

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

ZELDA BRODOWICZ, DEREK ELLIS, and
HAROLD NYANJOM, individually and on behalf
of all others similarly situated,

Plaintiffs,

v.

VIRGIN SCENT, INC. D/B/A ARTNATURALS,
INC., WALMART, INC.,

Defendants

No. 21-cv-60643-RKA

Jury Trial Demanded

Second Amended Class Action Complaint

SECOND AMENDED CLASS ACTION COMPLAINT

COMES NOW, Plaintiffs Zelda Brodowicz, Derek Ellis, and Harold Nyanjom, who file this class action complaint against the below-enumerated Defendants as alleges and avers as follows.

I. INTRODUCTION

1. This case arises from adulterated, misbranded, and unapproved hand sanitizer products that were designed, manufactured, marketed, distributed, packaged, and/or sold by Defendants (identified and defined *infra*) in the United States. The specific hand sanitizer products currently include Artnaturals product or brand name, as well as others including but not limited to Lavender & Herbs, TrueWash, Huangjisoo, The Crème Shop, Star Wars Mandalorian, Body Prescriptions, Born Basic, Beauty Concepts, PureLogic, Miami Carry On, Natural Wunderz, Puretize, Clean-Protect-Sanitize, (collectively, the “Hand Sanitizer Products”). These Hand Sanitizer Products are not merchantable, and are not of the quality represented by Defendants named herein.

2. Defendants’ Hand Sanitizer Products contain dangerously high levels of benzene,

a hazardous genotoxic class I human carcinogen. These dangerously high levels of benzene are not disclosed by Defendants, and were only discovered very recently when a third-party pharmacy tested Defendants' Hand Sanitizer Products.

3. The United States Food and Drug Administration ("FDA") regulates the sale of hand sanitizer products in the United States. These products are considered over-the-counter ("OTC") drugs. As such, these products, including Defendants' Hand Sanitizer Products, must comply with the Food, Drug and Cosmetic Act, 21 U.S.C. § 301 *et seq.*, the FDA regulations and guidance promulgated thereunder, as well as analogous state statutory and common law schemes pertaining to the safety, quality, and sale of OTC drugs.

4. Defendants sought to profit at consumers' expense during the unprecedented COVID-19 pandemic by false labelling and selling Hand Sanitizer Products that contained undisclosed levels of benzene, a known human carcinogen. Benzene is typically used in the manufacture of gasoline and other industry chemicals or textiles. Because of its genotoxic and carcinogenic potential, in 2011 the United States Environmental Protection introduced regulations that lowered benzene content in gasoline.¹ Meanwhile, Plaintiffs and other class members directly unknowingly purchased Defendants' Hand Sanitizer Products to apply the product to their bodies (especially so during the current COVID-19 pandemic) when the products contained undisclosed levels of benzene impurities well beyond the levels that would be permissible in gasoline.

5. Plaintiffs bring this action, first, for economic damages and injunctive relief on behalf of all persons who paid for Defendants' adulterated, misbranded, and/or unapproved Hand Sanitizer products illegally manufactured, sold, labeled, marketed, and distributed in the United States. Defendants' Hand Sanitizer Products contained high levels of benzene. Defendants' Hand

¹ EPA Gasoline Mobile Source Air Toxics, available at <https://www.epa.gov/gasoline-standards/gasoline-mobile-source-air-toxics> (last visited June 14, 2022).

Sanitizer Products were of lesser quality and were adulterated, misbranded, and/or unapproved (and thereby rendered worthless) through unacceptable and undisclosed levels of benzene.

6. Plaintiffs also bring this action for actual or anticipated bodily injury (i.e., past, present, and future harm) on behalf of themselves and other class members. On or before the commencement of this action, as a result of using the Hand Sanitizer Products, Plaintiffs and other class members have been exposed to a product that resulted in or could result in Plaintiffs or other class members sustaining bodily injury, sickness, or disease resulting from continuous or repeated use, as well as subsequent exposures based on repeated use of the same harmful Hand Sanitizer Products distributed or sold by Defendants, or may suffer personal and bodily injury in the future as a result of such exposures. Thus, Plaintiffs seek not only economic damages in the form of the cost of the products, but also damages for any actual or potential bodily or personal injuries suffered, which they may have suffered, or which they may suffer in the future based on the use of the Hand Sanitizer Products, and/or for medical monitoring.

7. At all times during the period alleged herein Defendants represented and warranted to consumers and others that their Hand Sanitizer Products were comprised of the materials disclosed on the products' labels, and were merchantable and fit for use. Yet, Defendants knowingly, fraudulently, and/or negligently manufactured, labeled, marketed, and/or sold their Hand Sanitizer Products that contained extremely high levels of the carcinogenic substance benzene. Defendants have been unjustly enriched through the sale of these knowingly adulterated and/or misbranded products. Defendants' conduct also constitutes actionable fraud, consumer fraud, negligence, and other violations of law as set forth herein.

II. PARTIES

8. Plaintiff Zelda Brodowicz is a resident of Hollywood, Florida. During the class period, Plaintiff paid money for one or more of Defendants' Hand Sanitizer Products. Specifically,

Plaintiff purchased at least one or more of the following Hand Sanitizer Products, manufactured and sold at retail to Plaintiff and other consumers as follows: Artnaturals (manufactured or distributed by Defendant Virgin Scent, and purchased by Plaintiff at a store operated by Defendant Walmart). Defendants expressly and impliedly warranted to Plaintiff that the Hand Sanitizer Products that Plaintiff purchased were merchantable and of the represented quality. But in fact, Plaintiff purchased product that was not of the represented merchantability or quality. Plaintiff would not have paid money for Defendants' Hand Sanitizer Products but for their concealment of the benzene levels in those products; indeed, as the benzene levels were above the acceptable levels mandated by the FDA and analogous state laws, Defendants' Hand Sanitizer Products could not be sold in the United States (including Florida) in the first place. Further, Plaintiff used Defendants' Hand Sanitizer Products to sanitize her hands, not knowing the products were contaminated with harmful levels of benzene. Plaintiff thus suffered cellular and genetic injury that creates and/or increases the risk that Plaintiff will develop cancer or may suffer personal and personal injury in the future (if not already) as a result of such exposure.

9. Plaintiff Derek Ellis is a resident of San Antonio, Texas. During the class period, Plaintiff paid money for one or more of Virgin Scent's Hand Sanitizer Products. Specifically, Plaintiff purchased at least one or more of the following Hand Sanitizer Products, manufactured and sold at retail to Plaintiff and other consumers as follows: Artnaturals (manufactured or distributed by Defendant Virgin Scent. Virgin Scent expressly and impliedly warranted to Plaintiff that the Hand Sanitizer Products that Plaintiff purchased were merchantable and of the represented quality. But in fact, Plaintiff purchased product that was not of the represented merchantability or quality. Plaintiff would not have paid money for Virgin Scent's Hand Sanitizer Products but for their concealment of the benzene levels in those products; indeed, as the benzene levels were above the acceptable levels mandated by the FDA and analogous state laws, Virgin Scent's Hand

Sanitizer Products could not be sold in the United States (including Texas) in the first place. Further, Plaintiff used the Hand Sanitizer Products to sanitize his hands, not knowing the products were contaminated with harmful levels of benzene. Plaintiff thus suffered cellular and genetic injury that creates and/or increases the risk that Plaintiff will develop cancer or may suffer personal and personal injury in the future (if not already) as a result of such exposure.

10. Plaintiff Harold Nyanjom is a resident of Wichita, KS. During the class period, Plaintiff paid money for one or more of Defendants' Hand Sanitizer Products. Specifically, Plaintiff purchased at least one or more of the following Hand Sanitizer Products, manufactured and sold at retail to Plaintiff and other consumers as follows: Artnaturals (manufactured or distributed by Defendant Virgin Scent), and LaRose. Defendants expressly and impliedly warranted to Plaintiff that the Hand Sanitizer Products that Plaintiff purchased were merchantable and of the represented quality. But in fact, Plaintiff purchased product that was not of the represented merchantability or quality. Plaintiff would not have paid money for Defendants' Hand Sanitizer Products but for their concealment of the benzene levels in those products; indeed, as the benzene levels were above the acceptable levels mandated by the FDA and analogous state laws, Defendants' Hand Sanitizer Products could not be sold in the United States (including Kansas) in the first place. Further, Plaintiff used the Hand Sanitizer Products to sanitize his hands, not knowing the products were contaminated with harmful levels of benzene. Plaintiff thus suffered cellular and genetic injury that creates and/or increases the risk that Plaintiff will develop cancer or may suffer personal and personal injury in the future (if not already) as a result of such exposure.

11. Defendant Virgin Scent, Inc. d/b/a Artnaturals ("Virgin Scent") is a Delaware corporation with its principal place of business in Gardena, California. At all times material to this action, Virgin Scent has been engaged in the manufacture, sale, marketing, and/or distribution of adulterated and/or misbranded Hand Sanitizer Products in the United States, including but not

limited to Artnaturals.

12. Defendant Walmart, Inc. (“Walmart”) a Delaware corporation with its principal place of business in Bentonville, Arkansas. At all times material to this action, Walmart has been engaged in the marketing or sale of adulterated and/or misbranded Hand Sanitizer Products in the United States, including but not limited to Artnaturals.

13. Upon information and belief, one or more other entities manufactured, distributed, marketed, and/or sold Hand Sanitizer Products during the class period. The true names, affiliations, and/or capacities of John Doe Defendants are not presently known. However, each John Doe proximately caused damages to Plaintiffs and other class members as alleged herein, and each John Doe is liable to Plaintiffs and other class members for the acts and omissions alleged below as well as the resulting damages. Plaintiffs will amend complaint to allege the true names and capacities of the John Does when evidence reveals their identities.

III. JURISDICTION AND VENUE

14. This Court has original jurisdiction pursuant to the Class Action Fairness Act, 28 U.S.C. § 1332(d), because (a) at least one member of the proposed class is a citizen of a state different from that of Defendants, (b) the amount in controversy exceeds \$5,000,000, exclusive of interest and costs, (c) the proposed class consists of more than 100 class members, and (d) none of the exceptions under the subsection apply to this action.

15. This Court has personal jurisdiction over Defendants pursuant to 28 U.S.C. § 1407, and because Defendants have sufficient minimum contacts in Florida, and because Defendants have otherwise intentionally availed themselves of the markets within Florida through their business activities, such that the exercise of jurisdiction by this Court is proper and necessary.

16. Venue is proper in this District because at least one plaintiff resides in this District, 28 U.S.C. § 1391(b)(1); “a substantial part of the events or omissions giving rise to the claim

occurred” in this District, 28 U.S.C. § 1391(b)(2); and Defendants are subject to the personal jurisdiction of this Court, 28 U.S.C. § 1391(b)(3).

IV. FACTUAL ALLEGATIONS

A. Regulation of Over-The-Counter (OTC) Hand Sanitizer Products

17. Over-the-counter (OTC) drugs are non-prescription drugs that are available for purchase without a prescription. The FDA recognizes that OTC drugs “play an increasingly vital role in America’s health care system. OTC drugs are defined as drugs that are safe and effective for use by the general public without seeking treatment by a health professional.”² “[T]here are over 300,000 marketed OTC drug products[.]”³

18. The FDA (and analogous state agencies or laws) requires that OTC drug labeling identify, *inter alia*, each active and inactive ingredient.⁴

19. The FDA considers hand sanitizer products to be over-the-counter (OTC) drugs and regulates them as such: “Hand sanitizers are over-the-counter (OTC) drugs regulated by FDA.”⁵

20. As OTC drugs, hand sanitizer products, *inter alia*, must meet prescribed standards for, *inter alia*, safety and efficacy; have standardized, FDA-approved drug labeling (*see, e.g.*, 21 C.F.R. 201.66); and are subject to current Good Manufacturing Practices (cGMP) regulations and state-law analogues.

21. Defendants had actual and or constructive notice of the benzene contamination of their Hand Sanitizer Product. Hand sanitizers are considered “drug products” because they are used to fight disease. Therefore, hand sanitizers must comply with the FDA’s regulations and

² Drug Applications for Over-the-Counter (OTC) Drugs, available at <https://www.fda.gov/drugs/types-applications/drug-applications-over-counter-otc-drugs> (last visited June 14, 2022).

³ *Id.*

⁴ Guidance for Industry, National Uniformity for Nonprescription Drugs – Ingredient Listing for OTC Drugs, available at <https://www.fda.gov/media/72250/downloadi> (last visited June 14, 2022).

⁵ Q&A for Consumers, Hand Sanitizers and COVID-19, available at <https://www.fda.gov/drugs/information-drug-class/qa-consumers-hand-sanitizers-and-covid-19> (last visited June 14, 2022).

current Good Manufacturing Practices (“cGMPs”) for OTC drug products, which ensures that hand sanitizers meet safety, quality, purity, identity, and strength standards. See 21 U.S.C. § 51(a)(2)(B). 21 C.F.R. § 210.1(a) states that the cGMPs establish “minimum current good manufacturing practice for methods to be used in, and the facilities or controls to be used for, the manufacture, processing, packing, or holding of a drug to assure that such drug meets the requirements of the act as to safety, and has the identity and strength and meets the quality and purity characteristics that it purports or is represented to possess.” In other words, entities at all phases of the design, manufacture, and distribution chain are bound by these requirements.

22. The FDA’s cGMP regulations are found in 21 C.F.R. Parts 210 and 211. These detailed regulations set forth minimum standards regarding: organization and personnel (Subpart B); buildings and facilities (Subpart C); equipment (Subpart D); control of components and drug product containers and closures (Subpart E); production and process controls (Subpart F); packaging and label controls (Subpart G); holding and distribution (Subpart H); laboratory controls (Subpart I); records and reports (Subpart J); and returned and salvaged drug products (Subpart K). The FDA has worldwide jurisdiction to enforce these regulations if the facility is making drugs intended to be distributed in the United States.

23. Any drug product not manufactured in accordance with cGMPs is deemed “adulterated and/or misbranded” or “misbranded” and may not be distributed or sold in the United States. See 21 U.S.C. §§ 331(a), 351(a)(2)(B). States have enacted laws adopting or mirroring these federal standards.

24. FDA regulations require a drug product manufacturer to have “written procedures for production and process control designed to assure that the drug products have the identity, strength, quality, and purity they purport or are represented to possess.” 21 C.F.R. § 211.100.A drug product manufacturer’s “[l]aboratory controls shall include the establishment of scientifically

sound and appropriate specifications, standards, sampling plans, and test procedures designed to assure that components, drug product containers, closures, in-process materials, labeling, and drug products conform to appropriate standards of identity, strength, quality, and purity.” 21 C.F.R. § 211.160.

25. “Laboratory records shall include complete data derived from all tests necessary to assure compliance with established specifications and standards, including examinations and assays” and a “statement of the results of tests and how the results compare with established standards of identity, strength, quality, and purity for the component, drug product container, closure, in-process material, or drug product tested.” 21 C.F.R. § 211.194.

26. Upon information and belief, Defendant disregarded the cGMPs outlined above. If Defendant had not routinely disregarded the FDA’s cGMPs, or had fulfilled their quality assurance obligations, Defendant would have identified the presence of the benzene contaminant almost immediately.

27. Further, had Defendant adequately tested its hand sanitizer products for benzene and other carcinogens, reproductive toxins, and impurities, it would have discovered that its products contained benzene at levels far above the FDA’s emergency, interim limit (to the extent even applicable), making those products ineligible for distribution, marketing, and sale.

28. Accordingly, Defendants at least negligently introduced contaminated, adulterated, and/or misbranded hand sanitizer containing dangerous amounts of benzene into the U.S. market. Defendants failed to recall the Hand Sanitizer Products because of fear of permanently ceding market share to competitors.

B. Adulterated or Misbranded Drugs

29. The manufacture and sale of any adulterated or misbranded drug (OTC or

prescription) is prohibited under federal law,⁶ as well as under analogous state laws.

30. The introduction into commerce of any misbranded or adulterated or misbranded drug is similarly prohibited under federal law,⁷ as well as under analogous state laws.

31. Similarly, the receipt in interstate commerce of any adulterated or misbranded or drug is also unlawful under federal law,⁸ as well as under analogous state laws.

32. Among the ways a drug may be adulterated and/or misbranded are:

- a. “if it has been prepared, packed, or held under unsanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health;”⁹
- b. “if . . . the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice . . . as to safety and has the identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess;”¹⁰
- c. “If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and . . . its quality or purity falls below, the standard set forth in such compendium. . . .”¹¹
- d. “If . . . any substance has been (1) mixed or packed therewith so as to reduce its quality or strength or (2) substituted wholly or in part therefor.”¹²

33. A drug is misbranded:

⁶ 21 U.S.C. § 331(g).

⁷ 21 U.S.C. § 331(a).

⁸ 21 U.S.C. § 331(c).

⁹ 21 U.S.C. § 351(a)(2)(A).

¹⁰ 21 U.S.C. § 351(a)(2)(B).

¹¹ 21 U.S.C. § 351(b).

¹² 21 U.S.C. § 351(d).

- a. “If its labeling is false or misleading in any particular.”¹³
- b. “If any word, statement, or other information required...to appear on the label or labeling is not prominently placed thereon...in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.”¹⁴
- c. If the labeling does not contain, among other things, “the proportion of each active ingredient...”¹⁵
- d. “Unless its labeling bears (1) adequate directions for use; and (2) such adequate warnings ... against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users. ...”¹⁶
- e. “If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein.”¹⁷
- f. “if it is an imitation of another drug;”¹⁸
- g. “if it is offered for sale under the name of another drug.”¹⁹
- h. “If it is dangerous to health when used in the dosage or manner, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.”²⁰
- i. If the drug is advertised incorrectly in any manner;²¹ or

¹³ 21 U.S.C. § 352(a)(1).

¹⁴ 21 U.S.C. § 352(c).

¹⁵ 21 U.S.C. § 352(e)(1)(A)(ii)

¹⁶ 21 U.S.C. § 352(f).

¹⁷ 21 U.S.C. § 352(g).

¹⁸ 21 U.S.C. § 352(i)(2).

¹⁹ 21 U.S.C. § 352(i)(3).

²⁰ 21 U.S.C. § 352(j).

²¹ 21 U.S.C. § 352(n).

j. If the drug’s “packaging or labeling is in violation of an applicable regulation...”²²

34. Various state statutory and common law regimes expressly or impliedly adopt or parallel the aforementioned federal provisions.

35. As articulated in this Complaint, Defendants’ unapproved OTC drugs were adulterated and/or misbranded per the foregoing, as described more fully below.

C. OTC Drugs That Do Not Match FDA-Approved Content and Labeling Are New, Unapproved OTC Drugs

36. The FDA’s website provides the definition for a drug:

The Federal Food Drug and Cosmetic Act (FD&C Act) and FDA regulations define the term drug, in part, by reference to its intended use, as “articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease” and “articles (other than food) intended to affect the structure or any function of the body of man or other animals.” Therefore, almost any ingested or topical or injectable product that, through its label or labeling (including internet websites, promotional pamphlets, and other marketing material), is claimed to be beneficial for such uses will be regulated by FDA as a drug. The definition also includes components of drugs, such as active pharmaceutical ingredients.²³

37. 21 C.F.R. § 210.3(b)(7) defines an “active ingredient” in a drug as “any component that is intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease, or to affect the structure or any function of the body of man or other animals. The term includes those components that may undergo chemical change in the manufacture of the drug product and be present in the drug product in a modified form intended to furnish the specified activity or effect.”²⁴ An “inactive ingredient” is “any component other than an active ingredient.”²⁵

²² 21 U.S.C. § 352(p).

²³ <https://www.fda.gov/ForIndustry/ImportProgram/ImportBasics/RegulatedProducts/ucm511482.htm#drug>.

²⁴ <https://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/CFRSearch.cfm?fr=210.3>.

²⁵ See 21 C.F.R. § 210.3(b)(8).

38. An OTC drug that contains an ingredient that is different than those disclosed on the drug's label, or at levels not disclosed on the drug's label, is a new and unapproved drug.²⁶

39. At the very least and alternatively, drugs with different and dangerous ingredients than their brand-name counterparts are adulterated or misbranded under federal and state law, and the sale or introduction into commerce of adulterated or misbranded drugs is illegal.²⁷

40. The inclusion of additional ingredients (e.g., benzene) at undisclosed levels, and potentially other deviations, renders a drug unapproved, adulterated, and of lesser quality than that reflected in FDA-approved versions of the drug.

41. Plaintiffs reference federal law in this Complaint not in any attempt to enforce it, but to demonstrate that Plaintiff's state law claims alleged herein do not seek to impose any obligations on Defendants, beyond what is already required of them under federal law. Rather, the state law claims here seek to enforce state statutory and common law principles that are parallel to, and not addition to or pose an obstacle to, any obligations imposed on Defendants by federal law.

D. FDA Interim Limits on Impurities in Hand Sanitizer Products

42. Prior to 2020, the FDA did not allow any benzene or similar ethanol-based impurities in hand sanitizer products because of the public health risk.

43. However, the United States Secretary of Health and Human Services (HHS) declared a public health emergency on January 31, 2020 in connection with the then-emergent COVID-19 pandemic.²⁸

44. Because of the public's grave concern over COVID-19, sales of hand sanitizer

²⁶ See generally 21 C.F.R. § 310.3(h).

²⁷ See generally <https://www.justice.gov/opa/pr/generic-drug-manufacturer-ranbaxy-pleads-guilty-and-agrees-pay-500-million-resolve-false> (last accessed June 14, 2022).

²⁸ HHS Public Health Emergency Declaration, available at <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx> (last visited June 14, 2022).

products, including Defendants' Hand Sanitizer Products, increased at a prodigious rate. Additionally, other companies sought to meet the public's demand and introduce new hand sanitizer products.

45. In response to the public crisis and tightened supply, the FDA issued a Temporary Policy for Preparation of Certain Alcohol-Based Hand Sanitizer Products During the Public Health Emergency (COVID-19), Guidance for Industry, in early March 2020 ("Interim Guidance").²⁹ The FDA Guidance, which currently remains in effect, was updated March 27, 2020, April 15, 2020, June 1, 2020, August 7, 2020, and most recently February 10, 2021.

46. This FDA's Interim Guidance was issued and immediately effective "to communicate its policy for the temporary preparation of certain alcohol-based hand sanitizer products by firms that register their establishment with FDA as an over-the-counter (OTC) drug manufacturer, re-packager, or re-labeler to prepare alcohol-based hand sanitizers under the circumstances described in this guidance ('firms') for the duration of the public health emergency[.]"³⁰

47. The FDA observed that hand sanitizer products' public health importance had greatly increased during the COVID-19 crisis because "[h]and hygiene is an important part of the response to COVID-19. Washing hands often with soap and water for at least 20 seconds is essential, especially after going to the bathroom; before eating; and after coughing, sneezing, or blowing one's nose. If soap and water are not readily available, the Centers for Disease Control and Prevention (CDC) recommends consumers use an alcohol-based hand sanitizer that contains at least 60 percent alcohol (also referred to as ethanol or ethyl alcohol)."³¹

48. Accordingly, in view of the public emergency, the FDA announced that it would

²⁹ Available at <https://www.fda.gov/media/136289/download> (last visited June 14, 2022).

³⁰ *Id.* at 1.

³¹ *Id.* at 2.

not take regulatory action “against firms that prepare alcohol-based hand sanitizer for consumer use and for use as health care personnel hand rubs for the duration of the public health emergency[,]” provided, however, that the hand sanitizer products met certain criteria.³²

49. Among the criteria set forth by the FDA were quality standards and specifications hand sanitizer products. The criteria were informed by “FDA’s experience in which data submitted by fuel ethanol manufacturers producing ethanol via fermentation and distillation indicated that at least some fuel ethanol products included harmful chemicals, including gasoline and benzene, which is a known human carcinogen (cancer-causing agent).”³³

50. Because of the risk associated with dangerous impurities such as benzene, the FDA set interim limits for the use of the following ethanol-related impurities that can be present in hand sanitizer products:³⁴

Impurity	Interim Limit under this policy
Methanol	NMT 630 ppm
Benzene	NMT 2 ppm
Acetaldehyde	NMT 50 ppm*
Acetal (1,1-diethoxyethane)	NMT 50 ppm
Sum of all other impurities	NMT 300 ppm

51. Notably, the FDA’s interim limits “does not apply to hand sanitizer gel or foam products because different or additional ingredients may impact the quality and potency of the product.”³⁵

52. The FDA also advised that any firm wishing to use ethanol-related substances in their hand sanitizer product “should test the ethanol (or have a third party laboratory conduct

³² *Id.* a 3.
³³ *Id.* at 10.
³⁴ *Id.*
³⁵ *Id.* at 7.

testing) to identify the levels of impurities listed in the USP monograph as well as any other potentially harmful impurities that may be present given the manufacturing environment.”³⁶

E. Defendants Did Not Disclose the Unacceptable Levels of Benzene in Their Hand Sanitizer Products

53. A manufacturer is required to give adequate directions for the use of a pharmaceutical drug such that a “layman can use a drug safely and for the purposes for which it is intended,”³⁷ and conform to requirements governing the appearance of the label.³⁸

54. “Labeling” encompasses all written, printed or graphic material accompanying the drug or device.³⁹

55. If a manufacturer labels a drug but omits or misstates ingredients, that renders the drug misbranded.⁴⁰

56. Prior to the FDA’s Interim Guidance, the labeling for Defendants’ Hand Sanitizer Products did not disclose the presence of any benzene.

57. This was consistent with FDA’s view, as the agency had not issued formal guidance prior to COVID-19 that sanctioned *any* levels of benzene in hand sanitizer products.

58. Following the FDA’s Interim Guidance first issued in March 2020, trace amounts of a benzene impurity, at 2ppm (parts per million), would have been permissible.

59. However, upon information and belief, Defendants did not amend their products’ labels to disclose the presence of *any* benzene in their Hand Sanitizer Products. Defendants did not disclose, on their products’ labels or otherwise, whether they tested their Hand Sanitizer Products for benzene as directed by the FDA.

60. On March 24, 2021, Valisure, an independent pharmacy submitted a Citizen

³⁶ *Id.*

³⁷ 21 C.F.R. § 201.5.

³⁸ 21 C.F.R. § 801.15.

³⁹ *Id.* 65 Fed. Reg. 14286 (March 16, 2000).

⁴⁰ 21 C.F.R. § 201.6; 201.10.

Petition to the FDA concerning its testing of various Hand Sanitizer Products.

61. Valisure is an “online pharmacy currently licensed in 38 states and an analytical laboratory that is ISO 17025 accredited by the International Organization for Standardization.”

Valisure also is registered with the Drug Enforcement Administration and the FDA.

62. Valisure conducted its own independent testing of various hand sanitizer products, including Defendants’ Hand Sanitizer Products.

63. The tests conducted by Valisure show that Defendants’ Hand Sanitizer Products contain high levels of benzene.

64. The testing protocol utilized by Valisure, detected benzene in Defendants’ Hand Sanitizer Products at levels much higher than zero (the level permissible prior to COVID-19) as well as the interim limits set forth in the FDA’s Interim Guidance first published in March 2020.

65. Valisure’s testing found benzene present at levels in the Hand Sanitizer Products ranging from 2.2ppm to 16.1ppm – all of which were over the 2ppm interim level (assuming it even applied to the product, i.e., if the product was not a gel or foam).

F. Each Defendant Had an Obligation to Test and Otherwise Ensure Its Hand Sanitizer Products Did Not Contain Dangerous, Undisclosed Benzene Impurities

1. Manufacturer/Distributor Defendant(s)

66. As a manufacturer or distributor of an OTC drug, Virgin Scent had a duty to ensure that their Hand Sanitizer Products did not contain benzene impurities.

67. Prior to the FDA’s Interim Guidance, Virgin Scent had a duty to ensure that their Hand Sanitizer Products did not contain any benzene impurities, consistent with the FDA-approved labeling for any of their Hand Sanitizer Products.

68. Virgin Scent did not disclose to Plaintiff, consumers, or otherwise that – prior to the FDA’s Interim Guidance – any of its Hand Sanitizer Products contained *any* amount of

benzene.

69. Following the FDA's Interim Guidance, Virgin Scent did not disclose to Plaintiff, consumers, or otherwise that any of its Hand Sanitizer Products contained benzene far in excess of the interim limit set by the FDA.

70. Upon information and belief, Virgin Scent did not take reasonable steps to test or otherwise assure that its Hand Sanitizer Products either did not contain any benzene (prior to the FDA's Interim Guidance) or did not contain benzene in excess of the FDA's interim limits (following issuance of the FDA's Interim Guidance). Had Virgin Scent done so, they would have discovered, as Valisure was able to discover, that its products contained benzene at levels in excess of the FDA's interim limits.

71. Virgin Scent represented and warranted to its customers, consumers, and the public in general that its Hand Sanitizer Products were of merchantable quality and complied with federal and analogous state law, and did not contain undisclosed impurities such as benzene.

2. Retailer Defendant(s)

72. As a retail seller of an OTC drug, Walmart had a duty to ensure that the Hand Sanitizer Products they sourced and in turn sold to consumers did not contain benzene impurities. Prior to the FDA's Interim Guidance, Walmart had a duty to ensure that their Hand Sanitizer Products did not contain any benzene impurities, consistent with the FDA-approved labeling for any of their Hand Sanitizer Products.

73. Walmart did not disclose to Plaintiff, consumers, or otherwise that – prior to the FDA's Interim Guidance – any of its Hand Sanitizer Products contained *any* amount of benzene.

74. Following the FDA's Interim Guidance, Walmart did not disclose to Plaintiff, consumers, or otherwise that any of its Hand Sanitizer Products contained benzene far in excess of the interim limit set by the FDA.

