- 22 r. Whether Defendant's conduct violated Rhode Island consumer protection laws.
- 23 s. Whether Defendant's conduct violated Washington's consumer protection laws.
- 24 t. Whether Defendant breached the express and implied warranties they made about the
- 25 BPO Products.
- 26 u. Whether Defendant was unjustly enriched by the Plaintiff, the proposed Class, and
- 27 Subclasses members' purchase of the BPO Products.
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- 1 v. Whether the Plaintiff, the proposed Class, and Subclasses have been injured and if so,  
2 what is the proper measure of damages.
- 3 w. Whether the Plaintiff, the proposed Class, and Subclasses have the right to economic  
4 damages including compensatory, exemplary, and statutory remedies for Defendant's  
5 misconduct.
- 6 x. Whether the Plaintiff, the proposed Class, and Subclasses have the right to injunctive,  
7 declaratory, or other equitable relief and attorneys' fees.

8 82. **Typicality.** Plaintiff's claims are typical of the claims of the Class and Subclasses  
9 because the claims arise from the same course of misconduct by Defendant, *i.e.*, Defendant's false and  
10 misleading advertising and their failure to disclose benzene in the Products. The Plaintiff, and all  
11 Class and Subclass members were all exposed to the same uniform and consistent advertising,  
12 labeling, and packaging statements Defendant made about the Products. Because of the Defendant's  
13 misconduct, Plaintiff, like all Class members, was damaged and has incurred economic loss because  
14 of buying the Products believed to be safe. The claims of the Plaintiff are typical of Class members.

15 83. **Adequacy.** The Plaintiff will fairly and adequately represent and protect the interests of  
16 all Class and Subclass members. Plaintiff has no interests antagonistic to the Class or Subclass  
17 members. Plaintiff hired attorneys experienced in the prosecution of consumer Class Actions and  
18 Plaintiff intends to prosecute this action vigorously. Plaintiff anticipates no difficulty in the  
19 management of this litigation as a Class Action.

20 84. Finally, this Class Action is proper under Rule 23(b) because, under these facts, a Class  
21 Action is superior to other methods and is the most efficient method for the fair and efficient  
22 adjudication of the dispute. The Class and Subclass members have all suffered economic damages  
23 because of Defendant's deceptive trade practices, false advertising, and omissions of material health  
24 and safety information. Because of the nature of the individual Class and Subclass members' claims  
25 and the cost of the Products, few, if any individuals, would seek legal redress against Defendant  
26 because the costs of litigation would far exceed any potential economic recovery. Absent a Class  
27 Action, individuals will continue to suffer economic losses for which they would have no remedy, and  
28 Defendant will unjustly continue their misconduct with no accountability while retaining the profits of

1 their ill-gotten gains. Even if separate cases could be brought by individuals, the resulting multiplicity  
2 of lawsuits would cause undue hardship, burden, and expense for the Court and the litigants, as well  
3 as create a risk of inconsistent rulings across the country, which might be dispositive of the interests  
4 of individuals who are not parties. A Class Action furthers the important public interest of containing  
5 legal expenses, efficiently resolving many claims with common facts in a single forum  
6 simultaneously, and without unnecessary duplication of effort and drain on critical judicial resources.  
7 The Class Action method presents far fewer management difficulties than individual cases filed  
8 nationwide and provides the benefit of comprehensive supervision by a single court.

9 **VIII. CAUSES OF ACTION**

10 **A. VIOLATION OF CALIFORNIA’S UNFAIR COMPETITION LAW *Bus. & Prof. Code § 17200 et seq., on Behalf of the California Subclass***

11 85. Plaintiff realleges and incorporates all other paragraphs in this Class Action Complaint  
12 and further alleges:

13 86. Plaintiff brings this cause of action on behalf of herself, and all members of the  
14 California Subclass, all of whom are similarly situated consumers.

15 87. California’s Unfair Competition Law, CAL. BUS. & PROF. CODE § 17200, *et seq.*,  
16 prohibits “unlawful, unfair, or fraudulent business act or practices” and “unfair, deceptive, untrue or  
17 misleading advertising.” Defendant regularly transacts business in California, including in this  
18 District, and has engaged in misconduct that has had a direct, substantial, foreseeable, and intended  
19 effect of injuring people in California, and in this District.