75. Upon information and belief, Walmart did not take reasonable steps to test – either itself or requesting that its supplier test – or otherwise assure that its Hand Sanitizer Products either did not contain any benzene (prior to the FDA’s Interim Guidance) or did not contain benzene in excess of the FDA’s interim limits (following issuance of the FDA’s Interim Guidance). Had Walmart done so, they would have discovered, as Valisure was able to discover, that its products contained benzene at levels in excess of the FDA’s interim limits.

76. Walmart represented and warranted to its customers, consumers, and the public in general that its Hand Sanitizer Products were of merchantable quality and complied with federal and analogous state law, and did not contain undisclosed impurities such as benzene.

G. Plaintiffs’ Experiences

77. In March 2021, Plaintiff Brodowicz purchased Defendants’ Hand Sanitizer Products at a Walmart location in Florida, and subsequently used them on her hands.

78. Specifically, Plaintiff purchased for personal or household use two bottles of Artnaturals scent free hand sanitizer.

79. Neither the products’ label, nor anything else published by Walmart or Virgin Scent, disclosed that the product contained benzene, let alone at levels above the FDA’s interim limits.

80. In fact, these products are gels; as such, the FDA’s interim limits do not even apply to them.

81. Plaintiff Brodowicz relied on the representations and statements in the product label or otherwise in purchasing these Hand Sanitizer Products. She would not have purchased them had she known that they contained benzene.

82. Plaintiff Derek Ellis purchased Artnaturals’ Hand Sanitizer Products in Texas over the year prior to March 24, 2021, and subsequently used them on his hands.

83. Specifically, he purchased for personal or household use multiple bottles of Artnaturals scent free hand sanitizer.

84. Neither the products' label, nor anything else published by Virgin Scent, disclosed that the product contained benzene, let alone at levels above the FDA's interim limits.

85. In fact, these products are gels; as such, the FDA's interim limits do not even apply to them.

86. Plaintiff Ellis relied on the representations and statements in the product label or otherwise in purchasing these Hand Sanitizer Products. She would not have purchased them had she known that they contained benzene.

87. Plaintiff Harold purchased Defendants' Hand Sanitizer Products in Kansas in the months prior to March 24, 2021, and subsequently used them on his hands.

88. Specifically, he purchased for personal or household use at least four bottles of Artnaturals scent free hand sanitizer at Walmart in Kansas (he also purchased two bottles of LaRose hand sanitizer at Walmart).

89. Neither the products' label, nor anything else published by Virgin Scent, disclosed that the product contained benzene, let alone at levels above the FDA's interim limits.

90. In fact, these products are gels; as such, the FDA's interim limits do not even apply to them.

91. Plaintiff Nyanjom relied on the representations and statements in the product label or otherwise in purchasing these Hand Sanitizer Products. She would not have purchased them had she known that they contained benzene.

H. Fraudulent Concealment, Tolling, and Continuing Violations

92. Plaintiffs and other class members' causes of action could not and did not accrue until the date Valisure's Citizen Petition became public on March 24, 2021.

93. Plaintiffs and other class members exercised reasonable diligence but could not discover Defendants' wrongful conduct prior to Valisure's Citizen Petition.

94. For instance, no Defendant revealed to the public that their Hand Sanitizer Product contained benzene or the levels of benzene, or that the products were adulterated, misbranded, and/or unapproved.

95. To the contrary, each Defendant continued to represent and warrant that their Hand Sanitizer Products were merchantable, fit for their intended purpose, and were of the quality and composition as marketed.

96. Because of this, Plaintiffs and other class members did not discover, nor could they have discovered through reasonable and ordinary diligence, each Defendant's deceptive, fraudulent, and unlawful conduct alleged herein. Defendants' false and misleading explanations, or obfuscations, lulled Plaintiffs and other class members into believing that the prices paid for Hand Sanitizer Products were appropriate for what they believed to be non-adulterated or -non-misbranded drugs despite their exercise of reasonable and ordinary diligence.

97. Alternatively, any statute of limitation or prescriptive period is equitably tolled on account of fraudulent concealment. Defendants each affirmatively concealed from Plaintiffs and other class members their unlawful conduct. Each Defendant affirmatively strove to avoid disclosing their knowledge or the true nature of their Hand Sanitizer Products, and the fact that those products were adulterated, misbranded, and/or contained benzene at all or above the FDA's interim limits.

98. As a result of each Defendant's affirmative and other acts of concealment, any applicable statute of limitations affecting the rights of Plaintiffs or other class members has been tolled. Plaintiffs and/or other class members exercised reasonable diligence by among other things promptly investigating and bringing the allegations contained herein. Despite these or other

efforts, Plaintiffs were unable to discover, and could not have discovered, the unlawful conduct alleged herein at the time it occurred or at an earlier time so as to enable this complaint to be filed sooner.

99. Additionally, the revelations revealed by Valisure's Citizen Petition may be only the top of the iceberg. Because of Defendants' and non-parties' ongoing fraud and deception, the full scope of Defendants' and non-parties' unlawful conduct is not yet known.

V. CLASS ACTION ALLEGATIONS

100. Plaintiffs bring this action both individually and as a class action pursuant to Fed. R. Civ. P. 23(a), 23(b)(2) and 23(b)(3) against Defendants on Plaintiffs' own behalves and on behalf of the Nationwide Class(es) defined below, to the extent class members from these jurisdictions can be grouped together for purposes of class treatment:

All individuals and entities in the United States and its territories and possessions who, since at least January 1, 2015 to the present, paid any amount of money for a Hand Sanitizer Product (intended for personal or household use) that was manufactured, distributed, or sold by any Defendant.

101. Plaintiffs also allege the following Subclasses:

All individuals and entities in Florida and its territories and possessions who, since at least January 1, 2015 to the present, paid any amount of money for a Hand Sanitizer Product (intended for personal or household use) that was manufactured, distributed, or sold by any Defendant.

All individuals and entities in Texas and its territories and possessions who, since at least January 1, 2015 to the present, paid any amount of money for a Hand Sanitizer Product (intended for personal or household use) that was manufactured, distributed, or sold by any Defendant.

All individuals and entities in Kansas and its territories and possessions who, since at least January 1, 2015 to the present, paid any amount of money for a Hand Sanitizer Product (intended for personal or household use) that was manufactured, distributed, or sold by any Defendant.

102. Excluded from the Class(es)es are: (a) any judge or magistrate presiding over this action, and members of their families; (b) Defendants and their employees, officers, directors, and agents; (c) Defendants' legal representatives, assigns and successors; and (d) all persons who properly execute and file a timely request for exclusion from any Court-approved class.

103. Plaintiffs reserve the right to narrow or expand the foregoing class definitions, or to create or modify subclasses as the Court deems necessary.

104. Plaintiffs meet the prerequisites of Rule 23(a) to bring this action on behalf of the Class(es).

105. **Numerosity:** While the exact number of class members cannot be determined without discovery, they are believed to consist of potentially millions of consumers nationwide. The Class(es)es are therefore so numerous that joinder of all members is impracticable.

106. **Commonality:** Common questions of law and fact exist as to all class members, including but not limited to:

- a. Whether each Defendant made express or implied warranties to Plaintiffs and other class members regarding their Hand Sanitizer Products;
- b. Whether each Defendant's Hand Sanitizer Products were adulterated, misbranded, or otherwise contained undisclosed benzene impurities, and the levels of such impurities;
- c. Whether Defendant violated cGMPs regarding the manufacture, sourcing, or testing of their Hand Sanitizer Products;
- d. Whether each Defendant falsely claimed that its Hand Sanitizer Products were merchantable, fit for intended purposes, and otherwise of the quality and composition represented;
- e. Whether each Defendant affirmatively or negligently misrepresented or omitted facts regarding its manufacture, sale, or testing of its Hand Sanitizer Products;

- f. Whether use of the Hand Sanitizer products resulted in personal or bodily injury, or were likely to have done so based on the levels of benzene contained in the product, requiring medical monitoring to determine the impacts of such exposures (and the form and nature of any medical monitoring that is reasonably necessary);
- g. Whether Plaintiffs and other class members have been economically and physically injured, or are at a greater risk of bodily injury in the future, as a result of each Defendant's unlawful conduct, and the amount of their damages;
- h. Whether a common damages model can calculate damages on a class-wide basis;
- i. When Plaintiffs' and other class members' causes of action accrued; and
- j. Whether Defendants fraudulently concealed Plaintiffs' and other class member's causes of action.

107. **Typicality:** Plaintiffs' claims are typical of other class members' claims. Plaintiffs and other class members all suffered the same type of economic harm and actual or potential physical bodily injuries that already manifested or which may manifest in the future. Plaintiffs have substantially the same interest in this matter as all other class members, and their claims arise out of the same set of facts and conduct as the claims of all other class members.

108. **Adequacy of Representation:** Plaintiffs are committed to pursuing this action and have retained competent counsel experienced in pharmaceutical litigation, consumer fraud litigation, class actions, and federal court litigation. Accordingly, Plaintiffs and Plaintiffs' counsel will fairly and adequately protect the interests of other class members. Plaintiff' claims are coincident with, and not antagonistic to, those of the other class members they seek to represent. Plaintiffs have no disabling conflicts with other class members and will fairly and adequately represent the interests of class members.

109. The elements of Rule 23(b)(2) are met. Defendants have acted on grounds that

apply generally to all class members so that preliminary and/or final injunctive relief and corresponding declaratory relief is appropriate respecting the Class(es) as a whole.

110. The requirements of Rule 23(b)(3) are met. The common questions of law and fact enumerated above predominate over the questions affecting only individual class members, and a class action is the superior method for fair and efficient adjudication of the controversy. Although many other class members have claims against Defendants, the likelihood that individual class members will prosecute separate actions is remote due to the time and expense necessary to conduct such litigation. Serial adjudication in numerous venues would not be efficient, timely or proper. Judicial resources would be unnecessarily depleted by resolution of individual claims. Joinder on an individual basis of thousands of claimants in one suit would be impractical or impossible. In addition, individualized rulings and judgments could result in inconsistent relief for similarly situated plaintiffs. Plaintiffs' counsel, highly experienced in pharmaceutical litigation, consumer fraud litigation, class actions, and federal court litigation, foresee little difficulty in the management of this case as a class action.

VI. CAUSES OF ACTION

A. Florida Causes of Action

1. Against Defendant Virgin Scent

i. Breach of Express Warranty Against Defendant Virgin Scent

111. Plaintiff Brodowicz alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Florida and those in other states the laws of which do not conflict with Florida law.

112. Plaintiff Brodowicz incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

113. Plaintiff Brodowicz, and each other class member as set forth in this sub-section,

formed a contract with Defendant Virgin Scent at the time they purchased Hand Sanitizer Products. The terms of the contract include the promises and affirmations of fact made by Defendant Virgin Scent on the Hand Sanitizer Products' packaging and through marketing and advertising, including that the product would be of the quality and character as represented. This labeling, marketing, and advertising constitute express warranties and became part of the basis of the bargain, and are part of the standardized contract between class members and Defendant Virgin Scent.

114. Defendant Virgin Scent expressly warranted that its Hand Sanitizer Products were fit for its ordinary use, i.e., as an FDA-approved OTC drug, were safe and effective for intended use, and did not contain any undisclosed impurities.

115. Defendant Virgin Scent sold Hand Sanitizer Products that they expressly warranted were compliant with cGMP and not adulterated or misbranded, or otherwise contained undisclosed levels of benzene or other impurities. This includes statements in the product labeling that described the product as "effective" (among other things) without disclosing the levels of benzene or other impurities, "manufacture" information that omitted the failure to adhere to cGMPs, and "Drug Facts" that did not identify benzene or other impurities among the active or inactive ingredients or mention them in the warning, use, or other sections of the labeling. Additionally, the very fact the product was available for purchase constituted an affirmation the product complied with applicable law for the sale of an OTC drug product such as the Hand Sanitizer Products.

116. Defendant Virgin Scent's Hand Sanitizer Products did not conform to its express representations and warranties because the product was not manufactured in compliance with cGMP and was adulterated and misbranded, or contained undisclosed impurities.

117. At all times relevant times Florida had codified and adopted the provisions of the Uniform Commercial Code governing the warranty of merchantability and fitness for ordinary

purpose, Fla. Stat. Ann. § 672.313.

118. At the time Defendant Virgin Scent marketed and sold its Hand Sanitizer Products, it recognized the purposes for which the products would be used, and expressly warranted the products were cGMP compliant and not adulterated or misbranded, or did not contain undisclosed impurities. These affirmative representations became part of the basis of the bargain in every purchase by Plaintiff Brodowicz, and each other class member as set forth in this sub-section, including but not limited to express representations made in referring to their products as FDA-compliant (and compliant with analogous state law).

119. Defendant Virgin Scent breached its express warranties with respect to its Hand Sanitizer Products as they were not of merchantable quality, were not fit for their ordinary purpose, and did not comply with cGMP and was adulterated and misbranded, or contained undisclosed impurities.

120. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, would not have purchased the Hand Sanitizer Products had they known these drugs contained undisclosed benzene impurities, were adulterated or misbranded, or did not have the represented safety and efficacy profile.

121. Direct privity is not required between Defendant Virgin Scent and Plaintiff Brodowicz, and each other class member as set forth in this sub-section, because, among other things, Defendant Virgin Scent is a manufacturer and made direct statements about the safety of its products, and intended its statements and affirmations to flow to Plaintiff Brodowicz, and each other class member as set forth in this sub-section.

122. As a direct and proximate result of each Defendant Virgin Scent's breach of warranty, Plaintiff Brodowicz and each other class member as set forth in this sub-section have been injured and suffered damages in the amount of the purchase price of their medications, the

purchase price of any replacement medications, and any consequential damages resulting from the purchases, in that the Hand Sanitizer Products they purchased were so inherently flawed, unfit, or unmerchantable as to have no market value.

123. Pre-suit notice is not required and, even if it was, Defendant Virgin Scent is already amply on notice of the nature of the allegations and claims against them from this ongoing litigation, and new pre-suit notice provided prior to the filing of this amended pleading. To the extent a demand is required, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, seek the relief set forth in the Wherefore Clause herein, which is incorporated into this count by explicit reference. To date, Defendant Virgin Scent have not responded to any claim or demand made or alleged by Plaintiffs in connection with this matter.

ii. Breach of Implied Warranty Against Defendant Virgin Scent

124. Plaintiff Brodowicz alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Florida and those in other states the laws of which do not conflict with Florida law.

125. Plaintiff Brodowicz incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

126. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, formed a contract with Defendant Virgin Scent at the time they purchased Hand Sanitizer Products. The terms of the contract include the promises and affirmations of fact made by Defendant Virgin Scent on the Hand Sanitizer Products' packaging and through marketing and advertising, including that the product would be of the quality and character as represented. This labeling, marketing, and advertising constitute express warranties and became part of the basis of the bargain, and are part of the standardized contract between class members and Defendant Virgin Scent.

127. Defendant Virgin Scent impliedly warranted that its Hand Sanitizer Products were

fit for its ordinary use, i.e., as an FDA-approved OTC drug, were safe and effective for intended use, and did not contain any undisclosed impurities. This includes statements in the product labeling that described the product as “effective” (among other things) without disclosing the levels of benzene or other impurities, “manufacture” information that omitted the failure to adhere to cGMPs, and “Drug Facts” that did not identify benzene or other impurities among the active or inactive ingredients or mention them in the warning, use, or other sections of the labeling. Additionally, the very fact the product was available for purchase constituted an affirmation the product complied with applicable law for the sale of an OTC drug product such as the Hand Sanitizer Products.

128. Defendant Virgin Scent sold Hand Sanitizer Products that they impliedly warranted were compliant with cGMP and not adulterated or misbranded, or otherwise contained undisclosed levels of benzene or other impurities.

129. Defendant Virgin Scent’s Hand Sanitizer Products did not conform to its implied representations and warranties because the product was not manufactured in compliance with cGMP and was adulterated and misbranded, or contained undisclosed impurities.

130. At all times relevant times Florida had codified and adopted the provisions of the Uniform Commercial Code governing the implied warranty of merchantability and fitness for ordinary purpose, Fla. Stat. Ann. § 672.313.

131. Defendant Virgin Scent was a merchant within the meaning of the above statutes.

132. Defendant Virgin Scent’s Hand Sanitizer Products constituted goods or products within the meaning of the products to which implied warranty attaches.

133. Defendant Virgin Scent was obligated to provide Plaintiff Brodowicz, and each other class member as set forth in this sub-section, reasonably fit Hand Sanitizer Products for the purpose for which the product was sold, and to conform to the standards of the trade in which

Defendant is involved such that the product was of fit and merchantable quality.

134. Defendant Virgin Scent knew or should have known that its Hand Sanitizer Products were being manufactured and sold for the intended purpose, and impliedly warranted that their Hand Sanitizer Products were of merchantable quality and fit for that purpose.

135. Defendant Virgin Scent breached its implied warranty because each Defendant's Hand Sanitizer Products were not of merchantable quality, nor fit for the product's ordinary purpose, and did not conform to the standards generally applicable to such goods.

136. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, purchased the Hand Sanitizer Products in reliance upon Defendant Virgin Scent's skill and judgment and the implied warranties of fitness for the purpose.

137. The Hand Sanitizer Products were not altered by Plaintiff Brodowicz and each other class member as set forth in this sub-section.

138. As a direct and proximate result of each Defendant's breach of implied warranty, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, have been injured and suffered damages, in that Defendant Virgin Scent's Hand Sanitizer Products they purchased was so inherently flawed, unfit, or unmerchantable as to have significantly diminished or no intrinsic market value.

139. Pre-suit notice is not required and, even if it was, Defendant Virgin Scent is already amply on notice of the nature of the allegations and claims against them from this ongoing litigation, and new pre-suit notice provided prior to the filing of this amended pleading. To the extent a demand is required, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, seek the relief set forth in the Wherefore Clause herein, which is incorporated into this count by explicit reference. To date, Defendant Virgin Scent have not responded to any claim or demand made or alleged by Plaintiffs in connection with this matter.

iii. Breach of Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et seq. Against Defendant Virgin Scent

140. Plaintiff Brodowicz alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Florida and those in other states the laws of which do not conflict with Florida law.

141. Plaintiff Brodowicz incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

142. Defendant Virgin Scent is a “warrantor” within the meaning of the Magnuson-Moss Warranty Act.

143. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, are “consumers” within the meaning of the Magnuson-Moss Warranty Act.

144. Defendant Virgin Scent expressly or impliedly warranted their Hand Sanitizer Products as alleged in the preceding Florida breach of express and implied warranty claims.

145. Under 15 U.S.C. § 2310(d)(1), Plaintiff Brodowicz, and each other class member as set forth in this sub-section, were “damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief.” 15 U.S.C. § 2310(d)(1). Plaintiff Brodowicz sues pursuant to this section to recover money damages and for legal and equitable relief on behalf of themselves and the class members as set forth in this sub-section.

146. Defendant Virgin Scent has acted on the opportunity to cure its failure with respect to its warranted Hand Sanitizer Products.

147. Likewise, pursuant to 15 U.S.C. § 2310(d)(2), upon prevailing in this action, Plaintiff Brodowicz is entitled to receive an award of attorneys’ fees and expenses and pray for the same.

iv. Fraud (Affirmative Misrepresentation, Omission, and Concealment) Against Defendant Virgin Scent

148. Plaintiff Brodowicz alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Florida and those in other states the laws of which do not conflict with Florida law.

149. Plaintiff Brodowicz incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

150. Defendant Virgin Scent affirmatively misrepresented material facts including, *inter alia*, that their Hand Sanitizer Products with not compliant with cGMPs and/or were not adulterated and/or misbranded, or did not contain undisclosed benzene impurities.

151. Defendant Virgin Scent omitted material facts including, *inter alia*, that its Hand Sanitizer Products with not compliant with cGMPs and/or were not adulterated and/or misbranded, or contained undisclosed benzene impurities. This includes statements in the product labeling that described the product as “effective” (among other things) without disclosing the levels of benzene or other impurities, “manufacture” information that omitted the failure to adhere to cGMPs, and “Drug Facts” that did not identify benzene or other impurities among the active or inactive ingredients or mention them in the warning, use, or other sections of the labeling. Additionally, the very fact the product was available for purchase constituted an affirmation the product complied with applicable law for the sale of an OTC drug product such as the Hand Sanitizer Products.

152. Defendant Virgin Scent’s actions had the effect of fraudulently inducing customers to pay in whole or in part for Defendant Virgin Scent’s Hand Sanitizer Products – products which it knew or should have known were did not comply with GMPs and/or were adulterated and/or misbranded, or contained undisclosed benzene impurities.

153. Plaintiff Brodowicz, and each other class member as set forth in this sub-section,

would not have purchased Defendant Virgin Scent's Hand Sanitizer Products had they known the truth. Indeed, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, could not have paid for Defendant Virgin Scent's Hand Sanitizer Products had they known the truth because Defendant Virgin Scent's Hand Sanitizer Products were illegally manufactured, illegally distributed, and illegally sold based on Defendant Virgin Scent's fraudulent misrepresentations and omissions.

154. Defendant Virgin Scent knew, or reasonably should have known, that their misrepresentations were materially false or misleading, or that the omission of material facts rendered such representations false or misleading.

155. Defendant Virgin Scent also knew, or had reason to know, that their misrepresentations and omissions would induce Class(es) members to pay for some or all of the cost of its Hand Sanitizer Products.

156. Defendant Virgin Scent's misrepresentations and omissions were material.

157. Defendant Virgin Scent actively concealed their misrepresentations and omissions from the Class(es), government regulators, and the public.

158. To the extent applicable, Defendant Virgin Scent intended their misrepresentations and omissions to induce Plaintiff Brodowicz, and each other class member as set forth in this sub-section, to pay for its Hand Sanitizer Products.

159. But for these misrepresentations and omissions, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, would not have paid for Defendant Virgin Scent's Hand Sanitizer Products.

160. In short, Defendant Virgin Scent failed to adhere to cGMP and industry standards of care as to the manufacture, testing, quality assurance, and sale of Hand Sanitizer Products, resulting in adulterated or misbranded product being sold to Plaintiff Brodowicz, and each other

class member as set forth in this sub-section, since at least 2015 through 2019 for the purpose of duping consumers into paying for adulterated or contaminated Hand Sanitizer Products that were economically worthless and otherwise unable to be sold in the United States, to wrongfully boost Defendant Virgin Scent's own profits.

161. To the extent applicable, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, were justified in relying on Defendant Virgin Scent's misrepresentations and omissions. The same or substantively identical misrepresentations and omissions were communicated, to each Class(es) member, including through product labeling and other statements by Defendant Virgin Scent. No reasonable consumer would have paid what they did for Defendant Virgin Scent's Hand Sanitizer Products but for its unlawful conduct. To the extent applicable, reliance may be presumed in these circumstances.

162. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, were damaged by reason of Defendant Virgin Scent's misrepresentations and omissions alleged herein.

v. Negligent Misrepresentation and Omission Against Defendant Virgin Scent

163. Plaintiff Brodowicz alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Florida and those in other states the laws of which do not conflict with Florida law.

164. Plaintiff Brodowicz incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

165. Defendant Virgin Scent had or undertook a duty to accurately and truthfully represent to the quality, nature, and characteristics of its Hand Sanitizer Products.

166. Defendant Virgin Scent failed to exercise ordinary care in making representations (or in failing to disclose facts) concerning the quality, nature, and characteristics of its Hand

Sanitizer Products.

167. Defendant Virgin Scent negligently misrepresented or omitted facts regarding the quality, nature, and characteristics of its Hand Sanitizer Products. This includes statements in the product labeling that described the product as “effective” (among other things) without disclosing the levels of benzene or other impurities, “manufacture” information that omitted the failure to adhere to cGMPs, and “Drug Facts” that did not identify benzene or other impurities among the active or inactive ingredients or mention them in the warning, use, or other sections of the labeling. Additionally, the very fact the product was available for purchase constituted an affirmation the product complied with applicable law for the sale of an OTC drug product such as the Hand Sanitizer Products.

168. Defendant Virgin Scent’s statements were false at the time the misrepresentations were made (or at the time omissions were not made).

169. Defendant Virgin Scent knew, or reasonably should have known, that its representations alleged herein were materially false or misleading, or that omission of material facts rendered such representations false or misleading. Defendant Virgin Scent also knew, or had reason to know, that its misrepresentations and omissions would induce Plaintiff Brodowicz, and each other class member as set forth in this sub-section, to make purchases of Defendant Virgin Scent’s Hand Sanitizer Products.

170. As a direct and proximate result of Defendant Virgin Scent’s acts and omissions described herein, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, have suffered harm, and will continue to do so.

171. Defendant Virgin Scent’s misrepresentations or omissions were material and a substantial factor in Plaintiffs’ and other class members’ paying for Hand Sanitizer Products.

172. Defendant Virgin Scent intended its misrepresentations or omissions to induce

Plaintiff Brodowicz, and each other class member as set forth in this sub-section, to make purchases of Hand Sanitizer Products, or had reckless disregard for same.

173. But for these misrepresentations (or omissions), Plaintiff Brodowicz, and each other class member as set forth in this sub-section, would not have made purchases of Defendant Virgin Scent's Hand Sanitizer Products.

174. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, were justified in relying on Defendants' misrepresentations or omissions. The same or substantively identical misrepresentations were communicated, and/or the same or substantively identical omissions were not communicated, to each purchaser.

175. In short, Defendant Virgin Scent failed to adhere to cGMP and industry standards of care as to the manufacture, testing, quality assurance, and sale of Hand Sanitizer Products, resulting in adulterated or misbranded product being sold to Plaintiff Brodowicz, and each other class member as set forth in this sub-section, since at least 2015 through 2019 for the purpose of duping consumers into paying for adulterated or contaminated Hand Sanitizer Products that were economically worthless and otherwise unable to be sold in the United States, to wrongfully boost Defendant Virgin Scent's own profits.

176. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, were damaged by reason of Defendant Virgin Scent's misrepresentations or omissions alleged herein.

**vi. Violation of Consumer Protection Law Against
Defendant Virgin Scent**

177. Plaintiff Brodowicz alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Florida and those in other states the laws of which do not conflict with Florida law.

178. Plaintiff Brodowicz incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-

29, 38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

179. The Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”) prohibits “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Fla. Stat. Ann. §501.204(1).

180. In construing the provisions of the FDUTPA, “due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2017.” Fla. Stat. Ann. §501.204(2).

181. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, are “[c]onsumer[s]” and “[i]nterested part[ies] or person[s]” as defined by the FDUTPA. See Fla. Stat. Ann. §501.203(6)-(7).

182. Defendant Virgin Scent engaged in “[t]rade or commerce” as defined by the FDUTPA. See Fla. Stat. Ann. §501.203(8).

183. Defendant Virgin Scent, directly or through its agents, employees, and/or subsidiaries, violate the FDUTPA by knowingly and intentionally misrepresenting, omitting, concealing, and failing to disclose material facts on the labels for its Hand Sanitizer Products, including that: such product were inherently defective, unreasonably dangerous, not fit to be used for their intended purpose, contained levels of benzene that rendered them unsafe and unfit for human consumption, and/or caused cancer.

184. Specifically, by knowingly and intentionally misrepresenting, omitting, concealing, and failing to disclose material facts regarding Hand Sanitizer Products, as detailed above, Defendant Virgin Scent engaged in one or more unfair or deceptive acts or practices in the conduct of trade or commerce, in violation of the FDUTPA. Defendant Virgin Scent’s misrepresentations and omissions regarding the inherently defective and unreasonably dangerous nature of Hand

Sanitizer Products were disseminated to Plaintiff Brodowicz, and each other class member as set forth in this sub-section, in a uniform manner. This includes statements in the product labeling that described the product as “effective” (among other things) without disclosing the levels of benzene or other impurities, “manufacture” information that omitted the failure to adhere to cGMPs, and “Drug Facts” that did not identify benzene or other impurities among the active or inactive ingredients or mention them in the warning, use, or other sections of the labeling. Additionally, the very fact the product was available for purchase constituted an affirmation the product complied with applicable law for the sale of an OTC drug product such as the Hand Sanitizer Products.

185. Defendant Virgin Scent’s unfair or deceptive acts or practices, including its misrepresentations, concealments, omissions, and suppressions of material facts, as alleged herein, had a tendency or capacity to mislead and create a false impression in consumers’ minds, and were likely to and, in fact, did deceive reasonable consumers, including Plaintiff Brodowicz, and each other class member as set forth in this sub-section, about the inherently defective and unreasonably dangerous nature of Hand Sanitizer Products.

186. The facts regarding Hand Sanitizer Products that Defendant Virgin Scent knowingly and intentionally misrepresented, omitted, concealed, and failed to disclose would be considered material by a reasonable consumer, and they were, in fact, material to Plaintiff Brodowicz, and each other class member as set forth in this sub-section, who consider such facts to be important to their purchase decisions with respect to Hand Sanitizer Products.

187. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, were aggrieved by Defendant Virgin Scent’s violations of the FDUTPA because they suffered ascertainable loss and actual damages as a direct and proximate result of Defendant Virgin Scent’s knowing and intentional misrepresentations, omissions, concealments, and failures to disclose

material facts as set forth above.

188. Specifically, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, were deceived by Defendant Virgin Scent's misrepresentations, omissions, concealments, and failures to disclose material facts regarding Hand Sanitizer Products. Had Defendant Virgin Scent not engaged in the deceptive acts and practices alleged herein, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, would not have purchased the drug, and, thus they did not receive the benefit of the bargain and/or suffered out-of-pocket loss.

189. Defendant Virgin Scent's violations present a continuing risk to Plaintiff Brodowicz, and each other class member as set forth in this sub-section, as well as to the general public. Defendant's unlawful acts and practices complained herein affect the public interest.

190. In short, Defendant Virgin Scent failed to adhere to cGMP and industry standards of care as to the manufacture, testing, quality assurance, and sale of Hand Sanitizer Products, resulting in adulterated or misbranded product being sold to Plaintiff Brodowicz, and each other class member as set forth in this sub-section, since at least 2015 through 2019 for the purpose of duping consumers into paying for adulterated or contaminated Hand Sanitizer Products that were economically worthless and otherwise unable to be sold in the United States, to wrongfully boost Defendant Virgin Scent's own profits.

191. As a result of Defendant Virgin Scent's violations of the FDUTPA, as alleged herein, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, seek an order enjoining Defendant Virgin Scent's unfair or deceptive acts or practices and awarding actual damages, costs, attorneys' fees, and any other just and proper relief available under the FDUTPA.

vii. Unjust Enrichment Against Defendant Virgin Scent

192. Plaintiff Brodowicz alleges this claim for relief on behalf of herself and all similarly

situated class members, both those in Florida and those in other states the laws of which do not conflict with Florida law.

193. Plaintiff Brodowicz incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

194. As alleged herein, Defendant Virgin Scent was unjustly enriched at the expense of Plaintiff Brodowicz, and each other class member as set forth in this sub-section, by virtue of their paying for Defendant Virgin Scent's Hand Sanitizer Products.

195. Defendant Virgin Scent profited immensely from introducing a carcinogen into the United States for human consumption. On top of that, because its Hand Sanitizer Products were adulterated and misbranded, their distribution and sale in the United States was illegal.

196. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, were unjustly deprived of money obtained by Defendant Virgin Scent as a result of the improper amounts paid for Defendant Virgin Scent's Hand Sanitizer Products. It would be inequitable and unconscionable for Defendant Virgin Scent to retain the profit, benefit, and other compensation obtained from Plaintiff Brodowicz, and each other class member as set forth in this sub-section, as a result of their wrongful conduct alleged in this complaint.

197. In the alternative to the other causes of actions alleged herein, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, have no adequate remedy at law.

198. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, are entitled to seek and do seek restitution from Defendant Virgin Scents as well as an order from this Court requiring disgorgement of all profits, benefits, and other compensation obtained by Defendant Virgin Scent's by virtue of its wrongful conduct.

viii. Negligence Against Defendant Virgin Scent

199. Plaintiff Brodowicz alleges this claim for relief on behalf of herself and all similarly

situated class members, both those in Florida and those in other states the laws of which do not conflict with Florida law.

200. Plaintiff Brodowicz incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

201. Defendant Virgin Scent owed a duty to Plaintiff Brodowicz, and each other class member as set forth in this sub-section, to use and exercise reasonable and due care in the manufacturing of its Hand Sanitizer Products.

202. Defendant Virgin Scent owed a duty to Plaintiff Brodowicz, and each other class member as set forth in this sub-section, to ensure that the Hand Sanitizer Products it sold in the United States complied with cGMPs and were not adulterated or misbranded, or did not contain undisclosed benzene impurities.

203. Defendant Virgin Scent owed a duty to care to Plaintiff Brodowicz, and each other class member as set forth in this sub-section, because they were the foreseeable, reasonable, and probable user of Hand Sanitizer Products and victim of Defendant Virgin Scent's fraudulent and deceptive activities. Defendant Virgin Scent knew, or should have known, that its Hand Sanitizer Products did not comply with cGMPs and were adulterated and misbranded, or contained undisclosed benzene impurities, and each was in the best position to uncover and remedy these shortcomings.

204. Defendant Virgin Scent knew, or should have known, that the Hand Sanitizer Products did not comply with cGMPs and were adulterated and misbranded, and were in the best positions to uncover and remedy these shortcomings.

205. Defendant Virgin Scent failed to do this. Defendant Virgin Scent inadequately oversaw the manufacture or sale of its own Hand Sanitizer Products. Defendant Virgin Scent knew that ignoring the manufacturing issues surrounding its Hand Sanitizer Products would damage

Plaintiff Brodowicz, and each other class member as set forth in this sub-section, and increase its own profits.

206. Defendant Virgin Scent maintained or should have maintained a special relationship with Plaintiff Brodowicz, and each other class member as set forth in this sub-section, who were anticipated or intended direct and intended third-party beneficiaries, as it was obligated to ensure that its Hand Sanitizer Products complied with cGMPs and was not adulterated or misbranded, or did not contain undisclosed benzene impurities.

207. Defendant Virgin Scent's own actions and inactions created a foreseeable risk of harm to Plaintiff Brodowicz, and each other class member as set forth in this sub-section. Defendant Virgin Scent's misconduct included, but was not limited to, failing to oversee actions taken in the manufacture or sale of its Hand Sanitizer Products.

208. Defendant Virgin Scent breached duties owed to Plaintiff Brodowicz, and each other class member as set forth in this sub-section, by failing to exercise reasonable care sufficient to protect the interests and meet the needs of Plaintiff Brodowicz, and each other class member as set forth in this sub-section.

209. As a direct and proximate result of Defendant Virgin Scent's negligent conduct, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, suffered injury and are entitled to damages in an amount to be proven at trial. They suffered both economic injury, as well as actual physical injury and a heightened risk of physical injury in the form of current sub-cellular damage and genetic damage, and a greater risk of developing cancer. The physical injury was suffered at the time of application by Plaintiff Brodowicz, and each other class member as set forth in this sub-section, during the alleged class period.

210. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, are also entitled to the costs of medical monitoring, and/or for actual physical bodily injuries

sustained, or that may be sustained in the future, as a result of Defendant Virgin Scent's wrongful conduct as alleged herein.

ix. Negligence Per Se Against Defendant Virgin Scent

211. Plaintiff Brodowicz alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Florida and those in other states the laws of which do not conflict with Florida law.

212. Plaintiff Brodowicz incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

213. Defendant Virgin Scent owed a duty to Plaintiff Brodowicz, and each other class member as set forth in this sub-section, to use and exercise reasonable and due care in the manufacturing of its Hand Sanitizer Products.

214. Defendant Virgin Scent owed a duty to Plaintiff Brodowicz, and each other class member as set forth in this sub-section, to ensure that the Hand Sanitizer Products it sold in the United States complied with cGMPs and were not adulterated or misbranded, or did not contain undisclosed benzene impurities.

215. Defendant Virgin Scent owed a duty to care to Plaintiff Brodowicz, and each other class member as set forth in this sub-section, because they were the foreseeable, reasonable, and probable user of Hand Sanitizer Products and victim of Defendant Virgin Scent's fraudulent and deceptive activities. Defendant Virgin Scent knew, or should have known, that its Hand Sanitizer Products did not comply with cGMPs and were adulterated and misbranded, or contained undisclosed benzene impurities, and each was in the best position to uncover and remedy these shortcomings.

216. Defendant Virgin Scent's duty in part flows from federal cGMP regulations, and analogous Florida statutory law, *see e.g.*, Fla. Stat. § 499.006, *et seq.*

217. Defendant Virgin Scent knew, or should have known, that the Hand Sanitizer Products did not comply with cGMPs and were adulterated and misbranded, and were in the best positions to uncover and remedy these shortcomings.

218. Defendant Virgin Scent failed to do this. Defendant Virgin Scent inadequately oversaw the manufacture or sale of its own Hand Sanitizer Products. Defendant Virgin Scent knew that ignoring the manufacturing issues surrounding its Hand Sanitizer Products would damage Plaintiff Brodowicz, and each other class member as set forth in this sub-section, and increase its own profits.

219. Defendant Virgin Scent maintained or should have maintained a special relationship with Plaintiff Brodowicz, and each other class member as set forth in this sub-section, who were anticipated or intended direct and intended third-party beneficiaries, as it was obligated to ensure that its Hand Sanitizer Products complied with cGMPs and was not adulterated or misbranded, or did not contain undisclosed benzene impurities.

220. Defendant Virgin Scent's own actions and inactions created a foreseeable risk of harm to Plaintiff Brodowicz, and each other class member as set forth in this sub-section. Defendant Virgin Scent's misconduct included, but was not limited to, failing to oversee actions taken in the manufacture or sale of its Hand Sanitizer Products.

221. Defendant Virgin Scent breached duties owed to Plaintiff Brodowicz, and each other class member as set forth in this sub-section, by failing to exercise reasonable care sufficient to protect the interests and meet the needs of Plaintiff Brodowicz, and each other class member as set forth in this sub-section.

222. As a direct and proximate result of Defendant Virgin Scent's negligent conduct, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, suffered injury and are entitled to damages in an amount to be proven at trial. They suffered both economic injury,

as well as actual physical injury and a heightened risk of physical injury in the form of current sub-cellular damage and genetic damage, and a greater risk of developing cancer. The physical injury was suffered at the time of application by Plaintiff Brodowicz, and each other class member as set forth in this sub-section, during the alleged class period.

223. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, are also entitled to the costs of medical monitoring, and/or for actual physical bodily injuries sustained, or that may be sustained in the future, as a result of Defendant Virgin Scent's wrongful conduct as alleged herein.

x. Medical Monitoring Against Defendant Virgin Scent

224. Plaintiff Brodowicz alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Florida and those in other states the laws of which do not conflict with Florida law.

225. Plaintiff Brodowicz incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

226. As a proximate result of Defendant Virgin Scent's acts and omissions, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, are at an increased risk of developing cancer above the normal base-level risk.

227. As alleged above, Defendant Virgin Scent's Hand Sanitizer Products were contaminated with benzene, a known human carcinogen.

228. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, may not develop cancer for many years.

229. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, are at an increased risk as they used Defendant Virgin Scent's Hand Sanitizer Products for extended periods of time, and as a result were exposed to a contaminant by having their skin absorb

the Product.

230. Based upon the internal and external investigations now made public, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, are at an increased risk as they were exposed to benzene. Benzene is a hazardous, life-threatening, toxic substance that is known to cause cancer in humans, capable of causing and likely has already caused sub-cellular damage.

231. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, are at an increased risk of cancer as they were exposed to Defendant Virgin Scent's Hand Sanitizer Products in quantities, and over periods of time sufficient to establish an exposure level that is considered to be hazardous to health, and that is considered to be sufficient to cause cancer or increase the risk of developing cancer.

232. Specifically, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, were exposed to greater than normal background levels of benzene due to Defendant Virgin Scent's wrongful conduct. Indeed, the levels identified by the FDA were many times the interim level, and well above the prevailing zero-acceptable limit absent the interim guidance due to COVID-19.

233. At a minimum, at the levels detected by the FDA, even a single application of Defendant Virgin Scent's Hand Sanitizer product, the level of benzene exposure to the user would be well above baseline levels through inhalation in the ambient air or other substances that consumes reasonably may come into direct skin contact with (e.g., at least four times or higher that level), wherein the FDA specified there was no acceptable baseline level for a single application of Defendant Virgin Scent's Hand Sanitizer Products directly to human skin.

234. Multiple applications, at increasing frequency or overall duration, magnify the risk several fold. A single application (or more) through the skin (i.e., dermal absorption) of benzene

can lead to the transport of the benzene to other organs where it is metabolized and has been found to be associated with cancer and non-malignant injuries.

235. The exposure was caused solely and proximately by Defendant Virgin Scent's failures to adequately manufacture or source the Hand Sanitizer Products; Defendant Virgin Scent's failures to address discrepancies in batches of their Hand Sanitizer Products during quality control testing (or requiring same); Defendant Virgin Scent's material misrepresentations and other deceptive practices in continuing to claim that their Hand Sanitizer Products were safe for use and did not present a risk of cancer or other physical bodily injury.

236. Defendant Virgin Scent had a duty to Plaintiffs and other class members to disclose any defect, contamination, impurity or other potential health hazard known or discoverable by Defendant Virgin Scent, and to ensure that their Hand Sanitizer Products were safe, reliable, and non-hazardous for human use—its intended purpose.

237. Defendant Virgin Scent's own negligent acts and omissions resulted an increased risk of developing cancer for Plaintiff Brodowicz, and each other class member as set forth in this sub-section,. Cancer is a serious disease-causing life-threatening illness and debilitating cellular, genetic, and physical injury. Technology, analytical tools, tests and/or monitoring procedures exist and are readily available to provide for the testing and early detection of cancer in patients. These technologies, tools, tests and/or monitoring procedures are accepted and widely used by the scientific and medical community. These existing scientific methods include, but are not limited to, guaiac-based fecal occult blood test (gFOBT), fecal immunochemical test (FIT), FIT-DNA test, Flexible Sigmoidoscopy, Colonoscopy, and CT Colonography (Virtual Colonoscopy).

238. Early detection of cancer in patients is one of the best, and sometimes the only means to treat cancer such that it does not cause lasting, permanent injury, illness, or death.

239. Early detection of cancer in patients necessarily allows patients to avail themselves

of myriad forms of treatment, each of which is capable of altering the course of the illness, such as bringing the cancer into remission, removal of any malignant tumors, and other treatment to alleviate injury.

240. The tests and treatments for the early detection and treatment of cancer must be prescribed by a qualified physician, and are conducted according to the latest, contemporary, and widely accepted scientific principles. Because benzene-associated cancer screenings are not conducted with the frequency necessary to identify cancer in the absence of exposure to benzene, the prescribed monitoring regime is different from that normally recommended in the absence of exposure. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, require more frequent screenings not within the purview of routine medical exams.

241. Benzene in Defendant Virgin Scent's Hand Sanitizer products is a proven hazardous substance, known for its genotoxic and carcinogenic properties.

242. The monitoring regime sought is different than normal screening for cancers in the absence of benzene exposure, and the regime is reasonably necessary to evaluate and monitor the sub-cellular damage suffered by Plaintiff Brodowicz, and each other class member as set forth in this sub-section. Indeed, absent the screenings and regime sought here, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, would not normally receive adequate screenings that are reasonably necessary according to contemporary scientific principles (*see, e.g.*, Agency for Toxic Substances and Disease Registry (ATSDR). Toxicological Profile for Benzene. Atlanta: U.S. Public Health Service, 2007; Fang Y, Wu H-T, Ye Y-J, et al. Association between polymorphisms of metabolic enzyme genes and chromosomal damage in benzene-exposed workers in China. *Journal of Occupational and Environmental Medicine* 2017; 59: e215-e220; Whysner J, Reddy MV, Ross PM, et al. Genotoxicity of benzene and its metabolites. *Mutation Research* 2004; 566: 99-130; Zhou Y, Wang K, Wang B, et al. Occupational benzene exposure

and the risk of genetic damage: A systematic review and meta-analysis. BMC Public Health 2020; 20: 1113) to monitor the sub-cellular and genetic damage caused by Defendant Virgin Scent's Hand Sanitizer Products and monitor for cancer.

243. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, seek injunctive and monetary relief, including compensatory damages for, and the creation of a fund to adequately finance the costs of, medical monitoring procedures (1) to notify and alert all people exposed to benzene as aforesaid of their exposure and the potential consequences, (2) to provide for necessary testing and screening including but not limited to blood tests, physical examinations, imaging, colonoscopies, endoscopies, biopsies, and other similar methods for examination, biopsies, pathologic, histologic, and oncologic evaluations, oncologic, histologic, surgical and other necessary medical consultations, (3) to provide for necessary medical and surgical procedures for diagnosis and treatment, (4) to provide for all necessary evaluations and treatment, attorneys' fees, costs, interest, and such further relief as the Court deems equitable and just.

2. Against Defendant Walmart

i. Breach of Express Warranty Against Defendant Walmart

244. Plaintiff Brodowicz alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Florida and those in other states the laws of which do not conflict with Florida law.

245. Plaintiff Brodowicz incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

246. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, formed a contract with Defendant Walmart at the time they purchased Hand Sanitizer Products. The terms of the contract include the promises and affirmations of fact made by Defendant

Walmart on the Hand Sanitizer Products' packaging and through marketing and advertising, including that the product would be of the quality and character as represented. This labeling, marketing, and advertising constitute express warranties and became part of the basis of the bargain, and are part of the standardized contract between class members and Defendant Walmart.

247. Defendant Walmart expressly warranted that its Hand Sanitizer Products were fit for its ordinary use, i.e., as an FDA-approved OTC drug, were safe and effective for intended use, and did not contain any undisclosed impurities.

248. Defendant Walmart sold Hand Sanitizer Products that they expressly warranted were compliant with cGMP and not adulterated or misbranded, or otherwise contained undisclosed levels of benzene or other impurities. This includes statements in the product labeling that described the product as "effective" (among other things) without disclosing the levels of benzene or other impurities, "manufacture" information that omitted the failure to adhere to cGMPs, and "Drug Facts" that did not identify benzene or other impurities among the active or inactive ingredients or mention them in the warning, use, or other sections of the labeling. Additionally, the very fact the product was available for purchase constituted an affirmation the product complied with applicable law for the sale of an OTC drug product such as the Hand Sanitizer Products.

249. Defendant Walmart's Hand Sanitizer Products did not conform to its express representations and warranties because the product was not manufactured in compliance with cGMP and was adulterated and misbranded, or contained undisclosed impurities.

250. At all times relevant times Florida had codified and adopted the provisions of the Uniform Commercial Code governing the warranty of merchantability and fitness for ordinary purpose, Fla. Stat. Ann. § 672.313.

251. At the time Defendant Walmart marketed and sold its Hand Sanitizer Products, it

recognized the purposes for which the products would be used, and expressly warranted the products were cGMP compliant and not adulterated or misbranded, or did not contain undisclosed impurities. These affirmative representations became part of the basis of the bargain in every purchase by Plaintiff Brodowicz, and each other class member as set forth in this sub-section, including but not limited to express representations made in referring to their products as FDA-compliant (and compliant with analogous state law).

252. Defendant Walmart breached its express warranties with respect to its Hand Sanitizer Products as they were not of merchantable quality, were not fit for their ordinary purpose, and did not comply with cGMP and was adulterated and misbranded, or contained undisclosed impurities.

253. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, would not have purchased the Hand Sanitizer Products had they known these drugs contained undisclosed benzene impurities, were adulterated or misbranded, or did not have the represented safety and efficacy profile.

254. Direct privity exists between Defendant Walmart and Plaintiff Brodowicz, and each other class member as set forth in this sub-section, because, among other things, Defendant Walmart is a retailer and made direct statements about the safety of its products, and intended its statements and affirmations to flow to Plaintiff Brodowicz, and each other class member as set forth in this sub-section.

255. As a direct and proximate result of each Defendant Walmart's breach of warranty, Plaintiff Brodowicz and each other class member as set forth in this sub-section have been injured and suffered damages in the amount of the purchase price of their medications, the purchase price of any replacement medications, and any consequential damages resulting from the purchases, in that the Hand Sanitizer Products they purchased were so inherently flawed, unfit, or

unmerchtable as to have no market value.

256. Pre-suit notice is not required and, even if it was, Defendant Walmart is already amply on notice of the nature of the allegations and claims against them from this ongoing litigation, and new pre-suit notice provided prior to the filing of this amended pleading. To the extent a demand is required, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, seek the relief set forth in the Wherefore Clause herein, which is incorporated into this count by explicit reference. To date, Defendant Walmart have not responded to any claim or demand made or alleged by Plaintiffs in connection with this matter.

ii. Breach of Implied Warranty Against Defendant Walmart

257. Plaintiff Brodowicz alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Florida and those in other states the laws of which do not conflict with Florida law.

258. Plaintiff Brodowicz incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

259. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, formed a contract with Defendant Walmart at the time they purchased Hand Sanitizer Products. The terms of the contract include the promises and affirmations of fact made by Defendant Walmart on the Hand Sanitizer Products' packaging and through marketing and advertising, including that the product would be of the quality and character as represented. This labeling, marketing, and advertising constitute express warranties and became part of the basis of the bargain, and are part of the standardized contract between class members and Defendant Walmart.

260. Defendant Walmart impliedly warranted that its Hand Sanitizer Products were fit for its ordinary use, i.e., as an FDA-approved OTC drug, were safe and effective for intended use, and did not contain any undisclosed impurities. This includes statements in the product labeling

that described the product as “effective” (among other things) without disclosing the levels of benzene or other impurities, “manufacture” information that omitted the failure to adhere to cGMPs, and “Drug Facts” that did not identify benzene or other impurities among the active or inactive ingredients or mention them in the warning, use, or other sections of the labeling. Additionally, the very fact the product was available for purchase constituted an affirmation the product complied with applicable law for the sale of an OTC drug product such as the Hand Sanitizer Products.

261. Defendant Walmart sold Hand Sanitizer Products that they impliedly warranted were compliant with cGMP and not adulterated or misbranded, or otherwise contained undisclosed levels of benzene or other impurities.

262. Defendant Walmart’s Hand Sanitizer Products did not conform to its implied representations and warranties because the product was not manufactured in compliance with cGMP and was adulterated and misbranded, or contained undisclosed impurities.

263. At all times relevant times Florida had codified and adopted the provisions of the Uniform Commercial Code governing the implied warranty of merchantability and fitness for ordinary purpose, Fla. Stat. Ann. § 672.313.

264. Defendant Walmart was a merchant within the meaning of the above statutes.

265. Defendant Walmart’s Hand Sanitizer Products constituted goods or products within the meaning of the products to which implied warranty attaches.

266. Defendant Walmart was obligated to provide Plaintiff Brodowicz, and each other class member as set forth in this sub-section, reasonably fit Hand Sanitizer Products for the purpose for which the product was sold, and to conform to the standards of the trade in which Defendant is involved such that the product was of fit and merchantable quality.

267. Defendant Walmart knew or should have known that its Hand Sanitizer Products

were being manufactured and sold for the intended purpose, and impliedly warranted that their Hand Sanitizer Products were of merchantable quality and fit for that purpose.

268. Defendant Walmart breached its implied warranty because each Defendant's Hand Sanitizer Products were not of merchantable quality, nor fit for the product's ordinary purpose, and did not conform to the standards generally applicable to such goods.

269. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, purchased the Hand Sanitizer Products in reliance upon Defendant Walmart's skill and judgment and the implied warranties of fitness for the purpose.

270. The Hand Sanitizer Products were not altered by Plaintiff Brodowicz and each other class member as set forth in this sub-section.

271. As a direct and proximate result of each Defendant's breach of implied warranty, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, have been injured and suffered damages, in that Defendant Walmart's Hand Sanitizer Products they purchased was so inherently flawed, unfit, or unmerchantable as to have significantly diminished or no intrinsic market value.

272. Pre-suit notice is not required and, even if it was, Defendant Walmart is already amply on notice of the nature of the allegations and claims against them from this ongoing litigation, and new pre-suit notice provided prior to the filing of this amended pleading. To the extent a demand is required, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, seek the relief set forth in the Wherefore Clause herein, which is incorporated into this count by explicit reference. To date, Defendant Walmart have not responded to any claim or demand made or alleged by Plaintiffs in connection with this matter.

**iii. Breach of Magnuson-Moss Warranty Act, 15 U.S.C.
§ 2301, et seq. Against Defendant Walmart**

273. Plaintiff Brodowicz alleges this claim for relief on behalf of herself and all similarly

situated class members, both those in Florida and those in other states the laws of which do not conflict with Florida law.

274. Plaintiff Brodowicz incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

275. Defendant Walmart is a “warrantor” within the meaning of the Magnuson-Moss Warranty Act.

276. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, are “consumers” within the meaning of the Magnuson-Moss Warranty Act.

277. Defendant Walmart expressly or impliedly warranted their Hand Sanitizer Products as alleged in the preceding Florida breach of express and implied warranty claims.

278. Under 15 U.S.C. § 2310(d)(1), Plaintiff Brodowicz, and each other class member as set forth in this sub-section, were “damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief.” 15 U.S.C. § 2310(d)(1). Plaintiff Brodowicz sues pursuant to this section to recover money damages and for legal and equitable relief on behalf of themselves and the class members as set forth in this sub-section.

279. Defendant Walmart has acted on the opportunity to cure its failure with respect to its warranted Hand Sanitizer Products.

280. Likewise, pursuant to 15 U.S.C. § 2310(d)(2), upon prevailing in this action, Plaintiff Brodowicz is entitled to receive an award of attorneys’ fees and expenses and pray for the same.

iv. Fraud (Affirmative Misrepresentation, Omission, and Concealment) Against Defendant Walmart

281. Plaintiff Brodowicz alleges this claim for relief on behalf of herself and all similarly

situated class members, both those in Florida and those in other states the laws of which do not conflict with Florida law.

282. Plaintiff Brodowicz incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

283. Defendant Walmart affirmatively misrepresented material facts including, *inter alia*, that their Hand Sanitizer Products with not compliant with cGMPs and/or were not adulterated and/or misbranded, or did not contain undisclosed benzene impurities.

284. Defendant Walmart omitted material facts including, *inter alia*, that its Hand Sanitizer Products with not compliant with cGMPs and/or were not adulterated and/or misbranded, or contained undisclosed benzene impurities. This includes statements in the product labeling that described the product as “effective” (among other things) without disclosing the levels of benzene or other impurities, “manufacture” information that omitted the failure to adhere to cGMPs, and “Drug Facts” that did not identify benzene or other impurities among the active or inactive ingredients or mention them in the warning, use, or other sections of the labeling. Additionally, the very fact the product was available for purchase constituted an affirmation the product complied with applicable law for the sale of an OTC drug product such as the Hand Sanitizer Products.

285. Defendant Walmart’s actions had the effect of fraudulently inducing customers to pay in whole or in part for Defendant Walmart’s Hand Sanitizer Products – products which it knew or should have known were did not comply with GMPs and/or were adulterated and/or misbranded, or contained undisclosed benzene impurities.

286. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, would not have purchased Defendant Walmart’s Hand Sanitizer Products had they known the truth. Indeed, Plaintiff Brodowicz, and each other class member as set forth in this sub-section,

could not have paid for Defendant Walmart's Hand Sanitizer Products had they known the truth because Defendant Walmart's Hand Sanitizer Products were illegally manufactured, illegally distributed, and illegally sold based on Defendant Walmart' fraudulent misrepresentations and omissions.

287. Defendant Walmart knew, or reasonably should have known, that their misrepresentations were materially false or misleading, or that the omission of material facts rendered such representations false or misleading.

288. Defendant Walmart also knew, or had reason to know, that their misrepresentations and omissions would induce Class(es) members to pay for some or all of the cost of its Hand Sanitizer Products.

289. Defendant Walmart's misrepresentations and omissions were material.

290. Defendant Walmart actively concealed their misrepresentations and omissions from the Class(es), government regulators, and the public.

291. To the extent applicable, Defendant Walmart intended their misrepresentations and omissions to induce Plaintiff Brodowicz, and each other class member as set forth in this sub-section, to pay for its Hand Sanitizer Products.

292. But for these misrepresentations and omissions, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, would not have paid for Defendant Walmart's Hand Sanitizer Products.

293. In short, Defendant Walmart failed to ensure that its supplier, Defendant Virgin Scent, adhered to cGMP and industry standards of care as to the manufacture, testing, quality assurance, and sale of Hand Sanitizer Products, resulting in adulterated or misbranded product being sold to Plaintiff Brodowicz, and each other class member as set forth in this sub-section, since at least 2015 through 2019 for the purpose of duping consumers into paying for adulterated

or contaminated Hand Sanitizer Products that were economically worthless and otherwise unable to be sold in the United States, to wrongfully boost Defendant Walmart's own profits.

294. To the extent applicable, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, were justified in relying on Defendant Walmart's misrepresentations and omissions. The same or substantively identical misrepresentations and omissions were communicated, to each Class(es) member, including through product labeling and other statements by Defendant Walmart. No reasonable consumer would have paid what they did for Defendant Walmart's Hand Sanitizer Products but for its unlawful conduct. To the extent applicable, reliance may be presumed in these circumstances.

295. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, were damaged by reason of Defendant Walmart's misrepresentations and omissions alleged herein.

v. Negligent Misrepresentation and Omission Against Defendant Walmart

296. Plaintiff Brodowicz alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Florida and those in other states the laws of which do not conflict with Florida law.

297. Plaintiff Brodowicz incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

298. Defendant Walmart had or undertook a duty to accurately and truthfully represent to the quality, nature, and characteristics of its Hand Sanitizer Products.

299. Defendant Walmart failed to exercise ordinary care in making representations (or in failing to disclose facts) concerning the quality, nature, and characteristics of its Hand Sanitizer Products.

300. Defendant Walmart negligently misrepresented or omitted facts regarding the

quality, nature, and characteristics of its Hand Sanitizer Products. This includes statements in the product labeling that described the product as “effective” (among other things) without disclosing the levels of benzene or other impurities, “manufacture” information that omitted the failure to adhere to cGMPs, and “Drug Facts” that did not identify benzene or other impurities among the active or inactive ingredients or mention them in the warning, use, or other sections of the labeling. Additionally, the very fact the product was available for purchase constituted an affirmation the product complied with applicable law for the sale of an OTC drug product such as the Hand Sanitizer Products.

301. Defendant Walmart’s statements were false at the time the misrepresentations were made (or at the time omissions were not made).

302. Defendant Walmart knew, or reasonably should have known, that its representations alleged herein were materially false or misleading, or that omission of material facts rendered such representations false or misleading. Defendant Walmart also knew, or had reason to know, that its misrepresentations and omissions would induce Plaintiff Brodowicz, and each other class member as set forth in this sub-section, to make purchases of Defendant Walmart’s Hand Sanitizer Products.

303. As a direct and proximate result of Defendant Walmart’s acts and omissions described herein, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, have suffered harm, and will continue to do so.