20 88. Defendant misrepresented their Products in advertising, labels, and containers and  
21 misled Plaintiff, the Subclass, and the public about the ingredients, characteristics, purity, quality,  
22 approval, and safety of the Products. Defendant led Plaintiff, the Subclass, and the public to believe  
23 the Products were safe.

24 89. Defendant’s advertising, online representations, labeling, and packaging of the Products  
25 were misleading, fraudulent, and deceptive. Defendant knew through the Products’ development,  
26 formulation, research, and pre-sale safety and stability testing, the Products were not chemically and  
27 physically stable when exposed to common temperature conditions. Defendant knew or should have  
28 known the Products formulated benzene under normal and expected consumer use, handling, and



1 storage conditions, and that consumers would be exposed to benzene. Defendant were specifically  
2 reminded by the FDA of their obligation to ensure the safety and quality of their Products, including  
3 testing them for benzene before selling them to the public, but shirked their duties and continued to  
4 market and sell the Products without substantiating their safety, or warning Plaintiff, the Class, and  
5 the public about benzene.

6 90. Defendant omitted material health and safety information, *e.g.*, benzene, from the  
7 Products' advertising, label, container, and warnings. Defendant did not tell Plaintiff and the Class  
8 members they would be exposed to benzene, a human carcinogen, during normal and expected  
9 handling, use and storage of the Products, even with the Products' container closed.

10 91. Defendant's acts and omissions were likely to deceive reasonable consumers and the  
11 public. Reasonable consumers expect to be told about all ingredients in Products. Reasonable  
12 consumers further expect that carcinogens in the Products be disclosed. Reasonable consumers further  
13 expect that on market drugs to be free of carcinogens, unless told otherwise. Benzene in a widely  
14 marketed drug product used by children, teens, and the public is material health information  
15 reasonable consumers expect to be told.

16 92. Had Defendant been truthful in their advertising, labeling, packaging, and online  
17 statements about benzene in the Products, or the risk of contamination, and the risk of cancer, Plaintiff  
18 and the Class members would not have bought the Products.

19 93. Defendant's acts, omissions, and concealment of material health and safety information  
20 are ongoing and continuing to cause harm. Defendant continued to market, advertise, and sell the  
21 Products to the public without telling the public about benzene in the Products, or the risk of  
22 contamination, and the risk of cancer. Defendant continued to market themselves as responsible drug  
23 manufacturers and sellers who sell safe products when they have not tested the Products for benzene  
24 or quantified the levels of benzene formed in the Products during normal and expected storage  
25 conditions.

26 94. Defendant engaged in these deceptive practices for significant financial gain, which is  
27 unfair, unreasonably dangerous to Plaintiff and the California Subclass members, and not outweighed  
28 by any benefit. Omitting and concealing material human health and safety information such as



1 benzene in the Product and the consumers' risk of cancer from the Products is unethical,  
2 unscrupulous, and offensive.

3 95. Plaintiff suffered ascertainable economic losses because of Defendant's misconduct  
4 because he bought the Products, he otherwise would not have bought but for Defendant's  
5 misrepresentations and affirmations of safety.

6 96. Because of Defendant's misconduct, Plaintiff, on behalf of herself, and the California  
7 Subclass, seek recovery of their economic damages, attorneys' fees, restitution, and all other relief  
8 allowable under CAL. BUS. & PROF. CODE § 17200, *et seq.*, including an injunction to enjoin  
9 Defendant from continuing their fraudulent and deceptive business practices. The damages sought are  
10 ascertainable, uniform to the Class and can be measured and returned to the Class members.

11 **B. VIOLATION OF CALIFORNIA'S CONSUMER LEGAL REMEDIES ACT,**  
12 **CAL. CIV. CODE § 1750, et seq., on Behalf of the California Subclass**

13 97. Plaintiff realleges and incorporates all other paragraphs in this Complaint and further  
14 alleges:

15 98. Plaintiff brings this cause of action on behalf of herself, and the California Subclass  
16 members, all of whom are similarly situated consumers within the meaning of CAL. CIV. CODE §  
17 1781.

18 99. Defendant's acts and omissions violated California's Consumer Legal Remedies Act,  
19 CAL. CIV. CODE § 1750, *et seq.*, enacted to protect consumers from being victimized and deceived by  
20 advertisers, distributors, and sellers like the Defendant. Defendant regularly transacts business in  
21 California, including in this District, and has engaged in misconduct that has had a direct, substantial,  
22 foreseeable, and intended effect of injuring people in California, and in this District.