304. Defendant Walmart’s misrepresentations or omissions were material and a substantial factor in Plaintiffs’ and other class members’ paying for Hand Sanitizer Products.

305. Defendant Walmart intended its misrepresentations or omissions to induce Plaintiff Brodowicz, and each other class member as set forth in this sub-section, to make purchases of Hand Sanitizer Products, or had reckless disregard for same.

306. But for these misrepresentations (or omissions), Plaintiff Brodowicz, and each other class member as set forth in this sub-section, would not have made purchases of Defendant Walmart's Hand Sanitizer Products.

307. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, were justified in relying on Defendants' misrepresentations or omissions. The same or substantively identical misrepresentations were communicated, and/or the same or substantively identical omissions were not communicated, to each purchaser.

308. In short, Defendant Walmart failed to ensure that its supplier, Defendant Virgin Scent, adhered to cGMP and industry standards of care as to the manufacture, testing, quality assurance, and sale of Hand Sanitizer Products, resulting in adulterated or misbranded product being sold to Plaintiff Brodowicz, and each other class member as set forth in this sub-section, since at least 2015 through 2019 for the purpose of duping consumers into paying for adulterated or contaminated Hand Sanitizer Products that were economically worthless and otherwise unable to be sold in the United States, to wrongfully boost Defendant Walmart's own profits.

309. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, were damaged by reason of Defendant Walmart's misrepresentations or omissions alleged herein.

vi. Violation of Consumer Protection Law Against Defendant Walmart

310. Plaintiff Brodowicz alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Florida and those in other states the laws of which do not conflict with Florida law.

311. Plaintiff Brodowicz incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

312. The Florida Deceptive and Unfair Trade Practices Act ("FDUTPA") prohibits "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or

practices in the conduct of any trade or commerce.” Fla. Stat. Ann. §501.204(1).

313. In construing the provisions of the FDUTPA, “due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2017.” Fla. Stat. Ann. §501.204(2).

314. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, are “[c]onsumer[s]” and “[i]nterested part[ies] or person[s]” as defined by the FDUTPA. See Fla. Stat. Ann. §501.203(6)-(7).

315. Defendant Walmart engaged in “[t]rade or commerce” as defined by the FDUTPA. See Fla. Stat. Ann. §501.203(8).

316. Defendant Walmart, directly or through its agents, employees, and/or subsidiaries, violate the FDUTPA by knowingly and intentionally misrepresenting, omitting, concealing, and failing to disclose material facts on the labels for its Hand Sanitizer Products, including that: such product were inherently defective, unreasonably dangerous, not fit to be used for their intended purpose, contained levels of benzene that rendered them unsafe and unfit for human consumption, and/or caused cancer.

317. Specifically, by knowingly and intentionally misrepresenting, omitting, concealing, and failing to disclose material facts regarding Hand Sanitizer Products, as detailed above, Defendant Walmart engaged in one or more unfair or deceptive acts or practices in the conduct of trade or commerce, in violation of the FDUTPA. Defendant Walmart’s misrepresentations and omissions regarding the inherently defective and unreasonably dangerous nature of Hand Sanitizer Products were disseminated to Plaintiff Brodowicz, and each other class member as set forth in this sub-section, in a uniform manner. This includes statements in the product labeling that described the product as “effective” (among other things) without disclosing the levels of benzene

or other impurities, “manufacture” information that omitted the failure to adhere to cGMPs, and “Drug Facts” that did not identify benzene or other impurities among the active or inactive ingredients or mention them in the warning, use, or other sections of the labeling. Additionally, the very fact the product was available for purchase constituted an affirmation the product complied with applicable law for the sale of an OTC drug product such as the Hand Sanitizer Products.

318. Defendant Walmart’s unfair or deceptive acts or practices, including its misrepresentations, concealments, omissions, and suppressions of material facts, as alleged herein, had a tendency or capacity to mislead and create a false impression in consumers’ minds, and were likely to and, in fact, did deceive reasonable consumers, including Plaintiff Brodowicz, and each other class member as set forth in this sub-section, about the inherently defective and unreasonably dangerous nature of Hand Sanitizer Products.

319. The facts regarding Hand Sanitizer Products that Defendant Walmart knowingly and intentionally misrepresented, omitted, concealed, and failed to disclose would be considered material by a reasonable consumer, and they were, in fact, material to Plaintiff Brodowicz, and each other class member as set forth in this sub-section, who consider such facts to be important to their purchase decisions with respect to Hand Sanitizer Products.

320. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, were aggrieved by Defendant Walmart’s violations of the FDUTPA because they suffered ascertainable loss and actual damages as a direct and proximate result of Defendant Walmart’s knowing and intentional misrepresentations, omissions, concealments, and failures to disclose material facts as set forth above.

321. Specifically, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, were deceived by Defendant Walmart’s misrepresentations, omissions, concealments,

and failures to disclose material facts regarding Hand Sanitizer Products. Had Defendant Walmart not engaged in the deceptive acts and practices alleged herein, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, would not have purchased the drug, and, thus they did not receive the benefit of the bargain and/or suffered out-of-pocket loss.

322. Defendant Walmart's violations present a continuing risk to Plaintiff Brodowicz, and each other class member as set forth in this sub-section, as well as to the general public. Defendant's unlawful acts and practices complained herein affect the public interest.

323. In short, Defendant Walmart failed to ensure that its supplier, Defendant Virgin Scent, adhered to cGMP and industry standards of care as to the manufacture, testing, quality assurance, and sale of Hand Sanitizer Products, resulting in adulterated or misbranded product being sold to Plaintiff Brodowicz, and each other class member as set forth in this sub-section, since at least 2015 through 2019 for the purpose of duping consumers into paying for adulterated or contaminated Hand Sanitizer Products that were economically worthless and otherwise unable to be sold in the United States, to wrongfully boost Defendant Walmart's own profits.

324. As a result of Defendant Walmart's violations of the FDUTPA, as alleged herein, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, seek an order enjoining Defendant Walmart's unfair or deceptive acts or practices and awarding actual damages, costs, attorneys' fees, and any other just and proper relief available under the FDUTPA.

vii. Unjust Enrichment Against Defendant Walmart

325. Plaintiff Brodowicz alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Florida and those in other states the laws of which do not conflict with Florida law.

326. Plaintiff Brodowicz incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

327. As alleged herein, Defendant Walmart was unjustly enriched at the expense of Plaintiff Brodowicz, and each other class member as set forth in this sub-section, by virtue of their paying for Defendant Walmart's Hand Sanitizer Products.

328. Defendant Walmart profited immensely from introducing a carcinogen into the United States for human consumption. On top of that, because its Hand Sanitizer Products were adulterated and misbranded, their distribution and sale in the United States was illegal.

329. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, were unjustly deprived of money obtained by Defendant Walmart as a result of the improper amounts paid for Defendant Walmart's Hand Sanitizer Products. It would be inequitable and unconscionable for Defendant Walmart to retain the profit, benefit, and other compensation obtained from Plaintiff Brodowicz, and each other class member as set forth in this sub-section, as a result of their wrongful conduct alleged in this complaint.

330. In the alternative to the other causes of actions alleged herein, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, have no adequate remedy at law.

331. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, are entitled to seek and do seek restitution from Defendant Walmart as well as an order from this Court requiring disgorgement of all profits, benefits, and other compensation obtained by Defendant Walmart's by virtue of its wrongful conduct.

viii. Negligence Against Defendant Walmart

332. Plaintiff Brodowicz alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Florida and those in other states the laws of which do not conflict with Florida law.

333. Plaintiff Brodowicz incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

334. Defendant Walmart owed a duty to Plaintiff Brodowicz, and each other class member as set forth in this sub-section, to use and exercise reasonable and due care in the manufacturing of its Hand Sanitizer Products.

335. Defendant Walmart owed a duty to Plaintiff Brodowicz, and each other class member as set forth in this sub-section, to ensure that the Hand Sanitizer Products it sold in the United States complied with cGMPs and were not adulterated or misbranded, or did not contain undisclosed benzene impurities.

336. Defendant Walmart owed a duty to care to Plaintiff Brodowicz, and each other class member as set forth in this sub-section, because they were the foreseeable, reasonable, and probable user of Hand Sanitizer Products and victim of Defendant Walmart's fraudulent and deceptive activities. Defendant Walmart knew, or should have known, that its Hand Sanitizer Products did not comply with cGMPs and were adulterated and misbranded, or contained undisclosed benzene impurities, and each was in the best position to uncover and remedy these shortcomings.

337. Defendant Walmart knew, or should have known, that the Hand Sanitizer Products did not comply with cGMPs and were adulterated and misbranded, and were in the best positions to uncover and remedy these shortcomings.

338. Defendant Walmart failed to do this. Defendant Walmart inadequately oversaw the manufacture or sale of its own Hand Sanitizer Products. Defendant Walmart knew that ignoring the manufacturing issues surrounding its Hand Sanitizer Products would damage Plaintiff Brodowicz, and each other class member as set forth in this sub-section, and increase its own profits.

339. Defendant Walmart maintained or should have maintained a special relationship with Plaintiff Brodowicz, and each other class member as set forth in this sub-section, who were

anticipated or intended direct and intended third-party beneficiaries, as it was obligated to ensure that its Hand Sanitizer Products complied with cGMPs and was not adulterated or misbranded, or did not contain undisclosed benzene impurities.

340. Defendant Walmart's own actions and inactions created a foreseeable risk of harm to Plaintiff Brodowicz, and each other class member as set forth in this sub-section. Defendant Walmart's misconduct included, but was not limited to, failing to oversee actions taken in the manufacture or sale of its Hand Sanitizer Products.

341. Defendant Walmart breached duties owed to Plaintiff Brodowicz, and each other class member as set forth in this sub-section, by failing to exercise reasonable care sufficient to protect the interests and meet the needs of Plaintiff Brodowicz, and each other class member as set forth in this sub-section.

342. As a direct and proximate result of Defendant Walmart's negligent conduct, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, suffered injury and are entitled to damages in an amount to be proven at trial. They suffered both economic injury, as well as actual physical injury and a heightened risk of physical injury in the form of current sub-cellular damage and genetic damage, and a greater risk of developing cancer. The physical injury was suffered at the time of application by Plaintiff Brodowicz, and each other class member as set forth in this sub-section, during the alleged class period.

343. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, are also entitled to the costs of medical monitoring, and/or for actual physical bodily injuries sustained, or that may be sustained in the future, as a result of Defendant Walmart's wrongful conduct as alleged herein.

ix. Negligence Per Se Against Defendant Walmart

344. Plaintiff Brodowicz alleges this claim for relief on behalf of herself and all similarly

situated class members, both those in Florida and those in other states the laws of which do not conflict with Florida law.

345. Plaintiff Brodowicz incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

346. Defendant Walmart owed a duty to Plaintiff Brodowicz, and each other class member as set forth in this sub-section, to use and exercise reasonable and due care in the manufacturing of its Hand Sanitizer Products.

347. Defendant Walmart owed a duty to Plaintiff Brodowicz, and each other class member as set forth in this sub-section, to ensure that the Hand Sanitizer Products it sold in the United States complied with cGMPs and were not adulterated or misbranded, or did not contain undisclosed benzene impurities.

348. Defendant Walmart owed a duty to care to Plaintiff Brodowicz, and each other class member as set forth in this sub-section, because they were the foreseeable, reasonable, and probable user of Hand Sanitizer Products and victim of Defendant Walmart's fraudulent and deceptive activities. Defendant Walmart knew, or should have known, that its Hand Sanitizer Products did not comply with cGMPs and were adulterated and misbranded, or contained undisclosed benzene impurities, and each was in the best position to uncover and remedy these shortcomings.

349. Defendant Walmart's duty in part flows from federal cGMP regulations, and analogous Florida statutory law, *see e.g.*, Fla. Stat. § 499.006, *et seq.*

350. Defendant Walmart knew, or should have known, that the Hand Sanitizer Products did not comply with cGMPs and were adulterated and misbranded, and were in the best positions to uncover and remedy these shortcomings.

351. Defendant Walmart failed to do this. Defendant Walmart inadequately oversaw the

manufacture or sale of its own Hand Sanitizer Products. Defendant Walmart knew that ignoring the manufacturing issues surrounding its Hand Sanitizer Products would damage Plaintiff Brodowicz, and each other class member as set forth in this sub-section, and increase its own profits.

352. Defendant Walmart maintained or should have maintained a special relationship with Plaintiff Brodowicz, and each other class member as set forth in this sub-section, who were anticipated or intended direct and intended third-party beneficiaries, as it was obligated to ensure that its Hand Sanitizer Products complied with cGMPs and was not adulterated or misbranded, or did not contain undisclosed benzene impurities.

353. Defendant Walmart's own actions and inactions created a foreseeable risk of harm to Plaintiff Brodowicz, and each other class member as set forth in this sub-section. Defendant Walmart's misconduct included, but was not limited to, failing to oversee actions taken in the manufacture or sale of its Hand Sanitizer Products.

354. Defendant Walmart breached duties owed to Plaintiff Brodowicz, and each other class member as set forth in this sub-section, by failing to exercise reasonable care sufficient to protect the interests and meet the needs of Plaintiff Brodowicz, and each other class member as set forth in this sub-section.

355. As a direct and proximate result of Defendant Walmart's negligent conduct, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, suffered injury and are entitled to damages in an amount to be proven at trial. They suffered both economic injury, as well as actual physical injury and a heightened risk of physical injury in the form of current sub-cellular damage and genetic damage, and a greater risk of developing cancer. The physical injury was suffered at the time of application by Plaintiff Brodowicz, and each other class member as set forth in this sub-section, during the alleged class period.

356. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, are also entitled to the costs of medical monitoring, and/or for actual physical bodily injuries sustained, or that may be sustained in the future, as a result of Defendant Walmart's wrongful conduct as alleged herein.

x. Medical Monitoring Against Defendant Walmart

357. Plaintiff Brodowicz alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Florida and those in other states the laws of which do not conflict with Florida law.

358. Plaintiff Brodowicz incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

359. As a proximate result of Defendant Walmart's acts and omissions, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, are at an increased risk of developing cancer above the normal base-level risk.

360. As alleged above, Defendant Walmart's Hand Sanitizer Products were contaminated with benzene, a known human carcinogen.

361. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, may not develop cancer for many years.

362. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, are at an increased risk as they used Defendant Walmart's Hand Sanitizer Products for extended periods of time, and as a result were exposed to a contaminant by having their skin absorb the Product.

363. Based upon the internal and external investigations now made public, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, are at an increased risk as they were exposed to benzene. Benzene is a hazardous, life-threatening, toxic substance that is

known to cause cancer in humans, capable of causing and likely has already caused sub-cellular damage.

364. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, are at an increased risk of cancer as they were exposed to Defendant Walmart's Hand Sanitizer Products in quantities, and over periods of time sufficient to establish an exposure level that is considered to be hazardous to health, and that is considered to be sufficient to cause cancer or increase the risk of developing cancer.

365. Specifically, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, were exposed to greater than normal background levels of benzene due to Defendant Walmart's wrongful conduct. Indeed, the levels identified by the FDA were many times the interim level, and well above the prevailing zero-acceptable limit absent the interim guidance due to COVID-19.

366. At a minimum, at the levels detected by the FDA, even a single application of Defendant Walmart's Hand Sanitizer product, the level of benzene exposure to the user would be well above baseline levels through inhalation in the ambient air or other substances that consumes reasonably may come into direct skin contact with (e.g., at least four times or higher that level), wherein the FDA specified there was no acceptable baseline level for a single application of Defendant Walmart's Hand Sanitizer Products directly to human skin.

367. Multiple applications, at increasing frequency or overall duration, magnify the risk several fold. A single application (or more) through the skin (i.e., dermal absorption) of benzene can lead to the transport of the benzene to other organs where it is metabolized and has been found to be associated with cancer and non-malignant injuries.

368. The exposure was caused solely and proximately by Defendant Walmart's failures to adequately manufacture or source the Hand Sanitizer Products; Defendant Walmart's failures

to address discrepancies in batches of their Hand Sanitizer Products during quality control testing (or requiring same); Defendant Walmart's material misrepresentations and other deceptive practices in continuing to claim that their Hand Sanitizer Products were safe for use and did not present a risk of cancer or other physical bodily injury.

369. Defendant Walmart had a duty to Plaintiffs and other class members to disclose any defect, contamination, impurity or other potential health hazard known or discoverable by Defendant Walmart, and to ensure that their Hand Sanitizer Products were safe, reliable, and non-hazardous for human use—its intended purpose.

370. Defendant Walmart's own negligent acts and omissions resulted an increased risk of developing cancer for Plaintiff Brodowicz, and each other class member as set forth in this subsection,. Cancer is a serious disease-causing life-threatening illness and debilitating cellular, genetic, and physical injury. Technology, analytical tools, tests and/or monitoring procedures exist and are readily available to provide for the testing and early detection of cancer in patients. These technologies, tools, tests and/or monitoring procedures are accepted and widely used by the scientific and medical community. These existing scientific methods include, but are not limited to, guaiac-based fecal occult blood test (gFOBT), fecal immunochemical test (FIT), FIT-DNA test, Flexible Sigmoidoscopy, Colonoscopy, and CT Colonography (Virtual Colonoscopy).

371. Early detection of cancer in patients is one of the best, and sometimes the only means to treat cancer such that it does not cause lasting, permanent injury, illness, or death.

372. Early detection of cancer in patients necessarily allows patients to avail themselves of myriad forms of treatment, each of which is capable of altering the course of the illness, such as bringing the cancer into remission, removal of any malignant tumors, and other treatment to alleviate injury.

373. The tests and treatments for the early detection and treatment of cancer must be

prescribed by a qualified physician, and are conducted according to the latest, contemporary, and widely accepted scientific principles. Because benzene-associated cancer screenings are not conducted with the frequency necessary to identify cancer in the absence of exposure to benzene, the prescribed monitoring regime is different from that normally recommended in the absence of exposure. Plaintiff Brodowicz, and each other class member as set forth in this sub-section, require more frequent screenings not within the purview of routine medical exams.

374. Benzene in Defendant Walmart's Hand Sanitizer products is a proven hazardous substance, known for its genotoxic and carcinogenic properties.

375. The monitoring regime sought is different than normal screening for cancers in the absence of benzene exposure, and the regime is reasonably necessary to evaluate and monitor the sub-cellular damage suffered by Plaintiff Brodowicz, and each other class member as set forth in this sub-section. Indeed, absent the screenings and regime sought here, Plaintiff Brodowicz, and each other class member as set forth in this sub-section, would not normally receive adequate screenings that are reasonably necessary according to contemporary scientific principles (*see, e.g.*, Agency for Toxic Substances and Disease Registry (ATSDR). Toxicological Profile for Benzene. Atlanta: U.S. Public Health Service, 2007; Fang Y, Wu H-T, Ye Y-J, et al. Association between polymorphisms of metabolic enzyme genes and chromosomal damage in benzene-exposed workers in China. *Journal of Occupational and Environmental Medicine* 2017; 59: e215-e220; Whysner J, Reddy MV, Ross PM, et al. Genotoxicity of benzene and its metabolites. *Mutation Research* 2004; 566: 99-130; Zhou Y, Wang K, Wang B, et al. Occupational benzene exposure and the risk of genetic damage: A systematic review and meta-analysis. *BMC Public Health* 2020; 20: 1113) to monitor the sub-cellular and genetic damage caused by Defendant Walmart's Hand Sanitizer Products and monitor for cancer.

376. Plaintiff Brodowicz, and each other class member as set forth in this sub-section,

seek injunctive and monetary relief, including compensatory damages for, and the creation of a fund to adequately finance the costs of, medical monitoring procedures (1) to notify and alert all people exposed to benzene as aforesaid of their exposure and the potential consequences, (2) to provide for necessary testing and screening including but not limited to blood tests, physical examinations, imaging, colonoscopies, endoscopies, biopsies, and other similar methods for examination, biopsies, pathologic, histologic, and oncologic evaluations, oncologic, histologic, surgical and other necessary medical consultations, (3) to provide for necessary medical and surgical procedures for diagnosis and treatment, (4) to provide for all necessary evaluations and treatment, attorneys' fees, costs, interest, and such further relief as the Court deems equitable and just.

B. Kansas Causes of Action

1. Against Defendant Virgin Scent

i. Breach of Express Warranty Against Defendant Virgin Scent

377. Plaintiff Nyanjom alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Kansas and those in other states the laws of which do not conflict with Kansas law.

378. Plaintiff Nyanjom incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

379. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, formed a contract with Defendant Virgin Scent at the time they purchased Hand Sanitizer Products. The terms of the contract include the promises and affirmations of fact made by Defendant Virgin Scent on the Hand Sanitizer Products' packaging and through marketing and advertising, including that the product would be of the quality and character as represented. This labeling, marketing, and advertising constitute express warranties and became part of the basis of the bargain, and are

part of the standardized contract between class members and Defendant Virgin Scent.

380. Defendant Virgin Scent expressly warranted that its Hand Sanitizer Products were fit for its ordinary use, i.e., as an FDA-approved OTC drug, were safe and effective for intended use, and did not contain any undisclosed impurities.

381. Defendant Virgin Scent sold Hand Sanitizer Products that they expressly warranted were compliant with cGMP and not adulterated or misbranded, or otherwise contained undisclosed levels of benzene or other impurities. This includes statements in the product labeling that described the product as “effective” (among other things) without disclosing the levels of benzene or other impurities, “manufacture” information that omitted the failure to adhere to cGMPs, and “Drug Facts” that did not identify benzene or other impurities among the active or inactive ingredients or mention them in the warning, use, or other sections of the labeling. Additionally, the very fact the product was available for purchase constituted an affirmation the product complied with applicable law for the sale of an OTC drug product such as the Hand Sanitizer Products.

382. Defendant Virgin Scent’s Hand Sanitizer Products did not conform to its express representations and warranties because the product was not manufactured in compliance with cGMP and was adulterated and misbranded, or contained undisclosed impurities.

383. At all times relevant times Kansas had codified and adopted the provisions of the Uniform Commercial Code governing the warranty of merchantability and fitness for ordinary purpose, Kan. Stat. Ann. § 84-3-313.

384. At the time Defendant Virgin Scent marketed and sold its Hand Sanitizer Products, it recognized the purposes for which the products would be used, and expressly warranted the products were cGMP compliant and not adulterated or misbranded, or did not contain undisclosed impurities. These affirmative representations became part of the basis of the bargain in every

purchase by Plaintiff Nyanjom, and each other class member as set forth in this sub-section, including but not limited to express representations made in referring to their products as FDA-compliant (and compliant with analogous state law).

385. Defendant Virgin Scent breached its express warranties with respect to its Hand Sanitizer Products as they were not of merchantable quality, were not fit for their ordinary purpose, and did not comply with cGMP and was adulterated and misbranded, or contained undisclosed impurities.

386. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, would not have purchased the Hand Sanitizer Products had they known these drugs contained undisclosed benzene impurities, were adulterated or misbranded, or did not have the represented safety and efficacy profile.

387. Direct privity is not required between Defendant Virgin Scent and Plaintiff Nyanjom, and each other class member as set forth in this sub-section, because, among other things, Defendant Virgin Scent is a manufacturer and made direct statements about the safety of its products, and intended its statements and affirmations to flow to Plaintiff Nyanjom, and each other class member as set forth in this sub-section.

388. As a direct and proximate result of each Defendant Virgin Scent's breach of warranty, Plaintiff Nyanjom and each other class member as set forth in this sub-section have been injured and suffered damages in the amount of the purchase price of their medications, the purchase price of any replacement medications, and any consequential damages resulting from the purchases, in that the Hand Sanitizer Products they purchased were so inherently flawed, unfit, or unmerchantable as to have no market value.

389. Pre-suit notice is not required and, even if it was, Defendant Virgin Scent is already amply on notice of the nature of the allegations and claims against them from this ongoing

litigation, and new pre-suit notice provided prior to the filing of this amended pleading. To the extent a demand is required, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, seek the relief set forth in the Wherefore Clause herein, which is incorporated into this count by explicit reference. To date, Defendant Virgin Scent have not responded to any claim or demand made or alleged by Plaintiffs in connection with this matter.

ii. Breach of Implied Warranty Against Defendant Virgin Scent

390. Plaintiff Nyanjom alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Kansas and those in other states the laws of which do not conflict with Kansas law.

391. Plaintiff Nyanjom incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

392. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, formed a contract with Defendant Virgin Scent at the time they purchased Hand Sanitizer Products. The terms of the contract include the promises and affirmations of fact made by Defendant Virgin Scent on the Hand Sanitizer Products' packaging and through marketing and advertising, including that the product would be of the quality and character as represented. This labeling, marketing, and advertising constitute express warranties and became part of the basis of the bargain, and are part of the standardized contract between class members and Defendant Virgin Scent.

393. Defendant Virgin Scent impliedly warranted that its Hand Sanitizer Products were fit for its ordinary use, i.e., as an FDA-approved OTC drug, were safe and effective for intended use, and did not contain any undisclosed impurities. This includes statements in the product labeling that described the product as "effective" (among other things) without disclosing the levels of benzene or other impurities, "manufacture" information that omitted the failure to adhere to cGMPs, and "Drug Facts" that did not identify benzene or other impurities among the active or

inactive ingredients or mention them in the warning, use, or other sections of the labeling. Additionally, the very fact the product was available for purchase constituted an affirmation the product complied with applicable law for the sale of an OTC drug product such as the Hand Sanitizer Products.

394. Defendant Virgin Scent sold Hand Sanitizer Products that they impliedly warranted were compliant with cGMP and not adulterated or misbranded, or otherwise contained undisclosed levels of benzene or other impurities.

395. Defendant Virgin Scent's Hand Sanitizer Products did not conform to its implied representations and warranties because the product was not manufactured in compliance with cGMP and was adulterated and misbranded, or contained undisclosed impurities.

396. At all times relevant times Kansas had codified and adopted the provisions of the Uniform Commercial Code governing the implied warranty of merchantability and fitness for ordinary purpose, Kan. Stat. Ann. § 84-2-314.

397. Defendant Virgin Scent was a merchant within the meaning of the above statutes.

398. Defendant Virgin Scent's Hand Sanitizer Products constituted goods or products within the meaning of the products to which implied warranty attaches.

399. Defendant Virgin Scent was obligated to provide Plaintiff Nyanjom, and each other class member as set forth in this sub-section, reasonably fit Hand Sanitizer Products for the purpose for which the product was sold, and to conform to the standards of the trade in which Defendant is involved such that the product was of fit and merchantable quality.

400. Defendant Virgin Scent knew or should have known that its Hand Sanitizer Products were being manufactured and sold for the intended purpose, and impliedly warranted that their Hand Sanitizer Products were of merchantable quality and fit for that purpose.

401. Defendant Virgin Scent breached its implied warranty because each Defendant's

Hand Sanitizer Products were not of merchantable quality, nor fit for the product's ordinary purpose, and did not conform to the standards generally applicable to such goods.

402. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, purchased the Hand Sanitizer Products in reliance upon Defendant Virgin Scent's skill and judgment and the implied warranties of fitness for the purpose.

403. The Hand Sanitizer Products were not altered by Plaintiff Nyanjom and each other class member as set forth in this sub-section.

404. As a direct and proximate result of each Defendant's breach of implied warranty, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, have been injured and suffered damages, in that Defendant Virgin Scent's Hand Sanitizer Products they purchased was so inherently flawed, unfit, or unmerchantable as to have significantly diminished or no intrinsic market value.

405. Pre-suit notice is not required and, even if it was, Defendant Virgin Scent is already amply on notice of the nature of the allegations and claims against them from this ongoing litigation, and new pre-suit notice provided prior to the filing of this amended pleading. To the extent a demand is required, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, seek the relief set forth in the Wherefore Clause herein, which is incorporated into this count by explicit reference. To date, Defendant Virgin Scent have not responded to any claim or demand made or alleged by Plaintiffs in connection with this matter.

**iii. Breach of Magnuson-Moss Warranty Act, 15 U.S.C.
§ 2301, et seq. Against Defendant Virgin Scent**

406. Plaintiff Nyanjom alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Kansas and those in other states the laws of which do not conflict with Kansas law.

407. Plaintiff Nyanjom incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29,

38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

408. Defendant Virgin Scent is a “warrantor” within the meaning of the Magnuson-Moss Warranty Act.

409. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, are “consumers” within the meaning of the Magnuson-Moss Warranty Act.

410. Defendant Virgin Scent expressly or impliedly warranted their Hand Sanitizer Products as alleged in the preceding Kansas breach of express and implied warranty claims.

411. Under 15 U.S.C. § 2310(d)(1), Plaintiff Nyanjom, and each other class member as set forth in this sub-section, were “damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief.” 15 U.S.C. § 2310(d)(1). Plaintiff Nyanjom sues pursuant to this section to recover money damages and for legal and equitable relief on behalf of themselves and the class members as set forth in this sub-section.

412. Defendant Virgin Scent has acted on the opportunity to cure its failure with respect to its warranted Hand Sanitizer Products.

413. Likewise, pursuant to 15 U.S.C. § 2310(d)(2), upon prevailing in this action, Plaintiff Nyanjom is entitled to receive an award of attorneys’ fees and expenses and pray for the same.

iv. Fraud (Affirmative Misrepresentation, Omission, and Concealment) Against Defendant Virgin Scent

414. Plaintiff Nyanjom alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Kansas and those in other states the laws of which do not conflict with Kansas law.

415. Plaintiff Nyanjom incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29,

38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

416. Defendant Virgin Scent affirmatively misrepresented material facts including, *inter alia*, that their Hand Sanitizer Products with not compliant with cGMPs and/or were not adulterated and/or misbranded, or did not contain undisclosed benzene impurities.