23 100. California's Consumer Legal Remedies Act, CAL. CIV. CODE § 1750, *et seq. prohibits*  
24 unfair methods of competition and unfair or deceptive acts or practices in connection with the sale of  
25 consumer goods. Defendant violated several prohibitions of CIV. CODE § 1750(a).

26 101. Defendant violated CAL. CIV. CODE § 1750(a)(2) by representing the source,  
27 sponsorship, and approval, of the Products, *e.g.*, the Products were backed by sound scientific  
28 principles, that Defendant met its obligations to conduct adequate and meaningful quality and safety

1 testing before selling the Products to the public, and represented the Products only contained the  
2 ingredients listed, and were free of carcinogens.

3 102. Defendant violated CAL. CIV. CODE § 1750(a)(3) by representing the affiliation,  
4 connection, or association with, or certification by, another *e.g.*, the Products were approved by  
5 dermatologists and manufactured in conformity with current good manufacturing practices.

6 103. Defendant violated CAL. CIV. CODE § 1750 (a)(4) by using deceptive representations,  
7 *e.g.*, the Products were safe, validated, and supported by the latest research, and free of carcinogens  
8 such as benzene.

9 104. Defendant violated CAL. CIV. CODE § 1750(a)(5) by representing the Products have  
10 characteristics, ingredients, uses, or benefits, which they do not, *e.g.*, misleading Plaintiff and the  
11 Class members the Products only contained the listed ingredients, did not contain benzene, and did not  
12 increase the risk of the consumers' risk of cancer.

13 105. Defendant violated CAL. CIV. CODE § 1750(a)(6) by representing the Products were not  
14 deteriorated unreasonably or altered *e.g.*, the Products were pure and had not degraded or formed  
15 benzene.

16 106. Defendant violated CAL. CIV. CODE § 1750(a)(7) by representing the Products were  
17 pure and of a particular standard or quality, when they are not.

18 107. Defendant violated CAL. CIV. CODE § 1750(a)(9) by advertising the Products with the  
19 intent not to sell them as advertised, *e.g.*, the Products were of pure quality, safe, made in conformity  
20 with current good manufacturing practices, and not adulterated.

21 108. Had Defendant been truthful in their advertising, labeling, packaging, warnings, and  
22 online statements about benzene in the Products and the risk of cancer, Plaintiff and the California  
23 Subclass members would not have bought the Products. Benzene, a human carcinogen, in a widely  
24 marketed and available consumer drug product, is material health and safety information Defendant  
25 knew Plaintiff, the Class members, and the public would want to know. The Defendant's omission of  
26 this material information was common to Plaintiff and all Subclass members and made to Plaintiff and  
27 all Subclass members uniformly through common advertising, online representations, labeling, and  
28 packaging.

1 109. Defendant's acts, omissions, and concealment of material health and safety information  
2 are ongoing and continuing to cause harm. Defendant continued to market, advertise, and sell the  
3 Products to the public without telling the public about benzene in the Products and the risk of cancer.  
4 Defendant continues to market themselves as responsible drug manufacturers and sellers who sell safe  
5 products when they have not quantified the levels of benzene in and created in the Products during  
6 normal and expected storage conditions.

7 110. Defendant engaged in these deceptive practices for significant financial gain, which is  
8 unfair, unreasonably dangerous to Plaintiff and the Subclass members, and not outweighed by any  
9 benefit. Omitting and concealing material human health and safety information such as the  
10 consumers' risk of cancer from exposure to the Products is unethical, unscrupulous, and offensive.

11 111. Plaintiff suffered ascertainable economic losses because of Defendant's misconduct  
12 because he bought the Products, she otherwise would not have but for Defendant's misrepresentations.

13 112. Because of Defendant's misconduct, Plaintiff, on behalf of herself and the California  
14 Class seek recovery of their economic damages, attorneys' fees, punitive damages, restitution, and all  
15 other relief allowable under CAL. CIV. CODE § 1750, *et seq.*, including an injunction to enjoin  
16 Defendant from continuing their fraudulent business practices. The damages sought are ascertainable,  
17 uniform to the Subclass and can be measured and returned to the Subclass members.