417. Defendant Virgin Scent omitted material facts including, *inter alia*, that its Hand Sanitizer Products with not compliant with cGMPs and/or were not adulterated and/or misbranded, or contained undisclosed benzene impurities. This includes statements in the product labeling that described the product as “effective” (among other things) without disclosing the levels of benzene or other impurities, “manufacture” information that omitted the failure to adhere to cGMPs, and “Drug Facts” that did not identify benzene or other impurities among the active or inactive ingredients or mention them in the warning, use, or other sections of the labeling. Additionally, the very fact the product was available for purchase constituted an affirmation the product complied with applicable law for the sale of an OTC drug product such as the Hand Sanitizer Products.

418. Defendant Virgin Scent’s actions had the effect of fraudulently inducing customers to pay in whole or in part for Defendant Virgin Scent’s Hand Sanitizer Products – products which it knew or should have known were did not comply with GMPs and/or were adulterated and/or misbranded, or contained undisclosed benzene impurities.

419. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, would not have purchased Defendant Virgin Scent’s Hand Sanitizer Products had they known the truth. Indeed, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, could not have paid for Defendant Virgin Scent’s Hand Sanitizer Products had they known the truth because Defendant Virgin Scent’s Hand Sanitizer Products were illegally manufactured, illegally distributed, and illegally sold based on Defendant Virgin Scent’ fraudulent

misrepresentations and omissions.

420. Defendant Virgin Scent knew, or reasonably should have known, that their misrepresentations were materially false or misleading, or that the omission of material facts rendered such representations false or misleading.

421. Defendant Virgin Scent also knew, or had reason to know, that their misrepresentations and omissions would induce Class(es) members to pay for some or all of the cost of its Hand Sanitizer Products.

422. Defendant Virgin Scent's misrepresentations and omissions were material.

423. Defendant Virgin Scent actively concealed their misrepresentations and omissions from the Class(es), government regulators, and the public.

424. To the extent applicable, Defendant Virgin Scent intended their misrepresentations and omissions to induce Plaintiff Nyanjom, and each other class member as set forth in this sub-section, to pay for its Hand Sanitizer Products.

425. But for these misrepresentations and omissions, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, would not have paid for Defendant Virgin Scent's Hand Sanitizer Products.

426. In short, Defendant Virgin Scent failed to adhere to cGMP and industry standards of care as to the manufacture, testing, quality assurance, and sale of Hand Sanitizer Products, resulting in adulterated or misbranded product being sold to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, since at least 2015 through 2019 for the purpose of duping consumers into paying for adulterated or contaminated Hand Sanitizer Products that were economically worthless and otherwise unable to be sold in the United States, to wrongfully boost Defendant Virgin Scent's own profits.

427. To the extent applicable, Plaintiff Nyanjom, and each other class member as set

forth in this sub-section, were justified in relying on Defendant Virgin Scent's misrepresentations and omissions. The same or substantively identical misrepresentations and omissions were communicated, to each Class(es) member, including through product labeling and other statements by Defendant Virgin Scent. No reasonable consumer would have paid what they did for Defendant Virgin Scent's Hand Sanitizer Products but for its unlawful conduct. To the extent applicable, reliance may be presumed in these circumstances.

428. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, were damaged by reason of Defendant Virgin Scent's misrepresentations and omissions alleged herein.

v. Negligent Misrepresentation and Omission Against Defendant Virgin Scent

429. Plaintiff Nyanjom alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Kansas and those in other states the laws of which do not conflict with Kansas law.

430. Plaintiff Nyanjom incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

431. Defendant Virgin Scent had or undertook a duty to accurately and truthfully represent to the quality, nature, and characteristics of its Hand Sanitizer Products.

432. Defendant Virgin Scent failed to exercise ordinary care in making representations (or in failing to disclose facts) concerning the quality, nature, and characteristics of its Hand Sanitizer Products.

433. Defendant Virgin Scent negligently misrepresented or omitted facts regarding the quality, nature, and characteristics of its Hand Sanitizer Products. This includes statements in the product labeling that described the product as "effective" (among other things) without disclosing the levels of benzene or other impurities, "manufacture" information that omitted the failure to

adhere to cGMPs, and “Drug Facts” that did not identify benzene or other impurities among the active or inactive ingredients or mention them in the warning, use, or other sections of the labeling. Additionally, the very fact the product was available for purchase constituted an affirmation the product complied with applicable law for the sale of an OTC drug product such as the Hand Sanitizer Products.

434. Defendant Virgin Scent’s statements were false at the time the misrepresentations were made (or at the time omissions were not made).

435. Defendant Virgin Scent knew, or reasonably should have known, that its representations alleged herein were materially false or misleading, or that omission of material facts rendered such representations false or misleading. Defendant Virgin Scent also knew, or had reason to know, that its misrepresentations and omissions would induce Plaintiff Nyanjom, and each other class member as set forth in this sub-section, to make purchases of Defendant Virgin Scent’s Hand Sanitizer Products.

436. As a direct and proximate result of Defendant Virgin Scent’s acts and omissions described herein, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, have suffered harm, and will continue to do so.

437. Defendant Virgin Scent’s misrepresentations or omissions were material and a substantial factor in Plaintiffs’ and other class members’ paying for Hand Sanitizer Products.

438. Defendant Virgin Scent intended its misrepresentations or omissions to induce Plaintiff Nyanjom, and each other class member as set forth in this sub-section, to make purchases of Hand Sanitizer Products, or had reckless disregard for same.

439. But for these misrepresentations (or omissions), Plaintiff Nyanjom, and each other class member as set forth in this sub-section, would not have made purchases of Defendant Virgin Scent’s Hand Sanitizer Products.

440. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, were justified in relying on Defendants' misrepresentations or omissions. The same or substantively identical misrepresentations were communicated, and/or the same or substantively identical omissions were not communicated, to each purchaser.

441. In short, Defendant Virgin Scent failed to adhere to cGMP and industry standards of care as to the manufacture, testing, quality assurance, and sale of Hand Sanitizer Products, resulting in adulterated or misbranded product being sold to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, since at least 2015 through 2019 for the purpose of duping consumers into paying for adulterated or contaminated Hand Sanitizer Products that were economically worthless and otherwise unable to be sold in the United States, to wrongfully boost Defendant Virgin Scent's own profits.

442. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, were damaged by reason of Defendant Virgin Scent's misrepresentations or omissions alleged herein.

**vi. Violation of Consumer Protection Law Against
Defendant Virgin Scent**

443. Plaintiff Nyanjom alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Kansas and those in other states the laws of which do not conflict with Kansas law.

444. Plaintiff Nyanjom incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

445. The Kansas Consumer Protection Act ("KCPA") protects consumers "from deceptive and unconscionable practices." Kan. Stat. Ann. § 50-623 and prohibits a party from engaging in "any deceptive act or practice in connection with a consumer transaction." Kan. Stat. Ann. § 50-626. The KCPA should be construed liberally.

446. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, are consumers within the ambit of the KCPA.

447. Defendant Virgin Scent is a supplier under the KCPA, and engaged in deceptive acts or practices as defined therein, *see, e.g.*, Kan. Stat. Ann. § 50-626(a).

448. Defendant Virgin Scent, directly or through its agents, employees, and/or subsidiaries, violate the KCPA by knowingly and intentionally misrepresenting, omitting, concealing, and failing to disclose material facts on the labels for its Hand Sanitizer Products, including that: such product were inherently defective, unreasonably dangerous, not fit to be used for their intended purpose, contained levels of benzene that rendered them unsafe and unfit for human consumption, and/or caused cancer.

449. Specifically, by knowingly and intentionally misrepresenting, omitting, concealing, and failing to disclose material facts regarding Hand Sanitizer Products, as detailed above, Defendant Virgin Scent engaged in one or more unfair or deceptive acts or practices in the conduct of trade or commerce, in violation of the KCPA. Defendant Virgin Scent's misrepresentations and omissions regarding the inherently defective and unreasonably dangerous nature of Hand Sanitizer Products were disseminated to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, in a uniform manner. This includes statements in the product labeling that described the product as "effective" (among other things) without disclosing the levels of benzene or other impurities, "manufacture" information that omitted the failure to adhere to cGMPs, and "Drug Facts" that did not identify benzene or other impurities among the active or inactive ingredients or mention them in the warning, use, or other sections of the labeling. Additionally, the very fact the product was available for purchase constituted an affirmation the product complied with applicable law for the sale of an OTC drug product such as the Hand Sanitizer Products.

450. Defendant Virgin Scent's unfair or deceptive acts or practices, including its

misrepresentations, concealments, omissions, and suppressions of material facts, as alleged herein, had a tendency or capacity to mislead and create a false impression in consumers' minds, and were likely to and, in fact, did deceive reasonable consumers, including Plaintiff Nyanjom, and each other class member as set forth in this sub-section, about the inherently defective and unreasonably dangerous nature of Hand Sanitizer Products.

451. The facts regarding Hand Sanitizer Products that Defendant Virgin Scent knowingly and intentionally misrepresented, omitted, concealed, and failed to disclose would be considered material by a reasonable consumer, and they were, in fact, material to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, who consider such facts to be important to their purchase decisions with respect to Hand Sanitizer Products.

452. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, were aggrieved by Defendant Virgin Scent's violations of the KCPA because they suffered ascertainable loss and actual damages as a direct and proximate result of Defendant Virgin Scent's knowing and intentional misrepresentations, omissions, concealments, and failures to disclose material facts as set forth above.

453. Specifically, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, were deceived by Defendant Virgin Scent's misrepresentations, omissions, concealments, and failures to disclose material facts regarding Hand Sanitizer Products. Had Defendant Virgin Scent not engaged in the deceptive acts and practices alleged herein, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, would not have purchased the drug, and, thus they did not receive the benefit of the bargain and/or suffered out-of-pocket loss.

454. Defendant Virgin Scent's violations present a continuing risk to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, as well as to the general public.

Defendant's unlawful acts and practices complained herein affect the public interest.

455. In short, Defendant Virgin Scent failed to adhere to cGMP and industry standards of care as to the manufacture, testing, quality assurance, and sale of Hand Sanitizer Products, resulting in adulterated or misbranded product being sold to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, since at least 2015 through 2019 for the purpose of duping consumers into paying for adulterated or contaminated Hand Sanitizer Products that were economically worthless and otherwise unable to be sold in the United States, to wrongfully boost Defendant Virgin Scent's own profits.

456. As a result of Defendant Virgin Scent's violations of the KCPA, as alleged herein, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, seek an order enjoining Defendant Virgin Scent's unfair or deceptive acts or practices and awarding actual damages, costs, attorneys' fees, and any other just and proper relief available under the KCPA.

vii. Unjust Enrichment Against Defendant Virgin Scent

457. Plaintiff Nyanjom alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Kansas and those in other states the laws of which do not conflict with Kansas law.

458. Plaintiff Nyanjom incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

459. As alleged herein, Defendant Virgin Scent was unjustly enriched at the expense of Plaintiff Nyanjom, and each other class member as set forth in this sub-section, by virtue of their paying for Defendant Virgin Scent's Hand Sanitizer Products.

460. Defendant Virgin Scent profited immensely from introducing a carcinogen into the United States for human consumption. On top of that, because its Hand Sanitizer Products were adulterated and misbranded, their distribution and sale in the United States was illegal.

461. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, were unjustly deprived of money obtained by Defendant Virgin Scent as a result of the improper amounts paid for Defendant Virgin Scent's Hand Sanitizer Products. It would be inequitable and unconscionable for Defendant Virgin Scent to retain the profit, benefit, and other compensation obtained from Plaintiff Nyanjom, and each other class member as set forth in this sub-section, as a result of their wrongful conduct alleged in this complaint.

462. In the alternative to the other causes of actions alleged herein, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, have no adequate remedy at law.

463. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, are entitled to seek and do seek restitution from Defendant Virgin Scents as well as an order from this Court requiring disgorgement of all profits, benefits, and other compensation obtained by Defendant Virgin Scent's by virtue of its wrongful conduct.

viii. Negligence Against Defendant Virgin Scent

464. Plaintiff Nyanjom alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Kansas and those in other states the laws of which do not conflict with Kansas law.

465. Plaintiff Nyanjom incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

466. Defendant Virgin Scent owed a duty to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, to use and exercise reasonable and due care in the manufacturing of its Hand Sanitizer Products.

467. Defendant Virgin Scent owed a duty to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, to ensure that the Hand Sanitizer Products it sold in the United States complied with cGMPs and were not adulterated or misbranded, or did not contain

undisclosed benzene impurities.

468. Defendant Virgin Scent owed a duty to care to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, because they were the foreseeable, reasonable, and probable user of Hand Sanitizer Products and victim of Defendant Virgin Scent's fraudulent and deceptive activities. Defendant Virgin Scent knew, or should have known, that its Hand Sanitizer Products did not comply with cGMPs and were adulterated and misbranded, or contained undisclosed benzene impurities, and each was in the best position to uncover and remedy these shortcomings.

469. Defendant Virgin Scent knew, or should have known, that the Hand Sanitizer Products did not comply with cGMPs and were adulterated and misbranded, and were in the best positions to uncover and remedy these shortcomings.

470. Defendant Virgin Scent failed to do this. Defendant Virgin Scent inadequately oversaw the manufacture or sale of its own Hand Sanitizer Products. Defendant Virgin Scent knew that ignoring the manufacturing issues surrounding its Hand Sanitizer Products would damage Plaintiff Nyanjom, and each other class member as set forth in this sub-section, and increase its own profits.

471. Defendant Virgin Scent maintained or should have maintained a special relationship with Plaintiff Nyanjom, and each other class member as set forth in this sub-section, who were anticipated or intended direct and intended third-party beneficiaries, as it was obligated to ensure that its Hand Sanitizer Products complied with cGMPs and was not adulterated or misbranded, or did not contain undisclosed benzene impurities.

472. Defendant Virgin Scent's own actions and inactions created a foreseeable risk of harm to Plaintiff Nyanjom, and each other class member as set forth in this sub-section. Defendant Virgin Scent's misconduct included, but was not limited to, failing to oversee actions taken in the

manufacture or sale of its Hand Sanitizer Products.

473. Defendant Virgin Scent breached duties owed to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, by failing to exercise reasonable care sufficient to protect the interests and meet the needs of Plaintiff Nyanjom, and each other class member as set forth in this sub-section.

474. As a direct and proximate result of Defendant Virgin Scent's negligent conduct, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, suffered injury and are entitled to damages in an amount to be proven at trial. They suffered both economic injury, as well as actual physical injury and a heightened risk of physical injury in the form of current sub-cellular damage and genetic damage, and a greater risk of developing cancer. The physical injury was suffered at the time of application by Plaintiff Nyanjom, and each other class member as set forth in this sub-section, during the alleged class period.

475. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, are also entitled to the costs of medical monitoring, and/or for actual physical bodily injuries sustained, or that may be sustained in the future, as a result of Defendant Virgin Scent's wrongful conduct as alleged herein.

ix. Negligence Per Se Against Defendant Virgin Scent

476. Plaintiff Nyanjom alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Kansas and those in other states the laws of which do not conflict with Kansas law.

477. Plaintiff Nyanjom incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

478. Defendant Virgin Scent owed a duty to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, to use and exercise reasonable and due care in the

manufacturing of its Hand Sanitizer Products.

479. Defendant Virgin Scent owed a duty to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, to ensure that the Hand Sanitizer Products it sold in the United States complied with cGMPs and were not adulterated or misbranded, or did not contain undisclosed benzene impurities.

480. Defendant Virgin Scent owed a duty to care to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, because they were the foreseeable, reasonable, and probable user of Hand Sanitizer Products and victim of Defendant Virgin Scent's fraudulent and deceptive activities. Defendant Virgin Scent knew, or should have known, that its Hand Sanitizer Products did not comply with cGMPs and were adulterated and misbranded, or contained undisclosed benzene impurities, and each was in the best position to uncover and remedy these shortcomings.

481. Defendant Virgin Scent's duty in part flows from federal cGMP regulations, and analogous Kansas statutory law, *see e.g.*, Kan. Stat. Ann. § 65-657, *et seq.*

482. Defendant Virgin Scent knew, or should have known, that the Hand Sanitizer Products did not comply with cGMPs and were adulterated and misbranded, and were in the best positions to uncover and remedy these shortcomings.

483. Defendant Virgin Scent failed to do this. Defendant Virgin Scent inadequately oversaw the manufacture or sale of its own Hand Sanitizer Products. Defendant Virgin Scent knew that ignoring the manufacturing issues surrounding its Hand Sanitizer Products would damage Plaintiff Nyanjom, and each other class member as set forth in this sub-section, and increase its own profits.

484. Defendant Virgin Scent maintained or should have maintained a special relationship with Plaintiff Nyanjom, and each other class member as set forth in this sub-section,

who were anticipated or intended direct and intended third-party beneficiaries, as it was obligated to ensure that its Hand Sanitizer Products complied with cGMPs and was not adulterated or misbranded, or did not contain undisclosed benzene impurities.

485. Defendant Virgin Scent's own actions and inactions created a foreseeable risk of harm to Plaintiff Nyanjom, and each other class member as set forth in this sub-section. Defendant Virgin Scent's misconduct included, but was not limited to, failing to oversee actions taken in the manufacture or sale of its Hand Sanitizer Products.

486. Defendant Virgin Scent breached duties owed to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, by failing to exercise reasonable care sufficient to protect the interests and meet the needs of Plaintiff Nyanjom, and each other class member as set forth in this sub-section.

487. As a direct and proximate result of Defendant Virgin Scent's negligent conduct, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, suffered injury and are entitled to damages in an amount to be proven at trial. They suffered both economic injury, as well as actual physical injury and a heightened risk of physical injury in the form of current sub-cellular damage and genetic damage, and a greater risk of developing cancer. The physical injury was suffered at the time of application by Plaintiff Nyanjom, and each other class member as set forth in this sub-section, during the alleged class period.

488. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, are also entitled to the costs of medical monitoring, and/or for actual physical bodily injuries sustained, or that may be sustained in the future, as a result of Defendant Virgin Scent's wrongful conduct as alleged herein.

x. Medical Monitoring Against Defendant Virgin Scent

489. Plaintiff Nyanjom alleges this claim for relief on behalf of herself and all similarly

situated class members, both those in Kansas and those in other states the laws of which do not conflict with Kansas law.

490. Plaintiff Nyanjom incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

491. As a proximate result of Defendant Virgin Scent' acts and omissions, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, are at an increased risk of developing cancer above the normal base-level risk.

492. As alleged above, Defendant Virgin Scent's Hand Sanitizer Products were contaminated with benzene, a known human carcinogen.

493. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, may not develop cancer for many years.

494. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, are at an increased risk as they used Defendant Virgin Scent's Hand Sanitizer Products for extended periods of time, and as a result were exposed to a contaminant by having their skin absorb the Product.

495. Based upon the internal and external investigations now made public, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, are at an increased risk as they were exposed to benzene. Benzene is a hazardous, life-threatening, toxic substance that is known to cause cancer in humans, capable of causing and likely has already caused sub-cellular damage.

496. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, are at an increased risk of cancer as they were exposed to Defendant Virgin Scent's Hand Sanitizer Products in quantities, and over periods of time sufficient to establish an exposure level that is considered to be hazardous to health, and that is considered to be sufficient to cause cancer or

increase the risk of developing cancer.

497. Specifically, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, were exposed to greater than normal background levels of benzene due to Defendant Virgin Scent's wrongful conduct. Indeed, the levels identified by the FDA were many times the interim level, and well above the prevailing zero-acceptable limit absent the interim guidance due to COVID-19.

498. At a minimum, at the levels detected by the FDA, even a single application of Defendant Virgin Scent's Hand Sanitizer product, the level of benzene exposure to the user would be well above baseline levels through inhalation in the ambient air or other substances that consumes reasonably may come into direct skin contact with (e.g., at least four times or higher that level), wherein the FDA specified there was no acceptable baseline level for a single application of Defendant Virgin Scent's Hand Sanitizer Products directly to human skin.

499. Multiple applications, at increasing frequency or overall duration, magnify the risk several fold. A single application (or more) through the skin (i.e., dermal absorption) of benzene can lead to the transport of the benzene to other organs where it is metabolized and has been found to be associated with cancer and non-malignant injuries.

500. The exposure was caused solely and proximately by Defendant Virgin Scent's failures to adequately manufacture or source the Hand Sanitizer Products; Defendant Virgin Scent's failures to address discrepancies in batches of their Hand Sanitizer Products during quality control testing (or requiring same); Defendant Virgin Scent's material misrepresentations and other deceptive practices in continuing to claim that their Hand Sanitizer Products were safe for use and did not present a risk of cancer or other physical bodily injury.

501. Defendant Virgin Scent had a duty to Plaintiffs and other class members to disclose any defect, contamination, impurity or other potential health hazard known or discoverable by

Defendant Virgin Scent, and to ensure that their Hand Sanitizer Products were safe, reliable, and non-hazardous for human use—its intended purpose.

502. Defendant Virgin Scent's own negligent acts and omissions resulted an increased risk of developing cancer for Plaintiff Nyanjom, and each other class member as set forth in this sub-section,. Cancer is a serious disease-causing life-threatening illness and debilitating cellular, genetic, and physical injury. Technology, analytical tools, tests and/or monitoring procedures exist and are readily available to provide for the testing and early detection of cancer in patients. These technologies, tools, tests and/or monitoring procedures are accepted and widely used by the scientific and medical community. These existing scientific methods include, but are not limited to, guaiac-based fecal occult blood test (gFOBT), fecal immunochemical test (FIT), FIT-DNA test, Flexible Sigmoidoscopy, Colonoscopy, and CT Colonography (Virtual Colonoscopy).

503. Early detection of cancer in patients is one of the best, and sometimes the only means to treat cancer such that it does not cause lasting, permanent injury, illness, or death.

504. Early detection of cancer in patients necessarily allows patients to avail themselves of myriad forms of treatment, each of which is capable of altering the course of the illness, such as bringing the cancer into remission, removal of any malignant tumors, and other treatment to alleviate injury.

505. The tests and treatments for the early detection and treatment of cancer must be prescribed by a qualified physician, and are conducted according to the latest, contemporary, and widely accepted scientific principles. Because benzene-associated cancer screenings are not conducted with the frequency necessary to identify cancer in the absence of exposure to benzene, the prescribed monitoring regime is different from that normally recommended in the absence of exposure. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, require more frequent screenings not within the purview of routine medical exams.

506. Benzene in Defendant Virgin Scent's Hand Sanitizer products is a proven hazardous substance, known for its genotoxic and carcinogenic properties.

507. The monitoring regime sought is different than normal screening for cancers in the absence of benzene exposure, and the regime is reasonably necessary to evaluate and monitor the sub-cellular damage suffered by Plaintiff Nyanjom, and each other class member as set forth in this sub-section. Indeed, absent the screenings and regime sought here, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, would not normally receive adequate screenings that are reasonably necessary according to contemporary scientific principles (*see, e.g.*, Agency for Toxic Substances and Disease Registry (ATSDR). Toxicological Profile for Benzene. Atlanta: U.S. Public Health Service, 2007; Fang Y, Wu H-T, Ye Y-J, et al. Association between polymorphisms of metabolic enzyme genes and chromosomal damage in benzene-exposed workers in China. *Journal of Occupational and Environmental Medicine* 2017; 59: e215-e220; Whysner J, Reddy MV, Ross PM, et al. Genotoxicity of benzene and its metabolites. *Mutation Research* 2004; 566: 99-130; Zhou Y, Wang K, Wang B, et al. Occupational benzene exposure and the risk of genetic damage: A systematic review and meta-analysis. *BMC Public Health* 2020; 20: 1113) to monitor the sub-cellular and genetic damage caused by Defendant Virgin Scent's Hand Sanitizer Products and monitor for cancer.

508. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, seek injunctive and monetary relief, including compensatory damages for, and the creation of a fund to adequately finance the costs of, medical monitoring procedures (1) to notify and alert all people exposed to benzene as aforesaid of their exposure and the potential consequences, (2) to provide for necessary testing and screening including but not limited to blood tests, physical examinations, imaging, colonoscopies, endoscopies, biopsies, and other similar methods for examination, biopsies, pathologic, histologic, and oncologic evaluations, oncologic, histologic,

surgical and other necessary medical consultations, (3) to provide for necessary medical and surgical procedures for diagnosis and treatment, (4) to provide for all necessary evaluations and treatment, attorneys' fees, costs, interest, and such further relief as the Court deems equitable and just.

2. Against Defendant Walmart

i. Breach of Express Warranty Against Defendant Walmart

509. Plaintiff Nyanjom alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Kansas and those in other states the laws of which do not conflict with Kansas law.

510. Plaintiff Nyanjom incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

511. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, formed a contract with Defendant Walmart at the time they purchased Hand Sanitizer Products. The terms of the contract include the promises and affirmations of fact made by Defendant Walmart on the Hand Sanitizer Products' packaging and through marketing and advertising, including that the product would be of the quality and character as represented. This labeling, marketing, and advertising constitute express warranties and became part of the basis of the bargain, and are part of the standardized contract between class members and Defendant Walmart.

512. Defendant Walmart expressly warranted that its Hand Sanitizer Products were fit for its ordinary use, i.e., as an FDA-approved OTC drug, were safe and effective for intended use, and did not contain any undisclosed impurities.

513. Defendant Walmart sold Hand Sanitizer Products that they expressly warranted were compliant with cGMP and not adulterated or misbranded, or otherwise contained undisclosed levels of benzene or other impurities. This includes statements in the product labeling that

described the product as “effective” (among other things) without disclosing the levels of benzene or other impurities, “manufacture” information that omitted the failure to adhere to cGMPs, and “Drug Facts” that did not identify benzene or other impurities among the active or inactive ingredients or mention them in the warning, use, or other sections of the labeling. Additionally, the very fact the product was available for purchase constituted an affirmation the product complied with applicable law for the sale of an OTC drug product such as the Hand Sanitizer Products.

514. Defendant Walmart’s Hand Sanitizer Products did not conform to its express representations and warranties because the product was not manufactured in compliance with cGMP and was adulterated and misbranded, or contained undisclosed impurities.

515. At all times relevant times Kansas had codified and adopted the provisions of the Uniform Commercial Code governing the warranty of merchantability and fitness for ordinary purpose, Kan. Stat. Ann. § 84-2-313.

516. At the time Defendant Walmart marketed and sold its Hand Sanitizer Products, it recognized the purposes for which the products would be used, and expressly warranted the products were cGMP compliant and not adulterated or misbranded, or did not contain undisclosed impurities. These affirmative representations became part of the basis of the bargain in every purchase by Plaintiff Nyanjom, and each other class member as set forth in this sub-section, including but not limited to express representations made in referring to their products as FDA-compliant (and compliant with analogous state law).

517. Defendant Walmart breached its express warranties with respect to its Hand Sanitizer Products as they were not of merchantable quality, were not fit for their ordinary purpose, and did not comply with cGMP and was adulterated and misbranded, or contained undisclosed impurities.

518. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, would not have purchased the Hand Sanitizer Products had they known these drugs contained undisclosed benzene impurities, were adulterated or misbranded, or did not have the represented safety and efficacy profile.

519. Direct privity exists between Defendant Walmart and Plaintiff Nyanjom, and each other class member as set forth in this sub-section, because, among other things, Defendant Walmart is a retailer and made direct statements about the safety of its products, and intended its statements and affirmations to flow to Plaintiff Nyanjom, and each other class member as set forth in this sub-section.

520. As a direct and proximate result of each Defendant Walmart's breach of warranty, Plaintiff Nyanjom and each other class member as set forth in this sub-section have been injured and suffered damages in the amount of the purchase price of their medications, the purchase price of any replacement medications, and any consequential damages resulting from the purchases, in that the Hand Sanitizer Products they purchased were so inherently flawed, unfit, or unmerchantable as to have no market value.

521. Pre-suit notice is not required and, even if it was, Defendant Walmart is already amply on notice of the nature of the allegations and claims against them from this ongoing litigation, and new pre-suit notice provided prior to the filing of this amended pleading. To the extent a demand is required, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, seek the relief set forth in the Wherefore Clause herein, which is incorporated into this count by explicit reference. To date, Defendant Walmart have not responded to any claim or demand made or alleged by Plaintiffs in connection with this matter.

ii. Breach of Implied Warranty Against Defendant Walmart

522. Plaintiff Nyanjom alleges this claim for relief on behalf of herself and all similarly

situated class members, both those in Kansas and those in other states the laws of which do not conflict with Kansas law.

523. Plaintiff Nyanjom incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

524. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, formed a contract with Defendant Walmart at the time they purchased Hand Sanitizer Products. The terms of the contract include the promises and affirmations of fact made by Defendant Walmart on the Hand Sanitizer Products' packaging and through marketing and advertising, including that the product would be of the quality and character as represented. This labeling, marketing, and advertising constitute express warranties and became part of the basis of the bargain, and are part of the standardized contract between class members and Defendant Walmart.

525. Defendant Walmart impliedly warranted that its Hand Sanitizer Products were fit for its ordinary use, i.e., as an FDA-approved OTC drug, were safe and effective for intended use, and did not contain any undisclosed impurities. This includes statements in the product labeling that described the product as "effective" (among other things) without disclosing the levels of benzene or other impurities, "manufacture" information that omitted the failure to adhere to cGMPs, and "Drug Facts" that did not identify benzene or other impurities among the active or inactive ingredients or mention them in the warning, use, or other sections of the labeling. Additionally, the very fact the product was available for purchase constituted an affirmation the product complied with applicable law for the sale of an OTC drug product such as the Hand Sanitizer Products.

526. Defendant Walmart sold Hand Sanitizer Products that they impliedly warranted were compliant with cGMP and not adulterated or misbranded, or otherwise contained undisclosed levels of benzene or other impurities.

527. Defendant Walmart's Hand Sanitizer Products did not conform to its implied representations and warranties because the product was not manufactured in compliance with cGMP and was adulterated and misbranded, or contained undisclosed impurities.

528. At all times relevant times Kansas had codified and adopted the provisions of the Uniform Commercial Code governing the implied warranty of merchantability and fitness for ordinary purpose, Kan. Stat. Ann. § 84-2-314.

529. Defendant Walmart was a merchant within the meaning of the above statutes.

530. Defendant Walmart's Hand Sanitizer Products constituted goods or products within the meaning of the products to which implied warranty attaches.

531. Defendant Walmart was obligated to provide Plaintiff Nyanjom, and each other class member as set forth in this sub-section, reasonably fit Hand Sanitizer Products for the purpose for which the product was sold, and to conform to the standards of the trade in which Defendant is involved such that the product was of fit and merchantable quality.

532. Defendant Walmart knew or should have known that its Hand Sanitizer Products were being manufactured and sold for the intended purpose, and impliedly warranted that their Hand Sanitizer Products were of merchantable quality and fit for that purpose.

533. Defendant Walmart breached its implied warranty because each Defendant's Hand Sanitizer Products were not of merchantable quality, nor fit for the product's ordinary purpose, and did not conform to the standards generally applicable to such goods.

534. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, purchased the Hand Sanitizer Products in reliance upon Defendant Walmart's skill and judgment and the implied warranties of fitness for the purpose.

535. The Hand Sanitizer Products were not altered by Plaintiff Nyanjom and each other class member as set forth in this sub-section.

536. As a direct and proximate result of each Defendant's breach of implied warranty, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, have been injured and suffered damages, in that Defendant Walmart's Hand Sanitizer Products they purchased was so inherently flawed, unfit, or unmerchantable as to have significantly diminished or no intrinsic market value.

537. Pre-suit notice is not required and, even if it was, Defendant Walmart is already amply on notice of the nature of the allegations and claims against them from this ongoing litigation, and new pre-suit notice provided prior to the filing of this amended pleading. To the extent a demand is required, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, seek the relief set forth in the Wherefore Clause herein, which is incorporated into this count by explicit reference. To date, Defendant Walmart have not responded to any claim or demand made or alleged by Plaintiffs in connection with this matter.

iii. Breach of Magnuson-Moss Warranty Act, 15 U.S.C. § 2301, et seq. Against Defendant Walmart

538. Plaintiff Nyanjom alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Kansas and those in other states the laws of which do not conflict with Kansas law.

539. Plaintiff Nyanjom incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

540. Defendant Walmart is a "warrantor" within the meaning of the Magnuson-Moss Warranty Act.

541. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, are "consumers" within the meaning of the Magnuson-Moss Warranty Act.

542. Defendant Walmart expressly or impliedly warranted their Hand Sanitizer Products as alleged in the preceding Kansas breach of express and implied warranty claims.

543. Under 15 U.S.C. § 2310(d)(1), Plaintiff Nyanjom, and each other class member as set forth in this sub-section, were “damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief.” 15 U.S.C. § 2310(d)(1). Plaintiff Nyanjom sues pursuant to this section to recover money damages and for legal and equitable relief on behalf of themselves and the class members as set forth in this sub-section.

544. Defendant Walmart has acted on the opportunity to cure its failure with respect to its warranted Hand Sanitizer Products.

545. Likewise, pursuant to 15 U.S.C. § 2310(d)(2), upon prevailing in this action, Plaintiff Nyanjom is entitled to receive an award of attorneys’ fees and expenses and pray for the same.

iv. Fraud (Affirmative Misrepresentation, Omission, and Concealment) Against Defendant Walmart

546. Plaintiff Nyanjom alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Kansas and those in other states the laws of which do not conflict with Kansas law.

547. Plaintiff Nyanjom incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

548. Defendant Walmart affirmatively misrepresented material facts including, *inter alia*, that their Hand Sanitizer Products with not compliant with cGMPs and/or were not adulterated and/or misbranded, or did not contain undisclosed benzene impurities.

549. Defendant Walmart omitted material facts including, *inter alia*, that its Hand Sanitizer Products with not compliant with cGMPs and/or were not adulterated and/or misbranded, or contained undisclosed benzene impurities. This includes statements in the product labeling that

described the product as “effective” (among other things) without disclosing the levels of benzene or other impurities, “manufacture” information that omitted the failure to adhere to cGMPs, and “Drug Facts” that did not identify benzene or other impurities among the active or inactive ingredients or mention them in the warning, use, or other sections of the labeling.

550. Defendant Walmart’s actions had the effect of fraudulently inducing customers to pay in whole or in part for Defendant Walmart’s Hand Sanitizer Products – products which it knew or should have known were did not comply with GMPs and/or were adulterated and/or misbranded, or contained undisclosed benzene impurities.

551. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, would not have purchased Defendant Walmart’s Hand Sanitizer Products had they known the truth. Indeed, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, could not have paid for Defendant Walmart’s Hand Sanitizer Products had they known the truth because Defendant Walmart’s Hand Sanitizer Products were illegally manufactured, illegally distributed, and illegally sold based on Defendant Walmart’ fraudulent misrepresentations and omissions.

552. Defendant Walmart knew, or reasonably should have known, that their misrepresentations were materially false or misleading, or that the omission of material facts rendered such representations false or misleading.

553. Defendant Walmart also knew, or had reason to know, that their misrepresentations and omissions would induce Class(es) members to pay for some or all of the cost of its Hand Sanitizer Products.

554. Defendant Walmart’s misrepresentations and omissions were material.

555. Defendant Walmart actively concealed their misrepresentations and omissions from the Class(es), government regulators, and the public.

556. To the extent applicable, Defendant Walmart intended their misrepresentations and omissions to induce Plaintiff Nyanjom, and each other class member as set forth in this sub-section, to pay for its Hand Sanitizer Products.

557. But for these misrepresentations and omissions, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, would not have paid for Defendant Walmart's Hand Sanitizer Products.

558. In short, Defendant Walmart failed to ensure that its supplier, Defendant Virgin Scent, adhered to cGMP and industry standards of care as to the manufacture, testing, quality assurance, and sale of Hand Sanitizer Products, resulting in adulterated or misbranded product being sold to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, since at least 2015 through 2019 for the purpose of duping consumers into paying for adulterated or contaminated Hand Sanitizer Products that were economically worthless and otherwise unable to be sold in the United States, to wrongfully boost Defendant Walmart's own profits.

559. To the extent applicable, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, were justified in relying on Defendant Walmart's misrepresentations and omissions. The same or substantively identical misrepresentations and omissions were communicated, to each Class(es) member, including through product labeling and other statements by Defendant Walmart. No reasonable consumer would have paid what they did for Defendant Walmart's Hand Sanitizer Products but for its unlawful conduct. To the extent applicable, reliance may be presumed in these circumstances.

560. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, were damaged by reason of Defendant Walmart's misrepresentations and omissions alleged herein.

v. Negligent Misrepresentation and Omission Against Defendant Walmart

561. Plaintiff Nyanjom alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Kansas and those in other states the laws of which do not conflict with Kansas law.

562. Plaintiff Nyanjom incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

563. Defendant Walmart had or undertook a duty to accurately and truthfully represent to the quality, nature, and characteristics of its Hand Sanitizer Products.

564. Defendant Walmart failed to exercise ordinary care in making representations (or in failing to disclose facts) concerning the quality, nature, and characteristics of its Hand Sanitizer Products.

565. Defendant Walmart negligently misrepresented or omitted facts regarding the quality, nature, and characteristics of its Hand Sanitizer Products. This includes statements in the product labeling that described the product as “effective” (among other things) without disclosing the levels of benzene or other impurities, “manufacture” information that omitted the failure to adhere to cGMPs, and “Drug Facts” that did not identify benzene or other impurities among the active or inactive ingredients or mention them in the warning, use, or other sections of the labeling.

566. Defendant Walmart’s statements were false at the time the misrepresentations were made (or at the time omissions were not made).

567. Defendant Walmart knew, or reasonably should have known, that its representations alleged herein were materially false or misleading, or that omission of material facts rendered such representations false or misleading. Defendant Walmart also knew, or had reason to know, that its misrepresentations and omissions would induce Plaintiff Nyanjom, and each other class member as set forth in this sub-section, to make purchases of Defendant Walmart’s Hand Sanitizer Products.

568. As a direct and proximate result of Defendant Walmart's acts and omissions described herein, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, have suffered harm, and will continue to do so.

569. Defendant Walmart's misrepresentations or omissions were material and a substantial factor in Plaintiffs' and other class members' paying for Hand Sanitizer Products.

570. Defendant Walmart intended its misrepresentations or omissions to induce Plaintiff Nyanjom, and each other class member as set forth in this sub-section, to make purchases of Hand Sanitizer Products, or had reckless disregard for same.

571. But for these misrepresentations (or omissions), Plaintiff Nyanjom, and each other class member as set forth in this sub-section, would not have made purchases of Defendant Walmart's Hand Sanitizer Products.

572. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, were justified in relying on Defendants' misrepresentations or omissions. The same or substantively identical misrepresentations were communicated, and/or the same or substantively identical omissions were not communicated, to each purchaser.

573. In short, Defendant Walmart failed to ensure that its supplier, Defendant Virgin Scent, adhered to cGMP and industry standards of care as to the manufacture, testing, quality assurance, and sale of Hand Sanitizer Products, resulting in adulterated or misbranded product being sold to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, since at least 2015 through 2019 for the purpose of duping consumers into paying for adulterated or contaminated Hand Sanitizer Products that were economically worthless and otherwise unable to be sold in the United States, to wrongfully boost Defendant Walmart's own profits.

574. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, were damaged by reason of Defendant Walmart's misrepresentations or omissions alleged herein.

vi. Violation of Consumer Protection Law Against Defendant Walmart

575. Plaintiff Nyanjom alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Kansas and those in other states the laws of which do not conflict with Kansas law.

576. Plaintiff Nyanjom incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

577. The Kansas Consumer Protection Act (“KCPA”) protects consumers “from deceptive and unconscionable practices.” Kan. Stat. Ann. § 50-623 and prohibits a party from engaging in “any deceptive act or practice in connection with a consumer transaction.” Kan. Stat. Ann. § 50-626. The KCPA should be construed liberally.

578. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, are consumers within the ambit of the KCPA.

579. Defendant Walmart is a supplier under the KCPA, and engaged in deceptive acts or practices as defined therein, *see, e.g.*, Kan. Stat. Ann. § 50-626(a).

580. Defendant Walmart, directly or through its agents, employees, and/or subsidiaries, violate the FDUTPA by knowingly and intentionally misrepresenting, omitting, concealing, and failing to disclose material facts on the labels for its Hand Sanitizer Products, including that: such product were inherently defective, unreasonably dangerous, not fit to be used for their intended purpose, contained levels of benzene that rendered them unsafe and unfit for human consumption, and/or caused cancer.

581. Specifically, by knowingly and intentionally misrepresenting, omitting, concealing, and failing to disclose material facts regarding Hand Sanitizer Products, as detailed above, Defendant Walmart engaged in one or more unfair or deceptive acts or practices in the conduct of trade or commerce, in violation of the KCPA. Defendant Walmart’s misrepresentations and

omissions regarding the inherently defective and unreasonably dangerous nature of Hand Sanitizer Products were disseminated to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, in a uniform manner. This includes statements in the product labeling that described the product as “effective” (among other things) without disclosing the levels of benzene or other impurities, “manufacture” information that omitted the failure to adhere to cGMPs, and “Drug Facts” that did not identify benzene or other impurities among the active or inactive ingredients or mention them in the warning, use, or other sections of the labeling. Additionally, the very fact the product was available for purchase constituted an affirmation the product complied with applicable law for the sale of an OTC drug product such as the Hand Sanitizer Products.

582. Defendant Walmart’s unfair or deceptive acts or practices, including its misrepresentations, concealments, omissions, and suppressions of material facts, as alleged herein, had a tendency or capacity to mislead and create a false impression in consumers’ minds, and were likely to and, in fact, did deceive reasonable consumers, including Plaintiff Nyanjom, and each other class member as set forth in this sub-section, about the inherently defective and unreasonably dangerous nature of Hand Sanitizer Products.

583. The facts regarding Hand Sanitizer Products that Defendant Walmart knowingly and intentionally misrepresented, omitted, concealed, and failed to disclose would be considered material by a reasonable consumer, and they were, in fact, material to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, who consider such facts to be important to their purchase decisions with respect to Hand Sanitizer Products.

584. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, were aggrieved by Defendant Walmart’s violations of the KCPA because they suffered ascertainable loss and actual damages as a direct and proximate result of Defendant Walmart’s knowing and intentional misrepresentations, omissions, concealments, and failures to disclose

material facts as set forth above.

585. Specifically, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, were deceived by Defendant Walmart's misrepresentations, omissions, concealments, and failures to disclose material facts regarding Hand Sanitizer Products. Had Defendant Walmart not engaged in the deceptive acts and practices alleged herein, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, would not have purchased the drug, and, thus they did not receive the benefit of the bargain and/or suffered out-of-pocket loss.

586. Defendant Walmart's violations present a continuing risk to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, as well as to the general public. Defendant's unlawful acts and practices complained herein affect the public interest.

587. In short, Defendant Walmart failed to ensure that its supplier, Defendant Virgin Scent, adhered to cGMP and industry standards of care as to the manufacture, testing, quality assurance, and sale of Hand Sanitizer Products, resulting in adulterated or misbranded product being sold to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, since at least 2015 through 2019 for the purpose of duping consumers into paying for adulterated or contaminated Hand Sanitizer Products that were economically worthless and otherwise unable to be sold in the United States, to wrongfully boost Defendant Walmart's own profits.

588. As a result of Defendant Walmart's violations of the KCPA, as alleged herein, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, seek an order enjoining Defendant Walmart's unfair or deceptive acts or practices and awarding actual damages, costs, attorneys' fees, and any other just and proper relief available under the KCPA.

vii. Unjust Enrichment Against Defendant Walmart

589. Plaintiff Nyanjom alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Kansas and those in other states the laws of which do not

conflict with Kansas law.

590. Plaintiff Nyanjom incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

591. As alleged herein, Defendant Walmart was unjustly enriched at the expense of Plaintiff Nyanjom, and each other class member as set forth in this sub-section, by virtue of their paying for Defendant Walmart's Hand Sanitizer Products.

592. Defendant Walmart profited immensely from introducing a carcinogen into the United States for human consumption. On top of that, because its Hand Sanitizer Products were adulterated and misbranded, their distribution and sale in the United States was illegal.

593. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, were unjustly deprived of money obtained by Defendant Walmart as a result of the improper amounts paid for Defendant Walmart's Hand Sanitizer Products. It would be inequitable and unconscionable for Defendant Walmart to retain the profit, benefit, and other compensation obtained from Plaintiff Nyanjom, and each other class member as set forth in this sub-section, as a result of their wrongful conduct alleged in this complaint.

594. In the alternative to the other causes of actions alleged herein, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, have no adequate remedy at law.

595. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, are entitled to seek and do seek restitution from Defendant Walmart as well as an order from this Court requiring disgorgement of all profits, benefits, and other compensation obtained by Defendant Walmart's by virtue of its wrongful conduct.

viii. Negligence Against Defendant Walmart

596. Plaintiff Nyanjom alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Kansas and those in other states the laws of which do not

conflict with Kansas law.

597. Plaintiff Nyanjom incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

598. Defendant Walmart owed a duty to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, to use and exercise reasonable and due care in the manufacturing of its Hand Sanitizer Products.

599. Defendant Walmart owed a duty to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, to ensure that the Hand Sanitizer Products it sold in the United States complied with cGMPs and were not adulterated or misbranded, or did not contain undisclosed benzene impurities.

600. Defendant Walmart owed a duty to care to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, because they were the foreseeable, reasonable, and probable user of Hand Sanitizer Products and victim of Defendant Walmart's fraudulent and deceptive activities. Defendant Walmart knew, or should have known, that its Hand Sanitizer Products did not comply with cGMPs and were adulterated and misbranded, or contained undisclosed benzene impurities, and each was in the best position to uncover and remedy these shortcomings.

601. Defendant Walmart knew, or should have known, that the Hand Sanitizer Products did not comply with cGMPs and were adulterated and misbranded, and were in the best positions to uncover and remedy these shortcomings.

602. Defendant Walmart failed to do this. Defendant Walmart inadequately oversaw the manufacture or sale of its own Hand Sanitizer Products. Defendant Walmart knew that ignoring the manufacturing issues surrounding its Hand Sanitizer Products would damage Plaintiff Nyanjom, and each other class member as set forth in this sub-section, and increase its own profits.

603. Defendant Walmart maintained or should have maintained a special relationship with Plaintiff Nyanjom, and each other class member as set forth in this sub-section, who were anticipated or intended direct and intended third-party beneficiaries, as it was obligated to ensure that its Hand Sanitizer Products complied with cGMPs and was not adulterated or misbranded, or did not contain undisclosed benzene impurities.

604. Defendant Walmart's own actions and inactions created a foreseeable risk of harm to Plaintiff Nyanjom, and each other class member as set forth in this sub-section. Defendant Walmart's misconduct included, but was not limited to, failing to oversee actions taken in the manufacture or sale of its Hand Sanitizer Products.

605. Defendant Walmart breached duties owed to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, by failing to exercise reasonable care sufficient to protect the interests and meet the needs of Plaintiff Nyanjom, and each other class member as set forth in this sub-section.

606. As a direct and proximate result of Defendant Walmart's negligent conduct, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, suffered injury and are entitled to damages in an amount to be proven at trial. They suffered both economic injury, as well as actual physical injury and a heightened risk of physical injury in the form of current sub-cellular damage and genetic damage, and a greater risk of developing cancer. The physical injury was suffered at the time of application by Plaintiff Nyanjom, and each other class member as set forth in this sub-section, during the alleged class period.

607. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, are also entitled to the costs of medical monitoring, and/or for actual physical bodily injuries sustained, or that may be sustained in the future, as a result of Defendant Walmart's wrongful conduct as alleged herein.

ix. Negligence Per Se Against Defendant Walmart

608. Plaintiff Nyanjom alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Kansas and those in other states the laws of which do not conflict with Kansas law.

609. Plaintiff Nyanjom incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

610. Defendant Walmart owed a duty to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, to use and exercise reasonable and due care in the manufacturing of its Hand Sanitizer Products.

611. Defendant Walmart owed a duty to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, to ensure that the Hand Sanitizer Products it sold in the United States complied with cGMPs and were not adulterated or misbranded, or did not contain undisclosed benzene impurities.

612. Defendant Walmart owed a duty to care to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, because they were the foreseeable, reasonable, and probable user of Hand Sanitizer Products and victim of Defendant Walmart's fraudulent and deceptive activities. Defendant Walmart knew, or should have known, that its Hand Sanitizer Products did not comply with cGMPs and were adulterated and misbranded, or contained undisclosed benzene impurities, and each was in the best position to uncover and remedy these shortcomings.

613. Defendant Walmart's duty in part flows from federal cGMP regulations, and analogous Kansas statutory law, *see e.g.*, Kan. Stat. Ann. § 65-657, *et seq.*

614. Defendant Walmart knew, or should have known, that the Hand Sanitizer Products did not comply with cGMPs and were adulterated and misbranded, and were in the best positions

to uncover and remedy these shortcomings.

615. Defendant Walmart failed to do this. Defendant Walmart inadequately oversaw the manufacture or sale of its own Hand Sanitizer Products. Defendant Walmart knew that ignoring the manufacturing issues surrounding its Hand Sanitizer Products would damage Plaintiff Nyanjom, and each other class member as set forth in this sub-section, and increase its own profits.

616. Defendant Walmart maintained or should have maintained a special relationship with Plaintiff Nyanjom, and each other class member as set forth in this sub-section, who were anticipated or intended direct and intended third-party beneficiaries, as it was obligated to ensure that its Hand Sanitizer Products complied with cGMPs and was not adulterated or misbranded, or did not contain undisclosed benzene impurities.

617. Defendant Walmart's own actions and inactions created a foreseeable risk of harm to Plaintiff Nyanjom, and each other class member as set forth in this sub-section. Defendant Walmart's misconduct included, but was not limited to, failing to oversee actions taken in the manufacture or sale of its Hand Sanitizer Products.

618. Defendant Walmart breached duties owed to Plaintiff Nyanjom, and each other class member as set forth in this sub-section, by failing to exercise reasonable care sufficient to protect the interests and meet the needs of Plaintiff Nyanjom, and each other class member as set forth in this sub-section.

619. As a direct and proximate result of Defendant Walmart's negligent conduct, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, suffered injury and are entitled to damages in an amount to be proven at trial. They suffered both economic injury, as well as actual physical injury and a heightened risk of physical injury in the form of current sub-cellular damage and genetic damage, and a greater risk of developing cancer. The physical injury was suffered at the time of application by Plaintiff Nyanjom, and each other class member as set

forth in this sub-section, during the alleged class period.

620. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, are also entitled to the costs of medical monitoring, and/or for actual physical bodily injuries sustained, or that may be sustained in the future, as a result of Defendant Walmart's wrongful conduct as alleged herein.

x. Medical Monitoring Against Defendant Walmart

621. Plaintiff Nyanjom alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Kansas and those in other states the laws of which do not conflict with Kansas law.

622. Plaintiff Nyanjom incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

623. As a proximate result of Defendant Walmart' acts and omissions, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, are at an increased risk of developing cancer above the normal base-level risk.

624. As alleged above, Defendant Walmart's Hand Sanitizer Products were contaminated with benzene, a known human carcinogen.

625. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, may not develop cancer for many years.

626. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, are at an increased risk as they used Defendant Walmart's Hand Sanitizer Products for extended periods of time, and as a result were exposed to a contaminant by having their skin absorb the Product.

627. Based upon the internal and external investigations now made public, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, are at an increased risk as

they were exposed to benzene. Benzene is a hazardous, life-threatening, toxic substance that is known to cause cancer in humans, capable of causing and likely has already caused sub-cellular damage.

628. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, are at an increased risk of cancer as they were exposed to Defendant Walmart's Hand Sanitizer Products in quantities, and over periods of time sufficient to establish an exposure level that is considered to be hazardous to health, and that is considered to be sufficient to cause cancer or increase the risk of developing cancer.

629. Specifically, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, were exposed to greater than normal background levels of benzene due to Defendant Walmart's wrongful conduct. Indeed, the levels identified by the FDA were many times the interim level, and well above the prevailing zero-acceptable limit absent the interim guidance due to COVID-19.

630. At a minimum, at the levels detected by the FDA, even a single application of Defendant Walmart's Hand Sanitizer product, the level of benzene exposure to the user would be well above baseline levels through inhalation in the ambient air or other substances that consumes reasonably may come into direct skin contact with (e.g., at least four times or higher that level), wherein the FDA specified there was no acceptable baseline level for a single application of Defendant Walmart's Hand Sanitizer Products directly to human skin.

631. Multiple applications, at increasing frequency or overall duration, magnify the risk several fold. A single application (or more) through the skin (i.e., dermal absorption) of benzene can lead to the transport of the benzene to other organs where it is metabolized and has been found to be associated with cancer and non-malignant injuries.

632. The exposure was caused solely and proximately by Defendant Walmart's failures

to adequately manufacture or source the Hand Sanitizer Products; Defendant Walmart's failures to address discrepancies in batches of their Hand Sanitizer Products during quality control testing (or requiring same); Defendant Walmart's material misrepresentations and other deceptive practices in continuing to claim that their Hand Sanitizer Products were safe for use and did not present a risk of cancer or other physical bodily injury.

633. Defendant Walmart had a duty to Plaintiffs and other class members to disclose any defect, contamination, impurity or other potential health hazard known or discoverable by Defendant Walmart, and to ensure that their Hand Sanitizer Products were safe, reliable, and non-hazardous for human use—its intended purpose.

634. Defendant Walmart's own negligent acts and omissions resulted an increased risk of developing cancer for Plaintiff Nyanjom, and each other class member as set forth in this subsection,. Cancer is a serious disease-causing life-threatening illness and debilitating cellular, genetic, and physical injury. Technology, analytical tools, tests and/or monitoring procedures exist and are readily available to provide for the testing and early detection of cancer in patients. These technologies, tools, tests and/or monitoring procedures are accepted and widely used by the scientific and medical community. These existing scientific methods include, but are not limited to, guaiac-based fecal occult blood test (gFOBT), fecal immunochemical test (FIT), FIT-DNA test, Flexible Sigmoidoscopy, Colonoscopy, and CT Colonography (Virtual Colonoscopy).

635. Early detection of cancer in patients is one of the best, and sometimes the only means to treat cancer such that it does not cause lasting, permanent injury, illness, or death.

636. Early detection of cancer in patients necessarily allows patients to avail themselves of myriad forms of treatment, each of which is capable of altering the course of the illness, such as bringing the cancer into remission, removal of any malignant tumors, and other treatment to alleviate injury.

637. The tests and treatments for the early detection and treatment of cancer must be prescribed by a qualified physician, and are conducted according to the latest, contemporary, and widely accepted scientific principles. Because benzene-associated cancer screenings are not conducted with the frequency necessary to identify cancer in the absence of exposure to benzene, the prescribed monitoring regime is different from that normally recommended in the absence of exposure. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, require more frequent screenings not within the purview of routine medical exams.

638. Benzene in Defendant Walmart's Hand Sanitizer products is a proven hazardous substance, known for its genotoxic and carcinogenic properties.

639. The monitoring regime sought is different than normal screening for cancers in the absence of benzene exposure, and the regime is reasonably necessary to evaluate and monitor the sub-cellular damage suffered by Plaintiff Nyanjom, and each other class member as set forth in this sub-section. Indeed, absent the screenings and regime sought here, Plaintiff Nyanjom, and each other class member as set forth in this sub-section, would not normally receive adequate screenings that are reasonably necessary according to contemporary scientific principles (*see, e.g.*, Agency for Toxic Substances and Disease Registry (ATSDR). Toxicological Profile for Benzene. Atlanta: U.S. Public Health Service, 2007; Fang Y, Wu H-T, Ye Y-J, et al. Association between polymorphisms of metabolic enzyme genes and chromosomal damage in benzene-exposed workers in China. *Journal of Occupational and Environmental Medicine* 2017; 59: e215-e220; Whysner J, Reddy MV, Ross PM, et al. Genotoxicity of benzene and its metabolites. *Mutation Research* 2004; 566: 99-130; Zhou Y, Wang K, Wang B, et al. Occupational benzene exposure and the risk of genetic damage: A systematic review and meta-analysis. *BMC Public Health* 2020; 20: 1113) to monitor the sub-cellular and genetic damage caused by Defendant Walmart's Hand Sanitizer Products and monitor for cancer.

640. Plaintiff Nyanjom, and each other class member as set forth in this sub-section, seek injunctive and monetary relief, including compensatory damages for, and the creation of a fund to adequately finance the costs of, medical monitoring procedures (1) to notify and alert all people exposed to benzene as aforesaid of their exposure and the potential consequences, (2) to provide for necessary testing and screening including but not limited to blood tests, physical examinations, imaging, colonoscopies, endoscopies, biopsies, and other similar methods for examination, biopsies, pathologic, histologic, and oncologic evaluations, oncologic, histologic, surgical and other necessary medical consultations, (3) to provide for necessary medical and surgical procedures for diagnosis and treatment, (4) to provide for all necessary evaluations and treatment, attorneys' fees, costs, interest, and such further relief as the Court deems equitable and just.

C. Texas Causes of action

3. Against Defendant Virgin Scent

i. Breach of Express Warranty Against Defendant Virgin Scent

641. Plaintiff Ellis alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Texas and those in other states the laws of which do not conflict with Texas law.

642. Plaintiff Ellis incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

643. Plaintiff Ellis, and each other class member as set forth in this sub-section, formed a contract with Defendant Virgin Scent at the time they purchased Hand Sanitizer Products. The terms of the contract include the promises and affirmations of fact made by Defendant Virgin Scent on the Hand Sanitizer Products' packaging and through marketing and advertising, including that the product would be of the quality and character as represented. This labeling, marketing, and

advertising constitute express warranties and became part of the basis of the bargain, and are part of the standardized contract between class members and Defendant Virgin Scent.

644. Defendant Virgin Scent expressly warranted that its Hand Sanitizer Products were fit for its ordinary use, i.e., as an FDA-approved OTC drug, were safe and effective for intended use, and did not contain any undisclosed impurities.

645. Defendant Virgin Scent sold Hand Sanitizer Products that they expressly warranted were compliant with cGMP and not adulterated or misbranded, or otherwise contained undisclosed levels of benzene or other impurities. This includes statements in the product labeling that described the product as “effective” (among other things) without disclosing the levels of benzene or other impurities, “manufacture” information that omitted the failure to adhere to cGMPs, and “Drug Facts” that did not identify benzene or other impurities among the active or inactive ingredients or mention them in the warning, use, or other sections of the labeling. Additionally, the very fact the product was available for purchase constituted an affirmation the product complied with applicable law for the sale of an OTC drug product such as the Hand Sanitizer Products.

646. Defendant Virgin Scent’s Hand Sanitizer Products did not conform to its express representations and warranties because the product was not manufactured in compliance with cGMP and was adulterated and misbranded, or contained undisclosed impurities.