18 **C. FALSE ADVERTISING UNDER VARIOUS STATE STATUTES, on Behalf of**  
19 **the California, Hawaii and New York Subclasses**

20 113. Plaintiff realleges and incorporates all other paragraphs in this Complaint and further  
21 alleges:

22 114. Plaintiff brings this cause of action on behalf of herself, and all members of the  
23 California, Hawaii, and New York Subclasses, all of whom are similarly situated consumers.

24 115. Defendant develops, tests, selects, markets and/or sells the BPO Products throughout  
25 the United States in its stores and through eCommerce websites. Defendant knew through the  
26 Products' development, formulation, and selection, the Products were not chemically stable when  
27 exposed to certain expected and normal environmental and storage conditions and formed benzene, as  
28 a toxic byproduct. Despite this knowledge, Defendant did not mention benzene in the Products'

1 advertising, ingredient lists, labels, containers, or warnings. Defendant did not tell Plaintiff, and the  
2 Subclass members they would be exposed to benzene, a human carcinogen, during normal and  
3 expected handling, use and storage of the Products, even with the Products' containers closed.

4 116. Benzene, a human carcinogen, in a widely marketed and available consumer drug  
5 product, is material health and safety information Defendant knew Plaintiff, and the Subclass  
6 members would want to know. Defendant not only omitted this material human health and safety  
7 information from advertising, online representations, blogs, labeling, packaging, and warnings, but  
8 aggressively marketed itself as consumer conscious, a market leader, and company committed to  
9 consumer safety. Defendant's brand notoriety, market share, and affirmations of safety misled  
10 Plaintiff, and the Subclass members, leading them to believe the Products were tested, verified, and  
11 safe. Defendant further marketed the Products touting the approval of dermatologists, who were not  
12 aware of the presence of benzene in the Products and of Defendant's refusal to conduct adequate and  
13 meaningful testing before marketing and selling the Products to the public and following the FDA's  
14 2022 alert to specifically look for benzene.

15 117. Defendant's acts and omissions constitute false advertising. Defendant advertised the  
16 Products with the intent not to sell them as advertised. Reasonable consumers, including Plaintiff and  
17 the Subclass members, exposed to Defendant advertising would believe the Products were safe,  
18 verified, and free of benzene.

19 118. Defendant's false and misleading advertising violated California's False Advertising  
20 Law, Bus. & Prof. Code § 17500 *et seq.*, which prohibits Defendant from disseminating statements  
21 "which are untrue or misleading, and which are known, or which by the exercise of reasonable care  
22 should be known, to be untrue or misleading." Defendant knew or should have known the Products  
23 formed benzene under normal, handling, use, and storage conditions but did not disclose this to  
24 Plaintiff and the Class and Subclass members. Defendant knew or should have known the Products  
25 were not chemically stable when exposed to certain normal and expected environmental conditions.

26 119. Defendant's false and misleading advertising violated Hawaii's False Advertising Law,  
27 HI REV. STAT. § 708-871. Defendant knowingly or recklessly made false and misleading statements in  
28

1 the Products' advertising to the public.<sup>65</sup> Defendant further advertised the Products with the intent not  
2 to sell them as advertised and misrepresented the ingredients, quality, purity, safety, and character of  
3 the Products.

4 120. Defendant's false and misleading advertising violated New York's General Business  
5 Law § 350 *et seq.* ("GBL § 350"), which prohibits "[f]alse advertising in the misconduct of any  
6 business, trade or commerce or in the furnishing of any service" in New York. Under GBL § 350,  
7 "false advertising" includes "advertising, including labeling, of a commodity . . . if such advertising is  
8 misleading in a material respect." Defendant violated GBL § 350 by advertising and selling the  
9 Products without disclosing material health and safety information, *e.g.*, benzene and the consumers  
10 risk of cancer from benzene. Defendant's false and misleading advertising was directed at consumers,  
11 the New York Subclass members, and the public, and caused consumer injury and harm to the public  
12 interest.

13 121. Had Defendant been truthful in their advertising, online representations, labeling, and  
14 packaging about benzene, Plaintiff, and the Subclass members would not have bought the Products.