647. At all times relevant times Texas had codified and adopted the provisions of the Uniform Commercial Code governing the warranty of merchantability and fitness for ordinary purpose, Tex. Bus. & Com. Code Ann. § 2-313.

648. At the time Defendant Virgin Scent marketed and sold its Hand Sanitizer Products, it recognized the purposes for which the products would be used, and expressly warranted the products were cGMP compliant and not adulterated or misbranded, or did not contain undisclosed

impurities. These affirmative representations became part of the basis of the bargain in every purchase by Plaintiff Ellis, and each other class member as set forth in this sub-section, including but not limited to express representations made in referring to their products as FDA-compliant (and compliant with analogous state law).

649. Defendant Virgin Scent breached its express warranties with respect to its Hand Sanitizer Products as they were not of merchantable quality, were not fit for their ordinary purpose, and did not comply with cGMP and was adulterated and misbranded, or contained undisclosed impurities.

650. Plaintiff Ellis, and each other class member as set forth in this sub-section, would not have purchased the Hand Sanitizer Products had they known these drugs contained undisclosed benzene impurities, were adulterated or misbranded, or did not have the represented safety and efficacy profile.

651. Direct privity is not required between Defendant Virgin Scent and Plaintiff Ellis, and each other class member as set forth in this sub-section, because, among other things, Defendant Virgin Scent is a manufacturer and made direct statements about the safety of its products, and intended its statements and affirmations to flow to Plaintiff Ellis, and each other class member as set forth in this sub-section.

652. As a direct and proximate result of each Defendant Virgin Scent's breach of warranty, Plaintiff Ellis and each other class member as set forth in this sub-section have been injured and suffered damages in the amount of the purchase price of their medications, the purchase price of any replacement medications, and any consequential damages resulting from the purchases, in that the Hand Sanitizer Products they purchased were so inherently flawed, unfit, or unmerchantable as to have no market value.

653. Pre-suit notice is not required and, even if it was, Defendant Virgin Scent is already

amply on notice of the nature of the allegations and claims against them from this ongoing litigation, and new pre-suit notice provided prior to the filing of this amended pleading. To the extent a demand is required, Plaintiff Ellis, and each other class member as set forth in this sub-section, seek the relief set forth in the Wherefore Clause herein, which is incorporated into this count by explicit reference. To date, Defendant Virgin Scent have not responded to any claim or demand made or alleged by Plaintiffs in connection with this matter.

ii. Breach of Implied Warranty Against Defendant Virgin Scent

654. Plaintiff Ellis alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Texas and those in other states the laws of which do not conflict with Texas law.

655. Plaintiff Ellis incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

656. Plaintiff Ellis, and each other class member as set forth in this sub-section, formed a contract with Defendant Virgin Scent at the time they purchased Hand Sanitizer Products. The terms of the contract include the promises and affirmations of fact made by Defendant Virgin Scent on the Hand Sanitizer Products' packaging and through marketing and advertising, including that the product would be of the quality and character as represented. This labeling, marketing, and advertising constitute express warranties and became part of the basis of the bargain, and are part of the standardized contract between class members and Defendant Virgin Scent.

657. Defendant Virgin Scent impliedly warranted that its Hand Sanitizer Products were fit for its ordinary use, i.e., as an FDA-approved OTC drug, were safe and effective for intended use, and did not contain any undisclosed impurities. This includes statements in the product labeling that described the product as "effective" (among other things) without disclosing the levels of benzene or other impurities, "manufacture" information that omitted the failure to adhere

to cGMPs, and “Drug Facts” that did not identify benzene or other impurities among the active or inactive ingredients or mention them in the warning, use, or other sections of the labeling. Additionally, the very fact the product was available for purchase constituted an affirmation the product complied with applicable law for the sale of an OTC drug product such as the Hand Sanitizer Products.

658. Defendant Virgin Scent sold Hand Sanitizer Products that they impliedly warranted were compliant with cGMP and not adulterated or misbranded, or otherwise contained undisclosed levels of benzene or other impurities.

659. Defendant Virgin Scent’s Hand Sanitizer Products did not conform to its implied representations and warranties because the product was not manufactured in compliance with cGMP and was adulterated and misbranded, or contained undisclosed impurities.

660. At all times relevant times Texas had codified and adopted the provisions of the Uniform Commercial Code governing the implied warranty of merchantability and fitness for ordinary purpose, Tex. Bus. & Com. Code Ann. § 2-314.

661. Defendant Virgin Scent was a merchant within the meaning of the above statutes.

662. Defendant Virgin Scent’s Hand Sanitizer Products constituted goods or products within the meaning of the products to which implied warranty attaches.

663. Defendant Virgin Scent was obligated to provide Plaintiff Ellis, and each other class member as set forth in this sub-section, reasonably fit Hand Sanitizer Products for the purpose for which the product was sold, and to conform to the standards of the trade in which Defendant is involved such that the product was of fit and merchantable quality.

664. Defendant Virgin Scent knew or should have known that its Hand Sanitizer Products were being manufactured and sold for the intended purpose, and impliedly warranted that their Hand Sanitizer Products were of merchantable quality and fit for that purpose.

665. Defendant Virgin Scent breached its implied warranty because each Defendant's Hand Sanitizer Products were not of merchantable quality, nor fit for the product's ordinary purpose, and did not conform to the standards generally applicable to such goods.

666. Plaintiff Ellis, and each other class member as set forth in this sub-section, purchased the Hand Sanitizer Products in reliance upon Defendant Virgin Scent's skill and judgment and the implied warranties of fitness for the purpose.

667. The Hand Sanitizer Products were not altered by Plaintiff Ellis and each other class member as set forth in this sub-section.

668. As a direct and proximate result of each Defendant's breach of implied warranty, Plaintiff Ellis, and each other class member as set forth in this sub-section, have been injured and suffered damages, in that Defendant Virgin Scent's Hand Sanitizer Products they purchased was so inherently flawed, unfit, or unmerchantable as to have significantly diminished or no intrinsic market value.

669. Pre-suit notice is not required and, even if it was, Defendant Virgin Scent is already amply on notice of the nature of the allegations and claims against them from this ongoing litigation, and new pre-suit notice provided prior to the filing of this amended pleading. To the extent a demand is required, Plaintiff Ellis, and each other class member as set forth in this sub-section, seek the relief set forth in the Wherefore Clause herein, which is incorporated into this count by explicit reference. To date, Defendant Virgin Scent have not responded to any claim or demand made or alleged by Plaintiffs in connection with this matter.

**iii. Breach of Magnuson-Moss Warranty Act, 15 U.S.C.
§ 2301, et seq. Against Defendant Virgin Scent**

670. Plaintiff Ellis alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Texas and those in other states the laws of which do not conflict with Texas law.

671. Plaintiff Ellis incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

672. Defendant Virgin Scent is a “warrantor” within the meaning of the Magnuson-Moss Warranty Act.

673. Plaintiff Ellis, and each other class member as set forth in this sub-section, are “consumers” within the meaning of the Magnuson-Moss Warranty Act.

674. Defendant Virgin Scent expressly or impliedly warranted their Hand Sanitizer Products as alleged in the preceding Texas breach of express and implied warranty claims.

675. Under 15 U.S.C. § 2310(d)(1), Plaintiff Ellis, and each other class member as set forth in this sub-section, were “damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or under a written warranty, implied warranty, or service contract, may bring suit for damages and other legal and equitable relief.” 15 U.S.C. § 2310(d)(1). Plaintiff Ellis sues pursuant to this section to recover money damages and for legal and equitable relief on behalf of themselves and the class members as set forth in this sub-section.

676. Defendant Virgin Scent has acted on the opportunity to cure its failure with respect to its warranted Hand Sanitizer Products.

677. Likewise, pursuant to 15 U.S.C. § 2310(d)(2), upon prevailing in this action, Plaintiff Ellis is entitled to receive an award of attorneys’ fees and expenses and pray for the same.

iv. Fraud (Affirmative Misrepresentation, Omission, and Concealment) Against Defendant Virgin Scent

678. Plaintiff Ellis alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Texas and those in other states the laws of which do not conflict with Texas law.

679. Plaintiff Ellis incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38,

40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

680. Defendant Virgin Scent affirmatively misrepresented material facts including, *inter alia*, that their Hand Sanitizer Products with not compliant with cGMPs and/or were not adulterated and/or misbranded, or did not contain undisclosed benzene impurities.

681. Defendant Virgin Scent omitted material facts including, *inter alia*, that its Hand Sanitizer Products with not compliant with cGMPs and/or were not adulterated and/or misbranded, or contained undisclosed benzene impurities. This includes statements in the product labeling that described the product as “effective” (among other things) without disclosing the levels of benzene or other impurities, “manufacture” information that omitted the failure to adhere to cGMPs, and “Drug Facts” that did not identify benzene or other impurities among the active or inactive ingredients or mention them in the warning, use, or other sections of the labeling. Additionally, the very fact the product was available for purchase constituted an affirmation the product complied with applicable law for the sale of an OTC drug product such as the Hand Sanitizer Products.

682. Defendant Virgin Scent’s actions had the effect of fraudulently inducing customers to pay in whole or in part for Defendant Virgin Scent’s Hand Sanitizer Products – products which it knew or should have known were did not comply with GMPs and/or were adulterated and/or misbranded, or contained undisclosed benzene impurities.

683. Plaintiff Ellis, and each other class member as set forth in this sub-section, would not have purchased Defendant Virgin Scent’s Hand Sanitizer Products had they known the truth. Indeed, Plaintiff Ellis, and each other class member as set forth in this sub-section, could not have paid for Defendant Virgin Scent’s Hand Sanitizer Products had they known the truth because Defendant Virgin Scent’s Hand Sanitizer Products were illegally manufactured, illegally distributed, and illegally sold based on Defendant Virgin Scent’ fraudulent misrepresentations and

omissions.

684. Defendant Virgin Scent knew, or reasonably should have known, that their misrepresentations were materially false or misleading, or that the omission of material facts rendered such representations false or misleading.

685. Defendant Virgin Scent also knew, or had reason to know, that their misrepresentations and omissions would induce Class(es) members to pay for some or all of the cost of its Hand Sanitizer Products.

686. Defendant Virgin Scent's misrepresentations and omissions were material.

687. Defendant Virgin Scent actively concealed their misrepresentations and omissions from the Class(es), government regulators, and the public.

688. To the extent applicable, Defendant Virgin Scent intended their misrepresentations and omissions to induce Plaintiff Ellis, and each other class member as set forth in this sub-section, to pay for its Hand Sanitizer Products.

689. But for these misrepresentations and omissions, Plaintiff Ellis, and each other class member as set forth in this sub-section, would not have paid for Defendant Virgin Scent's Hand Sanitizer Products.

690. In short, Defendant Virgin Scent failed to adhere to cGMP and industry standards of care as to the manufacture, testing, quality assurance, and sale of Hand Sanitizer Products, resulting in adulterated or misbranded product being sold to Plaintiff Ellis, and each other class member as set forth in this sub-section, since at least 2015 through 2019 for the purpose of duping consumers into paying for adulterated or contaminated Hand Sanitizer Products that were economically worthless and otherwise unable to be sold in the United States, to wrongfully boost Defendant Virgin Scent's own profits.

691. To the extent applicable, Plaintiff Ellis, and each other class member as set forth in

this sub-section, were justified in relying on Defendant Virgin Scent's misrepresentations and omissions. The same or substantively identical misrepresentations and omissions were communicated, to each Class(es) member, including through product labeling and other statements by Defendant Virgin Scent. No reasonable consumer would have paid what they did for Defendant Virgin Scent's Hand Sanitizer Products but for its unlawful conduct. To the extent applicable, reliance may be presumed in these circumstances.

692. Plaintiff Ellis, and each other class member as set forth in this sub-section, were damaged by reason of Defendant Virgin Scent's misrepresentations and omissions alleged herein.

v. Negligent Misrepresentation and Omission Against Defendant Virgin Scent

693. Plaintiff Ellis alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Texas and those in other states the laws of which do not conflict with Texas law.

694. Plaintiff Ellis incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

695. Defendant Virgin Scent had or undertook a duty to accurately and truthfully represent to the quality, nature, and characteristics of its Hand Sanitizer Products.

696. Defendant Virgin Scent failed to exercise ordinary care in making representations (or in failing to disclose facts) concerning the quality, nature, and characteristics of its Hand Sanitizer Products.

697. Defendant Virgin Scent negligently misrepresented or omitted facts regarding the quality, nature, and characteristics of its Hand Sanitizer Products. This includes statements in the product labeling that described the product as "effective" (among other things) without disclosing the levels of benzene or other impurities, "manufacture" information that omitted the failure to adhere to cGMPs, and "Drug Facts" that did not identify benzene or other impurities among the

active or inactive ingredients or mention them in the warning, use, or other sections of the labeling. Additionally, the very fact the product was available for purchase constituted an affirmation the product complied with applicable law for the sale of an OTC drug product such as the Hand Sanitizer Products.

698. Defendant Virgin Scent's statements were false at the time the misrepresentations were made (or at the time omissions were not made).

699. Defendant Virgin Scent knew, or reasonably should have known, that its representations alleged herein were materially false or misleading, or that omission of material facts rendered such representations false or misleading. Defendant Virgin Scent also knew, or had reason to know, that its misrepresentations and omissions would induce Plaintiff Ellis, and each other class member as set forth in this sub-section, to make purchases of Defendant Virgin Scent's Hand Sanitizer Products.

700. As a direct and proximate result of Defendant Virgin Scent's acts and omissions described herein, Plaintiff Ellis, and each other class member as set forth in this sub-section, have suffered harm, and will continue to do so.

701. Defendant Virgin Scent's misrepresentations or omissions were material and a substantial factor in Plaintiffs' and other class members' paying for Hand Sanitizer Products.

702. Defendant Virgin Scent intended its misrepresentations or omissions to induce Plaintiff Ellis, and each other class member as set forth in this sub-section, to make purchases of Hand Sanitizer Products, or had reckless disregard for same.

703. But for these misrepresentations (or omissions), Plaintiff Ellis, and each other class member as set forth in this sub-section, would not have made purchases of Defendant Virgin Scent's Hand Sanitizer Products.

704. Plaintiff Ellis, and each other class member as set forth in this sub-section, were

justified in relying on Defendants' misrepresentations or omissions. The same or substantively identical misrepresentations were communicated, and/or the same or substantively identical omissions were not communicated, to each purchaser.

705. In short, Defendant Virgin Scent failed to adhere to cGMP and industry standards of care as to the manufacture, testing, quality assurance, and sale of Hand Sanitizer Products, resulting in adulterated or misbranded product being sold to Plaintiff Ellis, and each other class member as set forth in this sub-section, since at least 2015 through 2019 for the purpose of duping consumers into paying for adulterated or contaminated Hand Sanitizer Products that were economically worthless and otherwise unable to be sold in the United States, to wrongfully boost Defendant Virgin Scent's own profits.

706. Plaintiff Ellis, and each other class member as set forth in this sub-section, were damaged by reason of Defendant Virgin Scent's misrepresentations or omissions alleged herein.

vi. Violation of Consumer Protection Law Against Defendant Virgin Scent

707. Plaintiff Ellis alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Texas and those in other states the laws of which do not conflict with Texas law.

708. Plaintiff Ellis incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

709. The Texas Deceptive Trade Practices Act ("TDTPA") "protect[s] consumers against false, misleading, and deceptive business practices, unconscionable acts, and breaches of warranty and [provides] efficient and economical procedures to secure such protections." Tex. Bus. & Com. Code § 17.44, *et seq.* The TDTPA "shall be liberally construed." *Id.*

710. Plaintiff Ellis, and each other class member as set forth in this sub-section, are "consumers" within the meaning of the TDTPA. *See* Tex. Bus. & Com. Code § 17.45(4).

711. Defendant Virgin Scent is a “person” within the meaning of the TDPTA. *See* Tex. Bus. & Com. Code § 17.45(3).

712. Defendant Virgin Scent’s conduct described herein constitute “false, misleading and deceptive business practices” and/or an “unconscionable action or course of action.” *See* Tex. Bus. & Com. Code §§ 17.44, 17.45(5).

713. Defendant Virgin Scent, directly or through its agents, employees, and/or subsidiaries, violate the TDTPA by knowingly and intentionally misrepresenting, omitting, concealing, and failing to disclose material facts on the labels for its Hand Sanitizer Products, including that: such product were inherently defective, unreasonably dangerous, not fit to be used for their intended purpose, contained levels of benzene that rendered them unsafe and unfit for human consumption, and/or caused cancer.

714. Specifically, by knowingly and intentionally misrepresenting, omitting, concealing, and failing to disclose material facts regarding Hand Sanitizer Products, as detailed above, Defendant Virgin Scent engaged in one or more unfair or deceptive acts or practices in the conduct of trade or commerce, in violation of the TDTPA. Defendant Virgin Scent’s misrepresentations and omissions regarding the inherently defective and unreasonably dangerous nature of Hand Sanitizer Products were disseminated to Plaintiff Ellis, and each other class member as set forth in this sub-section, in a uniform manner. This includes statements in the product labeling that described the product as “effective” (among other things) without disclosing the levels of benzene or other impurities, “manufacture” information that omitted the failure to adhere to cGMPs, and “Drug Facts” that did not identify benzene or other impurities among the active or inactive ingredients or mention them in the warning, use, or other sections of the labeling.

715. Defendant Virgin Scent’s unfair or deceptive acts or practices, including its misrepresentations, concealments, omissions, and suppressions of material facts, as alleged herein,

had a tendency or capacity to mislead and create a false impression in consumers' minds, and were likely to and, in fact, did deceive reasonable consumers, including Plaintiff Ellis, and each other class member as set forth in this sub-section, about the inherently defective and unreasonably dangerous nature of Hand Sanitizer Products.

716. The facts regarding Hand Sanitizer Products that Defendant Virgin Scent knowingly and intentionally misrepresented, omitted, concealed, and failed to disclose would be considered material by a reasonable consumer, and they were, in fact, material to Plaintiff Ellis, and each other class member as set forth in this sub-section, who consider such facts to be important to their purchase decisions with respect to Hand Sanitizer Products.

717. Plaintiff Ellis, and each other class member as set forth in this sub-section, were aggrieved by Defendant Virgin Scent's violations of the TDTPA because they suffered ascertainable loss and actual damages as a direct and proximate result of Defendant Virgin Scent's knowing and intentional misrepresentations, omissions, concealments, and failures to disclose material facts as set forth above.

718. Specifically, Plaintiff Ellis, and each other class member as set forth in this sub-section, were deceived by Defendant Virgin Scent's misrepresentations, omissions, concealments, and failures to disclose material facts regarding Hand Sanitizer Products. Had Defendant Virgin Scent not engaged in the deceptive acts and practices alleged herein, Plaintiff Ellis, and each other class member as set forth in this sub-section, would not have purchased the drug, and, thus they did not receive the benefit of the bargain and/or suffered out-of-pocket loss.

719. Defendant Virgin Scent's violations present a continuing risk to Plaintiff Ellis, and each other class member as set forth in this sub-section, as well as to the general public. Defendant's unlawful acts and practices complained herein affect the public interest.

720. In short, Defendant Virgin Scent failed to adhere to cGMP and industry standards

of care as to the manufacture, testing, quality assurance, and sale of Hand Sanitizer Products, resulting in adulterated or misbranded product being sold to Plaintiff Ellis, and each other class member as set forth in this sub-section, since at least 2015 through 2019 for the purpose of duping consumers into paying for adulterated or contaminated Hand Sanitizer Products that were economically worthless and otherwise unable to be sold in the United States, to wrongfully boost Defendant Virgin Scent's own profits.

721. As a result of Defendant Virgin Scent's violations of the TDTPA, as alleged herein, Plaintiff Ellis, and each other class member as set forth in this sub-section, seek an order enjoining Defendant Virgin Scent's unfair or deceptive acts or practices and awarding actual damages, costs, attorneys' fees, and any other just and proper relief available under the TDTPA.

vii. Unjust Enrichment Against Defendant Virgin Scent

722. Plaintiff Ellis alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Texas and those in other states the laws of which do not conflict with Texas law.

723. Plaintiff Ellis incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

724. As alleged herein, Defendant Virgin Scent was unjustly enriched at the expense of Plaintiff Ellis, and each other class member as set forth in this sub-section, by virtue of their paying for Defendant Virgin Scent's Hand Sanitizer Products.

725. Defendant Virgin Scent profited immensely from introducing a carcinogen into the United States for human consumption. On top of that, because its Hand Sanitizer Products were adulterated and misbranded, their distribution and sale in the United States was illegal.

726. Plaintiff Ellis, and each other class member as set forth in this sub-section, were unjustly deprived of money obtained by Defendant Virgin Scent as a result of the improper

amounts paid for Defendant Virgin Scent's Hand Sanitizer Products. It would be inequitable and unconscionable for Defendant Virgin Scent to retain the profit, benefit, and other compensation obtained from Plaintiff Ellis, and each other class member as set forth in this sub-section, as a result of their wrongful conduct alleged in this complaint.

727. In the alternative to the other causes of actions alleged herein, Plaintiff Ellis, and each other class member as set forth in this sub-section, have no adequate remedy at law.

728. Plaintiff Ellis, and each other class member as set forth in this sub-section, are entitled to seek and do seek restitution from Defendant Virgin Scents as well as an order from this Court requiring disgorgement of all profits, benefits, and other compensation obtained by Defendant Virgin Scent's by virtue of its wrongful conduct.

viii. Negligence Against Defendant Virgin Scent

729. Plaintiff Ellis alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Texas and those in other states the laws of which do not conflict with Texas law.

730. Plaintiff Ellis incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

731. Defendant Virgin Scent owed a duty to Plaintiff Ellis, and each other class member as set forth in this sub-section, to use and exercise reasonable and due care in the manufacturing of its Hand Sanitizer Products.

732. Defendant Virgin Scent owed a duty to Plaintiff Ellis, and each other class member as set forth in this sub-section, to ensure that the Hand Sanitizer Products it sold in the United States complied with cGMPs and were not adulterated or misbranded, or did not contain undisclosed benzene impurities.

733. Defendant Virgin Scent owed a duty to care to Plaintiff Ellis, and each other class

member as set forth in this sub-section, because they were the foreseeable, reasonable, and probable user of Hand Sanitizer Products and victim of Defendant Virgin Scent's fraudulent and deceptive activities. Defendant Virgin Scent knew, or should have known, that its Hand Sanitizer Products did not comply with cGMPs and were adulterated and misbranded, or contained undisclosed benzene impurities, and each was in the best position to uncover and remedy these shortcomings.

734. Defendant Virgin Scent knew, or should have known, that the Hand Sanitizer Products did not comply with cGMPs and were adulterated and misbranded, and were in the best positions to uncover and remedy these shortcomings.

735. Defendant Virgin Scent failed to do this. Defendant Virgin Scent inadequately oversaw the manufacture or sale of its own Hand Sanitizer Products. Defendant Virgin Scent knew that ignoring the manufacturing issues surrounding its Hand Sanitizer Products would damage Plaintiff Ellis, and each other class member as set forth in this sub-section, and increase its own profits.

736. Defendant Virgin Scent maintained or should have maintained a special relationship with Plaintiff Ellis, and each other class member as set forth in this sub-section, who were anticipated or intended direct and intended third-party beneficiaries, as it was obligated to ensure that its Hand Sanitizer Products complied with cGMPs and was not adulterated or misbranded, or did not contain undisclosed benzene impurities.

737. Defendant Virgin Scent's own actions and inactions created a foreseeable risk of harm to Plaintiff Ellis, and each other class member as set forth in this sub-section. Defendant Virgin Scent's misconduct included, but was not limited to, failing to oversee actions taken in the manufacture or sale of its Hand Sanitizer Products.

738. Defendant Virgin Scent breached duties owed to Plaintiff Ellis, and each other class

member as set forth in this sub-section, by failing to exercise reasonable care sufficient to protect the interests and meet the needs of Plaintiff Ellis, and each other class member as set forth in this sub-section.

739. As a direct and proximate result of Defendant Virgin Scent's negligent conduct, Plaintiff Ellis, and each other class member as set forth in this sub-section, suffered injury and are entitled to damages in an amount to be proven at trial. They suffered both economic injury, as well as actual physical injury and a heightened risk of physical injury in the form of current sub-cellular damage and genetic damage, and a greater risk of developing cancer. The physical injury was suffered at the time of application by Plaintiff Ellis, and each other class member as set forth in this sub-section, during the alleged class period.

740. Plaintiff Ellis, and each other class member as set forth in this sub-section, are also entitled to the costs of medical monitoring, and/or for actual physical bodily injuries sustained, or that may be sustained in the future, as a result of Defendant Virgin Scent's wrongful conduct as alleged herein.

ix. Negligence Per Se Against Defendant Virgin Scent

741. Plaintiff Ellis alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Texas and those in other states the laws of which do not conflict with Texas law.

742. Plaintiff Ellis incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

743. Defendant Virgin Scent owed a duty to Plaintiff Ellis, and each other class member as set forth in this sub-section, to use and exercise reasonable and due care in the manufacturing of its Hand Sanitizer Products.

744. Defendant Virgin Scent owed a duty to Plaintiff Ellis, and each other class member

as set forth in this sub-section, to ensure that the Hand Sanitizer Products it sold in the United States complied with cGMPs and were not adulterated or misbranded, or did not contain undisclosed benzene impurities.

745. Defendant Virgin Scent owed a duty to care to Plaintiff Ellis, and each other class member as set forth in this sub-section, because they were the foreseeable, reasonable, and probable user of Hand Sanitizer Products and victim of Defendant Virgin Scent's fraudulent and deceptive activities. Defendant Virgin Scent knew, or should have known, that its Hand Sanitizer Products did not comply with cGMPs and were adulterated and misbranded, or contained undisclosed benzene impurities, and each was in the best position to uncover and remedy these shortcomings.

746. Defendant Virgin Scent's duty in part flows from federal cGMP regulations, and analogous Texas statutory law, *see e.g.*, Tex. H. & Safety Code §§ 432.002, *et seq.*

747. Defendant Virgin Scent knew, or should have known, that the Hand Sanitizer Products did not comply with cGMPs and were adulterated and misbranded, and were in the best positions to uncover and remedy these shortcomings.

748. Defendant Virgin Scent failed to do this. Defendant Virgin Scent inadequately oversaw the manufacture or sale of its own Hand Sanitizer Products. Defendant Virgin Scent knew that ignoring the manufacturing issues surrounding its Hand Sanitizer Products would damage Plaintiff Ellis, and each other class member as set forth in this sub-section, and increase its own profits.

749. Defendant Virgin Scent maintained or should have maintained a special relationship with Plaintiff Ellis, and each other class member as set forth in this sub-section, who were anticipated or intended direct and intended third-party beneficiaries, as it was obligated to ensure that its Hand Sanitizer Products complied with cGMPs and was not adulterated or

misbranded, or did not contain undisclosed benzene impurities.

750. Defendant Virgin Scent's own actions and inactions created a foreseeable risk of harm to Plaintiff Ellis, and each other class member as set forth in this sub-section. Defendant Virgin Scent's misconduct included, but was not limited to, failing to oversee actions taken in the manufacture or sale of its Hand Sanitizer Products.

751. Defendant Virgin Scent breached duties owed to Plaintiff Ellis, and each other class member as set forth in this sub-section, by failing to exercise reasonable care sufficient to protect the interests and meet the needs of Plaintiff Ellis, and each other class member as set forth in this sub-section.

752. As a direct and proximate result of Defendant Virgin Scent's negligent conduct, Plaintiff Ellis, and each other class member as set forth in this sub-section, suffered injury and are entitled to damages in an amount to be proven at trial. They suffered both economic injury, as well as actual physical injury and a heightened risk of physical injury in the form of current sub-cellular damage and genetic damage, and a greater risk of developing cancer. The physical injury was suffered at the time of application by Plaintiff Ellis, and each other class member as set forth in this sub-section, during the alleged class period.

753. Plaintiff Ellis, and each other class member as set forth in this sub-section, are also entitled to the costs of medical monitoring, and/or for actual physical bodily injuries sustained, or that may be sustained in the future, as a result of Defendant Virgin Scent's wrongful conduct as alleged herein.

x. Medical Monitoring Against Defendant Virgin Scent

754. Plaintiff Ellis alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Texas and those in other states the laws of which do not conflict with Texas law.

755. Plaintiff Ellis incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 66-71, 71-81, 92-99, and 100-101 as though full set forth herein.

756. As a proximate result of Defendant Virgin Scent's acts and omissions, Plaintiff Ellis, and each other class member as set forth in this sub-section, are at an increased risk of developing cancer above the normal base-level risk.

757. As alleged above, Defendant Virgin Scent's Hand Sanitizer Products were contaminated with benzene, a known human carcinogen.

758. Plaintiff Ellis, and each other class member as set forth in this sub-section, may not develop cancer for many years.

759. Plaintiff Ellis, and each other class member as set forth in this sub-section, are at an increased risk as they used Defendant Virgin Scent's Hand Sanitizer Products for extended periods of time, and as a result were exposed to a contaminant by having their skin absorb the Product.

760. Based upon the internal and external investigations now made public, Plaintiff Ellis, and each other class member as set forth in this sub-section, are at an increased risk as they were exposed to benzene. Benzene is a hazardous, life-threatening, toxic substance that is known to cause cancer in humans, capable of causing and likely has already caused sub-cellular damage.

761. Plaintiff Ellis, and each other class member as set forth in this sub-section, are at an increased risk of cancer as they were exposed to Defendant Virgin Scent's Hand Sanitizer Products in quantities, and over periods of time sufficient to establish an exposure level that is considered to be hazardous to health, and that is considered to be sufficient to cause cancer or increase the risk of developing cancer.