15 122. Plaintiff, on behalf of herself, and the California, Hawaii, and New York Subclass  
16 members suffered ascertainable economic losses because of Defendant's misconduct because they  
17 bought the Products, they otherwise would not have but for Defendant's material misrepresentations.

18 123. Because of Defendant's misconduct, Plaintiff, on behalf of herself, and the California,  
19 Hawaii, and New York Subclass members, seek recovery of their economic damages, attorneys' fees,  
20 punitive damages, restitution, and all other relief allowable by law, including an injunction to enjoin  
21 Defendant from continuing their fraudulent business practices. The damages sought are ascertainable,  
22 uniform, and can be measured and returned.

23 \\  
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26 <sup>65</sup> HI REV STAT § 708-871, False Advertising: (1) A person commits the offense of false advertising if, in  
27 connection with the promotion of the sale of property or services, the person knowingly or recklessly makes or causes to  
28 be made a false or misleading statement in any advertisement addressed to the public or to a substantial number of persons.  
(2) "Misleading statement" includes an offer to sell property or services if the offeror does not intend to sell or provide the  
advertised property or services: (a) At the price equal to or lower than the price offered; or (b) In a quantity sufficient to  
meet the reasonably- expected public demand unless quantity is specifically stated in the advertisement; or (c) At all.

1           **D. DECEPTIVE TRADE PRACTICES UNDER VARIOUS STATE STATUTES,**  
2           ***on Behalf of the California, Connecticut, Hawaii, Illinois, Maryland,***  
3           ***Massachusetts, Missouri, New York, Nevada, Pennsylvania, Ohio, Rhode Island,***  
4           ***and Washington Subclasses***

5           124. Plaintiff realleges and incorporates all other paragraphs in this Complaint and further  
6           alleges:

7           125. Plaintiff brings this cause of action on behalf of herself, and all members of California,  
8           Connecticut, Hawaii, Illinois, Maryland, Massachusetts, Missouri, New York, Nevada, Pennsylvania,  
9           Ohio, Rhode Island, and Washington Subclasses, all of whom are similarly situated consumers.

10           126. Defendant's acts and omissions constitute deceptive business practices in violation of  
11           state deceptive trade practices laws.

12           127. Defendant represented the BPO Products had characteristics, uses, and benefits, they  
13           did not, *e.g.*, Defendant represented the BPO Products were pure, of good quality, safe, and only  
14           contained the ingredients disclosed.

15           128. Defendant represented the BPO Products were not deteriorated or altered, when they  
16           knew, or should have known, the BPO Products degraded to benzene under normal and expected use,  
17           handling, and storage conditions.

18           129. Defendant represented the BPO Products contained only the ingredients listed on  
19           Defendant's websites, advertising, labels, and containers. Defendant did not disclose to Plaintiff, the  
20           Class and Subclass members, and the public the BPO Products were at risk of benzene contamination.

21           130. Defendant advertised the BPO Products with the intent not to sell them as advertised.

22           131. Defendant's acts and omissions violated California's Consumer Legal Remedies Act,  
23           CAL. CIV. CODE § 1750, *et seq.*, enacted to protect consumers from being victimized and deceived  
24           by advertisers, distributors, and sellers like the Defendant.

25           132. Defendant's acts and omissions violated Connecticut Unfair Trade Practices Act, CONN.  
26           GEN STAT. ANN., § 42- 110, *et seq.*, which broadly prohibits Defendant from engaging in unfair  
27           methods of competition and unfair or deceptive acts or practices in the conduct of any trade  
28           or commerce such as those committed by Defendant and alleged in this Class Action.

          133. Defendant's acts and omissions violated Hawaii's Uniform Deceptive Trade Practice  
Act, HAW. REV. STAT. §481-A3 because Defendant: (1) caused the likelihood of confusion or of

1 misunderstanding as to the source, sponsorship, approval, or certification of the Products; (2)  
2 represented the Products had characteristics, ingredients, or benefits, they did not; (3) represented the  
3 Products were not deteriorated or altered, when they were; (4) represented the Products were of a  
4 particular standard or quality when they were not; and (5) advertised the Products with the intent not  
5 to sell them as advertised.

6 134. Defendant's acts and omissions violated Illinois' Consumer Fraud and Deceptive  
7 Business Practices Act, 815 ILCS 505/1 *et seq.* Defendant's used deception, fraud, false pretense,  
8 false promises, and omitted material health and safety information about the Products' degradation to  
9 benzene, and/or contamination with benzene, which Defendant intended the Illinois Subclass  
10 members to rely upon.

11 135. Defendant's acts and omissions violated Maryland's Unfair or Deceptive Trade  
12 Practices Act, MD. COM. CODE, Title 13, Subtitle 3, §13-301 because Defendant: (1) represented the  
13 Products had characteristics, ingredients, uses, and benefits, they did not; (2) represented the Products  
14 were not deteriorated or altered, when they were; (3) represented the Products were of a particular  
15 standard or quality, when they were not. Defendant's representations about the Products' ingredients,  
16 and omission of benzene were misleading, deceptive, incomplete, and not truthful in violation of  
17 Maryland's Unfair or Deceptive Trade Practices Act.

18 136. Defendant's acts and omissions violated Massachusetts consumer protection law, MASS.  
19 GEN. LAWS ANN. Ch. 93A, § 1 *et seq.*, which broadly prohibits unfair and deceptive trade practices  
20 such as those committed by Defendant and alleged in this Class Action.

21 137. Defendant's acts and omissions violated the Missouri Merchandising Practices Act, MO.  
22 REV. STAT. § 407, *et seq.*, which prohibits the use of deception, fraud, misrepresentations, or unfair  
23 practices by a business, *e.g.*, marketing Products as safe, approved, tested, and only containing the  
24 listed ingredients. Missouri's law further prohibits the suppression or omission of material facts such  
25 as the Products' degradation to benzene.

26 138. Defendant's acts and omissions violated N.Y. GEN. BUS. LAW § 349, which prohibits  
27 Defendant from engaging in deceptive, unfair, and misleading acts and practices such as those  
28 committed by Defendant and alleged in this Class Action. Defendant's misrepresentations and



1 omissions caused consumer injury and harm to the public interests of protecting public health and the  
2 public's right to know about any harmful constituents in the Products.

3 139. Defendant's acts and omissions violate Nevada Deceptive Trade Practice Act, NEV.  
4 REV. STATUTES, Title 52, Chapter 598 *et seq.* which prohibits Defendant from making false statements  
5 about their Products and advertising the Products without the intent to sell them as advertised.

6 140. Defendants' acts and omissions violated Ohio's Consumer Sales Practices Act, OHIO  
7 REV. CODE ANN. § 1345.01, *et seq.* which prohibits sales practices that are deceptive, unfair, or  
8 unconscionable, and Ohio's Deceptive Trade Practices Act, OHIO REV. CODE ANN. § 4165 *et seq.*

9 141. Defendant's acts and omissions violated Pennsylvania's Unfair Trade Practices and  
10 Consumer Protection Law, 73 P.S. §§201-1 *et seq.* because Defendant: (1) caused the likelihood of  
11 confusion or of misunderstanding as to the source, sponsorship, approval, or certification of the  
12 Products; (2) used deceptive representations about the Products; (3) represented the Products had  
13 characteristics, ingredients, or benefits, they did not; (3) represented the Products were not  
14 deteriorated or altered, when they were; (4) represented the Products were particular standard or  
15 quality when they are not; and (5) advertised the Products with the intent not to sell them as  
16 advertised.

17 142. Defendant's acts and omissions violated Rhode Island's Deceptive Trade Practices Act,  
18 R.I. GEN. LAWS § 6- 13.1- 5.2(B), *et seq.* because Defendant: (1) caused likelihood of confusion or of  
19 misunderstanding as to the source, sponsorship, approval, or certification of the Products; (2) used  
20 deceptive representations in connection with the Products; (3) represented the Products had  
21 sponsorship, approval, characteristics, ingredients, uses, benefits, they did not; (4) represented the  
22 Products were not deteriorated or altered, when they were; (5) represented the Products were of a  
23 particular standard, quality, or grade, when they were not; and (6) advertised the Products with the  
24 intent not to sell them as advertised.

25 143. Defendant's acts and omissions violated Washington's Consumer Protection Act,  
26 WASH. REV. CODE § 19.86.010, *et seq.*, which broadly prohibits Defendant from engaging in unfair  
27 methods of competition and unfair or deceptive acts or practices in the conduct of any trade  
28



1 or commerce.<sup>66</sup> Defendant's concealment of material health and safety information about the  
2 Products, which they knew or should have known, was injurious to the public interests of protecting  
3 public health and the public's right to know about any harmful constituents in the Products.  
4 Defendant's conduct caused harm to the Plaintiff, the Washington subclass members, and members of  
5 the public who bought the Products without knowing they degraded to benzene. Defendant's conduct  
6 has the capacity to cause harm to other persons who buy the Products.

7 144. Had Defendant been truthful in their advertising, labeling, and packaging of the  
8 Products and not omitted material health and safety information about benzene in and formed from the  
9 Products, Plaintiff, the Class, and Subclass members would not have bought the Products.

10 145. Defendant's acts and omissions and violations of the state consumer protection statutes  
11 are ongoing and continuing to cause harm.

12 146. Plaintiff, on behalf of herself, and the Subclasses suffered an ascertainable economic  
13 loss because of Defendant's misconduct because they bought the Products, they would not have  
14 bought but for Defendant's misrepresentations.

15 147. Because of Defendant's misconduct, Plaintiff, on behalf of herself, and the Subclasses  
16 seek recovery of their economic damages, attorneys' fees, punitive damages, and all other relief  
17 allowable under the law. The damages sought are ascertainable, uniform and can be measured and  
18 returned.

19 **E. BREACH OF EXPRESS WARRANTY, on Behalf of the Nationwide Class and**  
20 ***on Behalf of the California, Hawaii, Illinois, Maryland, Massachusetts, Missouri,***  
21 ***New York, Nevada, Pennsylvania, Ohio, Rhode Island, and Washington***  
***Subclasses***

22 148. Plaintiff realleges and incorporates all other paragraphs in this Complaint and further  
23 alleges:

24 149. Plaintiff brings this cause of action on behalf of herself, and all members of the National  
25 Class and the California, Connecticut, Hawaii, Illinois, Maryland, Massachusetts, Missouri, New  
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<sup>66</sup> Under § 19.86.090, Washington consumers harmed by such practices may recover actual damages, the costs of the suit, including reasonable attorney's fees, and the court may, in its discretion, increase the award of damages to an amount up to three times the actual damages sustained.

1 York, Nevada, Pennsylvania, Ohio, Rhode Island, and Washington Subclasses, all of whom are  
2 similarly situated consumers.

3 150. The Uniform Commercial Code § 2-313 provides that an affirmation of fact or promise  
4 made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain  
5 creates an express warranty that the goods shall conform to the promise. Defendant advertised and  
6 sold the Products as safe, pure, of good quality, and only containing the listed ingredients.  
7 Defendant's advertising, labels, containers, packaging, advertising, and online statements did not  
8 mention benzene, leading consumers to believe the Products were safe for their ordinary use.  
9 Defendant's affirmations were uniformly made to Plaintiff, the Class, and Subclass members by  
10 Defendant in the Products' advertising, labeling, packaging, and online statements and were part of  
11 the basis of the bargain between Defendant, the Plaintiff, the Class, and Subclass members.

12 151. Defendant's affirmations and promises are unlawful. When Defendant marketed,  
13 distributed, and sold the Products, Defendant knew, or should have known, the Products degraded to  
14 benzene under normal and expected use, handling, and storage conditions. Defendant knew, or should  
15 have known, the Products formed benzene and therefore did not conform to Defendant's express  
16 representations and warranties to consumers. Plaintiff, the Class, and Subclass members purchased the  
17 Products in reasonable reliance on Defendant's statements.

18 152. Because of Defendant's misconduct, Plaintiff, on behalf of herself, the Class and  
19 Subclass members seek recovery of their economic damages, attorneys' fees, punitive damages,  
20 restitution, and all other relief allowable by law, including an injunction to enjoin Defendant from  
21 continuing their fraudulent business practices. The damages sought are ascertainable, uniform to the  
22 Class and Subclasses and can be measured and returned to the Class and Subclass members.

23 **F. BREACH OF IMPLIED EXPRESS WARRANTY, on Behalf of the Nationwide**  
24 ***Class and on Behalf of the California, Hawaii, Illinois, Maryland, Massachusetts,***  
25 ***Missouri, New York, Nevada, Pennsylvania, Ohio, Rhode Island, and Washington***  
***Subclasses***

26 153. Plaintiff realleges and incorporates all other paragraphs in this Complaint and further  
27 alleges:  
28

1 154. Plaintiff brings this cause of action on behalf of herself, and all members of the National  
2 Class and the California, Connecticut, Hawaii, Illinois, Maryland, Massachusetts, Missouri, New  
3 York, Nevada, Pennsylvania, Ohio, Rhode Island, and Washington Subclasses, all of whom are  
4 similarly situated consumers.

5 155. Defendant, as sellers of the Products, also made implied warranties including  
6 warranting the Products were of the same quality and purity represented on the labels, in advertising,  
7 and on Defendant's websites, were fit for the ordinary purpose of the Products and conformed to the  
8 promises made on the containers, labels, advertising, and websites that all ingredients were listed, and  
9 all warnings given.

10 156. Defendant advertised their Products as safe, when they knew, or should have known,  
11 the Products degraded to benzene. Defendant did not list benzene as an ingredient or contaminant  
12 anywhere on the Products or advertising. The Products are not of the quality and purity represented by  
13 Defendant because the Products degrade to benzene under normal use, handling, and storage  
14 conditions.

15 157. Defendant did not tell Plaintiff or the Class or Subclass members the Products were not  
16 fit for their ordinary use because the Products, as advertised and sold by Defendant, degraded to  
17 benzene under normal and expected handling, use, and storage.

18 158. Defendant's affirmations that the Products were safe for use were uniformly made to  
19 the Plaintiff and the Class members in the Products' advertising, labeling, and packaging, and on  
20 Defendant's websites, which were part of the basis of the bargain.

21 159. Plaintiff, the Class, and Subclass members purchased the Products in reasonable  
22 reliance on Defendant's statements, affirmations, and omissions of material health and safety  
23 information.

24 160. Defendant's acts and omissions are ongoing and continuing to cause harm.

25 161. Because of Defendant's misconduct, Plaintiff, on behalf of herself, the Class and  
26 Subclass members, seek recovery of their actual damages, injunctive relief, attorneys' fees, punitive  
27 damages, and all other relief allowable under the law. The damages sought are uniform to the Class  
28

1 and Subclasses and the actual damages can be measured and returned to consumers who bought  
2 Defendant's Products.

3 **G. UNJUST ENRICHMENT, on Behalf of the Nationwide Class and on Behalf of**  
4 ***the California, Hawaii, Illinois, Maryland, Massachusetts, Missouri, New York,***  
5 ***Nevada, Pennsylvania, Ohio, Rhode Island, and Washington State Subclasses***

6 162. Plaintiff realleges and incorporates all other paragraphs in this Complaint and further  
7 alleges:

8 163. Plaintiff brings this cause of action on behalf of herself, and all members of the National  
9 Class and the California, Connecticut, Hawaii, Illinois, Maryland, Massachusetts, Missouri, New  
10 York, Nevada, Pennsylvania, Ohio, Rhode Island, and Washington Subclasses, all of whom are  
11 similarly situated consumers.

12 164. Defendant has unjustly profited from their deceptive business practices and kept the  
13 profits from Plaintiff and the Class and Subclass members who purchased the Products.

14 165. Defendant requested and received a measurable economic benefit at the expense of  
15 Plaintiff, the Class, and Subclass members as payment for the Products. Defendant accepted the  
16 economic benefits from Plaintiff, the Class, and Subclass members knowing the economic benefit  
17 received was based on deception and omission of material human health and safety information.

18 166. There is no utility in Defendant's misconduct and Defendant's enrichment from the  
19 misconduct is unjust, inequitable, unconscionable, and against the strong public policy to protect  
20 consumers against fraud.

21 167. Because of Defendant's misconduct, Plaintiff, on behalf of herself, the Class and  
22 Subclass members, and the public seeks recovery of their actual damages, disgorgement of profits,  
23 injunctive relief, attorneys' fees, punitive damages, and all other relief allowable under the law. The  
24 damages sought are uniform to the Class and Subclasses and the actual damages can be measured and  
25 returned to consumers who bought Defendant's Products.

26 **IX. PRAYER FOR RELIEF**

27 168. WHEREFORE, Plaintiff pray for judgment against Defendant:

- 28 a. That the Court determine this action may be maintained as a Class Action under  
Rule 23(a) and (b)(1), (2) and (3) of the Federal Rules of Civil Procedure;