762. Specifically, Plaintiff Ellis, and each other class member as set forth in this sub-section, were exposed to greater than normal background levels of benzene due to Defendant

Virgin Scent's wrongful conduct. Indeed, the levels identified by the FDA were many times the interim level, and well above the prevailing zero-acceptable limit absent the interim guidance due to COVID-19.

763. At a minimum, at the levels detected by the FDA, even a single application of Defendant Virgin Scent's Hand Sanitizer product, the level of benzene exposure to the user would be well above baseline levels through inhalation in the ambient air or other substances that consumes reasonably may come into direct skin contact with (e.g., at least four times or higher that level), wherein the FDA specified there was no acceptable baseline level for a single application of Defendant Virgin Scent's Hand Sanitizer Products directly to human skin.

764. Multiple applications, at increasing frequency or overall duration, magnify the risk several fold. A single application (or more) through the skin (i.e., dermal absorption) of benzene can lead to the transport of the benzene to other organs where it is metabolized and has been found to be associated with cancer and non-malignant injuries.

765. The exposure was caused solely and proximately by Defendant Virgin Scent's failures to adequately manufacture or source the Hand Sanitizer Products; Defendant Virgin Scent's failures to address discrepancies in batches of their Hand Sanitizer Products during quality control testing (or requiring same); Defendant Virgin Scent's material misrepresentations and other deceptive practices in continuing to claim that their Hand Sanitizer Products were safe for use and did not present a risk of cancer or other physical bodily injury.

766. Defendant Virgin Scent had a duty to Plaintiffs and other class members to disclose any defect, contamination, impurity or other potential health hazard known or discoverable by Defendant Virgin Scent, and to ensure that their Hand Sanitizer Products were safe, reliable, and non-hazardous for human use—its intended purpose.

767. Defendant Virgin Scent's own negligent acts and omissions resulted an increased

risk of developing cancer for Plaintiff Ellis, and each other class member as set forth in this sub-section,. Cancer is a serious disease-causing life-threatening illness and debilitating cellular, genetic, and physical injury. Technology, analytical tools, tests and/or monitoring procedures exist and are readily available to provide for the testing and early detection of cancer in patients. These technologies, tools, tests and/or monitoring procedures are accepted and widely used by the scientific and medical community. These existing scientific methods include, but are not limited to, guaiac-based fecal occult blood test (gFOBT), fecal immunochemical test (FIT), FIT-DNA test, Flexible Sigmoidoscopy, Colonoscopy, and CT Colonography (Virtual Colonoscopy).

768. Early detection of cancer in patients is one of the best, and sometimes the only means to treat cancer such that it does not cause lasting, permanent injury, illness, or death.

769. Early detection of cancer in patients necessarily allows patients to avail themselves of myriad forms of treatment, each of which is capable of altering the course of the illness, such as bringing the cancer into remission, removal of any malignant tumors, and other treatment to alleviate injury.

770. The tests and treatments for the early detection and treatment of cancer must be prescribed by a qualified physician, and are conducted according to the latest, contemporary, and widely accepted scientific principles. Because benzene-associated cancer screenings are not conducted with the frequency necessary to identify cancer in the absence of exposure to benzene, the prescribed monitoring regime is different from that normally recommended in the absence of exposure. Plaintiff Ellis, and each other class member as set forth in this sub-section, require more frequent screenings not within the purview of routine medical exams.

771. Benzene in Defendant Virgin Scent's Hand Sanitizer products is a proven hazardous substance, known for its genotoxic and carcinogenic properties.

772. The monitoring regime sought is different than normal screening for cancers in the

absence of benzene exposure, and the regime is reasonably necessary to evaluate and monitor the sub-cellular damage suffered by Plaintiff Ellis, and each other class member as set forth in this sub-section. Indeed, absent the screenings and regime sought here, Plaintiff Ellis, and each other class member as set forth in this sub-section, would not normally receive adequate screenings that are reasonably necessary according to contemporary scientific principles (*see, e.g.*, Agency for Toxic Substances and Disease Registry (ATSDR). Toxicological Profile for Benzene. Atlanta: U.S. Public Health Service, 2007; Fang Y, Wu H-T, Ye Y-J, et al. Association between polymorphisms of metabolic enzyme genes and chromosomal damage in benzene-exposed workers in China. *Journal of Occupational and Environmental Medicine* 2017; 59: e215-e220; Whysner J, Reddy MV, Ross PM, et al. Genotoxicity of benzene and its metabolites. *Mutation Research* 2004; 566: 99-130; Zhou Y, Wang K, Wang B, et al. Occupational benzene exposure and the risk of genetic damage: A systematic review and meta-analysis. *BMC Public Health* 2020; 20: 1113) to monitor the sub-cellular and genetic damage caused by Defendant Virgin Scent's Hand Sanitizer Products and monitor for cancer.

773. Plaintiff Ellis, and each other class member as set forth in this sub-section, seek injunctive and monetary relief, including compensatory damages for, and the creation of a fund to adequately finance the costs of, medical monitoring procedures (1) to notify and alert all people exposed to benzene as aforesaid of their exposure and the potential consequences, (2) to provide for necessary testing and screening including but not limited to blood tests, physical examinations, imaging, colonoscopies, endoscopies, biopsies, and other similar methods for examination, biopsies, pathologic, histologic, and oncologic evaluations, oncologic, histologic, surgical and other necessary medical consultations, (3) to provide for necessary medical and surgical procedures for diagnosis and treatment, (4) to provide for all necessary evaluations and treatment, attorneys' fees, costs, interest, and such further relief as the Court deems equitable and

just.

4. Against Defendant Walmart

i. Breach of Express Warranty Against Defendant Walmart

774. Plaintiff Ellis alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Texas and those in other states the laws of which do not conflict with Texas law.

775. Plaintiff Ellis incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

776. Plaintiff Ellis, and each other class member as set forth in this sub-section, formed a contract with Defendant Walmart at the time they purchased Hand Sanitizer Products. The terms of the contract include the promises and affirmations of fact made by Defendant Walmart on the Hand Sanitizer Products' packaging and through marketing and advertising, including that the product would be of the quality and character as represented. This labeling, marketing, and advertising constitute express warranties and became part of the basis of the bargain, and are part of the standardized contract between class members and Defendant Walmart.

777. Defendant Walmart expressly warranted that its Hand Sanitizer Products were fit for its ordinary use, i.e., as an FDA-approved OTC drug, were safe and effective for intended use, and did not contain any undisclosed impurities.

778. Defendant Walmart sold Hand Sanitizer Products that they expressly warranted were compliant with cGMP and not adulterated or misbranded, or otherwise contained undisclosed levels of benzene or other impurities. This includes statements in the product labeling that described the product as "effective" (among other things) without disclosing the levels of benzene or other impurities, "manufacture" information that omitted the failure to adhere to cGMPs, and "Drug Facts" that did not identify benzene or other impurities among the active or inactive

ingredients or mention them in the warning, use, or other sections of the labeling. Additionally, the very fact the product was available for purchase constituted an affirmation the product complied with applicable law for the sale of an OTC drug product such as the Hand Sanitizer Products.

779. Defendant Walmart's Hand Sanitizer Products did not conform to its express representations and warranties because the product was not manufactured in compliance with cGMP and was adulterated and misbranded, or contained undisclosed impurities.

780. At all times relevant times Texas had codified and adopted the provisions of the Uniform Commercial Code governing the warranty of merchantability and fitness for ordinary purpose, Tex. Bus. & Com. Code Ann. § 2-313.

781. At the time Defendant Walmart marketed and sold its Hand Sanitizer Products, it recognized the purposes for which the products would be used, and expressly warranted the products were cGMP compliant and not adulterated or misbranded, or did not contain undisclosed impurities. These affirmative representations became part of the basis of the bargain in every purchase by Plaintiff Ellis, and each other class member as set forth in this sub-section, including but not limited to express representations made in referring to their products as FDA-compliant (and compliant with analogous state law).

782. Defendant Walmart breached its express warranties with respect to its Hand Sanitizer Products as they were not of merchantable quality, were not fit for their ordinary purpose, and did not comply with cGMP and was adulterated and misbranded, or contained undisclosed impurities.

783. Plaintiff Ellis, and each other class member as set forth in this sub-section, would not have purchased the Hand Sanitizer Products had they known these drugs contained undisclosed benzene impurities, were adulterated or misbranded, or did not have the represented safety and

efficacy profile.

784. Direct privity exists between Defendant Walmart and Plaintiff Ellis, and each other class member as set forth in this sub-section, because, among other things, Defendant Walmart is a retailer and made direct statements about the safety of its products, and intended its statements and affirmations to flow to Plaintiff Ellis, and each other class member as set forth in this sub-section.

785. As a direct and proximate result of each Defendant Walmart's breach of warranty, Plaintiff Ellis and each other class member as set forth in this sub-section have been injured and suffered damages in the amount of the purchase price of their medications, the purchase price of any replacement medications, and any consequential damages resulting from the purchases, in that the Hand Sanitizer Products they purchased were so inherently flawed, unfit, or unmerchantable as to have no market value.

786. Pre-suit notice is not required and, even if it was, Defendant Walmart is already amply on notice of the nature of the allegations and claims against them from this ongoing litigation, and new pre-suit notice provided prior to the filing of this amended pleading. To the extent a demand is required, Plaintiff Ellis, and each other class member as set forth in this sub-section, seek the relief set forth in the Wherefore Clause herein, which is incorporated into this count by explicit reference. To date, Defendant Walmart have not responded to any claim or demand made or alleged by Plaintiffs in connection with this matter.

ii. Breach of Implied Warranty Against Defendant Walmart

787. Plaintiff Ellis alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Texas and those in other states the laws of which do not conflict with Texas law.

788. Plaintiff Ellis incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38,

40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

789. Plaintiff Ellis, and each other class member as set forth in this sub-section, formed a contract with Defendant Walmart at the time they purchased Hand Sanitizer Products. The terms of the contract include the promises and affirmations of fact made by Defendant Walmart on the Hand Sanitizer Products' packaging and through marketing and advertising, including that the product would be of the quality and character as represented. This labeling, marketing, and advertising constitute express warranties and became part of the basis of the bargain, and are part of the standardized contract between class members and Defendant Walmart.

790. Defendant Walmart impliedly warranted that its Hand Sanitizer Products were fit for its ordinary use, i.e., as an FDA-approved OTC drug, were safe and effective for intended use, and did not contain any undisclosed impurities. This includes statements in the product labeling that described the product as "effective" (among other things) without disclosing the levels of benzene or other impurities, "manufacture" information that omitted the failure to adhere to cGMPs, and "Drug Facts" that did not identify benzene or other impurities among the active or inactive ingredients or mention them in the warning, use, or other sections of the labeling. Additionally, the very fact the product was available for purchase constituted an affirmation the product complied with applicable law for the sale of an OTC drug product such as the Hand Sanitizer Products.

791. Defendant Walmart sold Hand Sanitizer Products that they impliedly warranted were compliant with cGMP and not adulterated or misbranded, or otherwise contained undisclosed levels of benzene or other impurities.

792. Defendant Walmart's Hand Sanitizer Products did not conform to its implied representations and warranties because the product was not manufactured in compliance with cGMP and was adulterated and misbranded, or contained undisclosed impurities.

793. At all times relevant times Texas had codified and adopted the provisions of the Uniform Commercial Code governing the implied warranty of merchantability and fitness for ordinary purpose, Tex. Bus. & Com. Code Ann. § 2-314.

794. Defendant Walmart was a merchant within the meaning of the above statutes.

795. Defendant Walmart's Hand Sanitizer Products constituted goods or products within the meaning of the products to which implied warranty attaches.

796. Defendant Walmart was obligated to provide Plaintiff Ellis, and each other class member as set forth in this sub-section, reasonably fit Hand Sanitizer Products for the purpose for which the product was sold, and to conform to the standards of the trade in which Defendant is involved such that the product was of fit and merchantable quality.

797. Defendant Walmart knew or should have known that its Hand Sanitizer Products were being manufactured and sold for the intended purpose, and impliedly warranted that their Hand Sanitizer Products were of merchantable quality and fit for that purpose.

798. Defendant Walmart breached its implied warranty because each Defendant's Hand Sanitizer Products were not of merchantable quality, nor fit for the product's ordinary purpose, and did not conform to the standards generally applicable to such goods.

799. Plaintiff Ellis, and each other class member as set forth in this sub-section, purchased the Hand Sanitizer Products in reliance upon Defendant Walmart's skill and judgment and the implied warranties of fitness for the purpose.

800. The Hand Sanitizer Products were not altered by Plaintiff Ellis and each other class member as set forth in this sub-section.

801. As a direct and proximate result of each Defendant's breach of implied warranty, Plaintiff Ellis, and each other class member as set forth in this sub-section, have been injured and suffered damages, in that Defendant Walmart's Hand Sanitizer Products they purchased was so

inherently flawed, unfit, or unmerchantable as to have significantly diminished or no intrinsic market value.

802. Pre-suit notice is not required and, even if it was, Defendant Walmart is already amply on notice of the nature of the allegations and claims against them from this ongoing litigation, and new pre-suit notice provided prior to the filing of this amended pleading. To the extent a demand is required, Plaintiff Ellis, and each other class member as set forth in this sub-section, seek the relief set forth in the Wherefore Clause herein, which is incorporated into this count by explicit reference. To date, Defendant Walmart have not responded to any claim or demand made or alleged by Plaintiffs in connection with this matter.

**iii. Breach of Magnuson-Moss Warranty Act, 15 U.S.C.
§ 2301, et seq. Against Defendant Walmart**

803. Plaintiff Ellis alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Texas and those in other states the laws of which do not conflict with Texas law.

804. Plaintiff Ellis incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

805. Defendant Walmart is a “warrantor” within the meaning of the Magnuson-Moss Warranty Act.

806. Plaintiff Ellis, and each other class member as set forth in this sub-section, are “consumers” within the meaning of the Magnuson-Moss Warranty Act.

807. Defendant Walmart expressly or impliedly warranted their Hand Sanitizer Products as alleged in the preceding Texas breach of express and implied warranty claims.

808. Under 15 U.S.C. § 2310(d)(1), Plaintiff Ellis, and each other class member as set forth in this sub-section, were “damaged by the failure of a supplier, warrantor, or service contractor to comply with any obligation under this chapter, or under a written warranty, implied

warranty, or service contract, may bring suit for damages and other legal and equitable relief.” 15 U.S.C. § 2310(d)(1). Plaintiff Ellis sues pursuant to this section to recover money damages and for legal and equitable relief on behalf of themselves and the class members as set forth in this subsection.

809. Defendant Walmart has acted on the opportunity to cure its failure with respect to its warranted Hand Sanitizer Products.

810. Likewise, pursuant to 15 U.S.C. § 2310(d)(2), upon prevailing in this action, Plaintiff Ellis is entitled to receive an award of attorneys’ fees and expenses and pray for the same.

iv. Fraud (Affirmative Misrepresentation, Omission, and Concealment) Against Defendant Walmart

811. Plaintiff Ellis alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Texas and those in other states the laws of which do not conflict with Texas law.

812. Plaintiff Ellis incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

813. Defendant Walmart affirmatively misrepresented material facts including, *inter alia*, that their Hand Sanitizer Products with not compliant with cGMPs and/or were not adulterated and/or misbranded, or did not contain undisclosed benzene impurities.

814. Defendant Walmart omitted material facts including, *inter alia*, that its Hand Sanitizer Products with not compliant with cGMPs and/or were not adulterated and/or misbranded, or contained undisclosed benzene impurities. This includes statements in the product labeling that described the product as “effective” (among other things) without disclosing the levels of benzene or other impurities, “manufacture” information that omitted the failure to adhere to cGMPs, and “Drug Facts” that did not identify benzene or other impurities among the active or inactive ingredients or mention them in the warning, use, or other sections of the labeling.

815. Defendant Walmart's actions had the effect of fraudulently inducing customers to pay in whole or in part for Defendant Walmart's Hand Sanitizer Products – products which it knew or should have known were did not comply with GMPs and/or were adulterated and/or misbranded, or contained undisclosed benzene impurities.

816. Plaintiff Ellis, and each other class member as set forth in this sub-section, would not have purchased Defendant Walmart's Hand Sanitizer Products had they known the truth. Indeed, Plaintiff Ellis, and each other class member as set forth in this sub-section, could not have paid for Defendant Walmart's Hand Sanitizer Products had they known the truth because Defendant Walmart's Hand Sanitizer Products were illegally manufactured, illegally distributed, and illegally sold based on Defendant Walmart' fraudulent misrepresentations and omissions.

817. Defendant Walmart knew, or reasonably should have known, that their misrepresentations were materially false or misleading, or that the omission of material facts rendered such representations false or misleading.

818. Defendant Walmart also knew, or had reason to know, that their misrepresentations and omissions would induce Class(es) members to pay for some or all of the cost of its Hand Sanitizer Products.

819. Defendant Walmart's misrepresentations and omissions were material.

820. Defendant Walmart actively concealed their misrepresentations and omissions from the Class(es), government regulators, and the public.

821. To the extent applicable, Defendant Walmart intended their misrepresentations and omissions to induce Plaintiff Ellis, and each other class member as set forth in this sub-section, to pay for its Hand Sanitizer Products.

822. But for these misrepresentations and omissions, Plaintiff Ellis, and each other class member as set forth in this sub-section, would not have paid for Defendant Walmart's Hand

Sanitizer Products.

823. In short, Defendant Walmart failed to ensure that its supplier, Defendant Virgin Scent, adhered to cGMP and industry standards of care as to the manufacture, testing, quality assurance, and sale of Hand Sanitizer Products, resulting in adulterated or misbranded product being sold to Plaintiff Ellis, and each other class member as set forth in this sub-section, since at least 2015 through 2019 for the purpose of duping consumers into paying for adulterated or contaminated Hand Sanitizer Products that were economically worthless and otherwise unable to be sold in the United States, to wrongfully boost Defendant Walmart's own profits.

824. To the extent applicable, Plaintiff Ellis, and each other class member as set forth in this sub-section, were justified in relying on Defendant Walmart's misrepresentations and omissions. The same or substantively identical misrepresentations and omissions were communicated, to each Class(es) member, including through product labeling and other statements by Defendant Walmart. No reasonable consumer would have paid what they did for Defendant Walmart's Hand Sanitizer Products but for its unlawful conduct. To the extent applicable, reliance may be presumed in these circumstances.

825. Plaintiff Ellis, and each other class member as set forth in this sub-section, were damaged by reason of Defendant Walmart's misrepresentations and omissions alleged herein.

v. Negligent Misrepresentation and Omission Against Defendant Walmart

826. Plaintiff Ellis alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Texas and those in other states the laws of which do not conflict with Texas law.

827. Plaintiff Ellis incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

828. Defendant Walmart had or undertook a duty to accurately and truthfully represent

to the quality, nature, and characteristics of its Hand Sanitizer Products.

829. Defendant Walmart failed to exercise ordinary care in making representations (or in failing to disclose facts) concerning the quality, nature, and characteristics of its Hand Sanitizer Products.

830. Defendant Walmart negligently misrepresented or omitted facts regarding the quality, nature, and characteristics of its Hand Sanitizer Products. This includes statements in the product labeling that described the product as “effective” (among other things) without disclosing the levels of benzene or other impurities, “manufacture” information that omitted the failure to adhere to cGMPs, and “Drug Facts” that did not identify benzene or other impurities among the active or inactive ingredients or mention them in the warning, use, or other sections of the labeling. Additionally, the very fact the product was available for purchase constituted an affirmation the product complied with applicable law for the sale of an OTC drug product such as the Hand Sanitizer Products.

831. Defendant Walmart’s statements were false at the time the misrepresentations were made (or at the time omissions were not made).

832. Defendant Walmart knew, or reasonably should have known, that its representations alleged herein were materially false or misleading, or that omission of material facts rendered such representations false or misleading. Defendant Walmart also knew, or had reason to know, that its misrepresentations and omissions would induce Plaintiff Ellis, and each other class member as set forth in this sub-section, to make purchases of Defendant Walmart’s Hand Sanitizer Products.

833. As a direct and proximate result of Defendant Walmart’s acts and omissions described herein, Plaintiff Ellis, and each other class member as set forth in this sub-section, have suffered harm, and will continue to do so.

834. Defendant Walmart's misrepresentations or omissions were material and a substantial factor in Plaintiffs' and other class members' paying for Hand Sanitizer Products.

835. Defendant Walmart intended its misrepresentations or omissions to induce Plaintiff Ellis, and each other class member as set forth in this sub-section, to make purchases of Hand Sanitizer Products, or had reckless disregard for same.

836. But for these misrepresentations (or omissions), Plaintiff Ellis, and each other class member as set forth in this sub-section, would not have made purchases of Defendant Walmart's Hand Sanitizer Products.

837. Plaintiff Ellis, and each other class member as set forth in this sub-section, were justified in relying on Defendants' misrepresentations or omissions. The same or substantively identical misrepresentations were communicated, and/or the same or substantively identical omissions were not communicated, to each purchaser.

838. In short, Defendant Walmart failed to ensure that its supplier, Defendant Virgin Scent, adhered to cGMP and industry standards of care as to the manufacture, testing, quality assurance, and sale of Hand Sanitizer Products, resulting in adulterated or misbranded product being sold to Plaintiff Ellis, and each other class member as set forth in this sub-section, since at least 2015 through 2019 for the purpose of duping consumers into paying for adulterated or contaminated Hand Sanitizer Products that were economically worthless and otherwise unable to be sold in the United States, to wrongfully boost Defendant Walmart's own profits.

839. Plaintiff Ellis, and each other class member as set forth in this sub-section, were damaged by reason of Defendant Walmart's misrepresentations or omissions alleged herein.

vi. Violation of Consumer Protection Law Against Defendant Walmart

840. Plaintiff Ellis alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Texas and those in other states the laws of which do not

conflict with Texas law.

841. Plaintiff Ellis incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

842. The Texas Deceptive and Unfair Trade Practices Act (“FDUTPA”) prohibits “[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce.” Fla. Stat. Ann. §501.204(1).

843. The Texas Deceptive Trade Practices Act (“TDTPA”) “protect[s] consumers against false, misleading, and deceptive business practices, unconscionable acts, and breaches of warranty and [provides] efficient and economical procedures to secure such protections.” Tex. Bus. & Com. Code § 17.44, *et seq.* The TDTPA “shall be liberally construed.” *Id.*

844. Plaintiff Ellis, and each other class member as set forth in this sub-section, are “consumers” within the meaning of the TDTPA. *See* Tex. Bus. & Com. Code § 17.45(4).

845. Defendant Walmart is a “person” within the meaning of the TDPTA. *See* Tex. Bus. & Com. Code § 17.45(3).

846. Defendant Walmart’s conduct described herein constitute “false, misleading and deceptive business practices” and/or an “unconscionable action or course of action.” *See* Tex. Bus. & Com. Code §§ 17.44, 17.45(5).

847. Defendant Walmart, directly or through its agents, employees, and/or subsidiaries, violate the TDTPA by knowingly and intentionally misrepresenting, omitting, concealing, and failing to disclose material facts on the labels for its Hand Sanitizer Products, including that: such product were inherently defective, unreasonably dangerous, not fit to be used for their intended purpose, contained levels of benzene that rendered them unsafe and unfit for human consumption, and/or caused cancer.

848. Specifically, by knowingly and intentionally misrepresenting, omitting, concealing,

and failing to disclose material facts regarding Hand Sanitizer Products, as detailed above, Defendant Walmart engaged in one or more unfair or deceptive acts or practices in the conduct of trade or commerce, in violation of the TDTPA. Defendant Walmart's misrepresentations and omissions regarding the inherently defective and unreasonably dangerous nature of Hand Sanitizer Products were disseminated to Plaintiff Ellis, and each other class member as set forth in this sub-section, in a uniform manner. This includes statements in the product labeling that described the product as "effective" (among other things) without disclosing the levels of benzene or other impurities, "manufacture" information that omitted the failure to adhere to cGMPs, and "Drug Facts" that did not identify benzene or other impurities among the active or inactive ingredients or mention them in the warning, use, or other sections of the labeling. Additionally, the very fact the product was available for purchase constituted an affirmation the product complied with applicable law for the sale of an OTC drug product such as the Hand Sanitizer Products.

849. Defendant Walmart's unfair or deceptive acts or practices, including its misrepresentations, concealments, omissions, and suppressions of material facts, as alleged herein, had a tendency or capacity to mislead and create a false impression in consumers' minds, and were likely to and, in fact, did deceive reasonable consumers, including Plaintiff Ellis, and each other class member as set forth in this sub-section, about the inherently defective and unreasonably dangerous nature of Hand Sanitizer Products.

850. The facts regarding Hand Sanitizer Products that Defendant Walmart knowingly and intentionally misrepresented, omitted, concealed, and failed to disclose would be considered material by a reasonable consumer, and they were, in fact, material to Plaintiff Ellis, and each other class member as set forth in this sub-section, who consider such facts to be important to their purchase decisions with respect to Hand Sanitizer Products.

851. Plaintiff Ellis, and each other class member as set forth in this sub-section, were

aggrieved by Defendant Walmart's violations of the TDTPA because they suffered ascertainable loss and actual damages as a direct and proximate result of Defendant Walmart's knowing and intentional misrepresentations, omissions, concealments, and failures to disclose material facts as set forth above.

852. Specifically, Plaintiff Ellis, and each other class member as set forth in this sub-section, were deceived by Defendant Walmart's misrepresentations, omissions, concealments, and failures to disclose material facts regarding Hand Sanitizer Products. Had Defendant Walmart not engaged in the deceptive acts and practices alleged herein, Plaintiff Ellis, and each other class member as set forth in this sub-section, would not have purchased the drug, and, thus they did not receive the benefit of the bargain and/or suffered out-of-pocket loss.

853. Defendant Walmart's violations present a continuing risk to Plaintiff Ellis, and each other class member as set forth in this sub-section, as well as to the general public. Defendant's unlawful acts and practices complained herein affect the public interest.

854. In short, Defendant Walmart failed to ensure that its supplier, Defendant Virgin Scent, adhered to cGMP and industry standards of care as to the manufacture, testing, quality assurance, and sale of Hand Sanitizer Products, resulting in adulterated or misbranded product being sold to Plaintiff Ellis, and each other class member as set forth in this sub-section, since at least 2015 through 2019 for the purpose of duping consumers into paying for adulterated or contaminated Hand Sanitizer Products that were economically worthless and otherwise unable to be sold in the United States, to wrongfully boost Defendant Walmart's own profits.

855. As a result of Defendant Walmart's violations of the TDTPA, as alleged herein, Plaintiff Ellis, and each other class member as set forth in this sub-section, seek an order enjoining Defendant Walmart's unfair or deceptive acts or practices and awarding actual damages, costs, attorneys' fees, and any other just and proper relief available under the TDTPA.

vii. Unjust Enrichment Against Defendant Walmart

856. Plaintiff Ellis alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Texas and those in other states the laws of which do not conflict with Texas law.

857. Plaintiff Ellis incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

858. As alleged herein, Defendant Walmart was unjustly enriched at the expense of Plaintiff Ellis, and each other class member as set forth in this sub-section, by virtue of their paying for Defendant Walmart's Hand Sanitizer Products.

859. Defendant Walmart profited immensely from introducing a carcinogen into the United States for human consumption. On top of that, because its Hand Sanitizer Products were adulterated and misbranded, their distribution and sale in the United States was illegal.

860. Plaintiff Ellis, and each other class member as set forth in this sub-section, were unjustly deprived of money obtained by Defendant Walmart as a result of the improper amounts paid for Defendant Walmart's Hand Sanitizer Products. It would be inequitable and unconscionable for Defendant Walmart to retain the profit, benefit, and other compensation obtained from Plaintiff Ellis, and each other class member as set forth in this sub-section, as a result of their wrongful conduct alleged in this complaint.

861. In the alternative to the other causes of actions alleged herein, Plaintiff Ellis, and each other class member as set forth in this sub-section, have no adequate remedy at law.

862. Plaintiff Ellis, and each other class member as set forth in this sub-section, are entitled to seek and do seek restitution from Defendant Walmart as well as an order from this Court requiring disgorgement of all profits, benefits, and other compensation obtained by Defendant Walmart's by virtue of its wrongful conduct.

viii. Negligence Against Defendant Walmart

863. Plaintiff Ellis alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Texas and those in other states the laws of which do not conflict with Texas law.

864. Plaintiff Ellis incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

865. Defendant Walmart owed a duty to Plaintiff Ellis, and each other class member as set forth in this sub-section, to use and exercise reasonable and due care in the manufacturing of its Hand Sanitizer Products.

866. Defendant Walmart owed a duty to Plaintiff Ellis, and each other class member as set forth in this sub-section, to ensure that the Hand Sanitizer Products it sold in the United States complied with cGMPs and were not adulterated or misbranded, or did not contain undisclosed benzene impurities.

867. Defendant Walmart owed a duty to care to Plaintiff Ellis, and each other class member as set forth in this sub-section, because they were the foreseeable, reasonable, and probable user of Hand Sanitizer Products and victim of Defendant Walmart's fraudulent and deceptive activities. Defendant Walmart knew, or should have known, that its Hand Sanitizer Products did not comply with cGMPs and were adulterated and misbranded, or contained undisclosed benzene impurities, and each was in the best position to uncover and remedy these shortcomings.

868. Defendant Walmart knew, or should have known, that the Hand Sanitizer Products did not comply with cGMPs and were adulterated and misbranded, and were in the best positions to uncover and remedy these shortcomings.

869. Defendant Walmart failed to do this. Defendant Walmart inadequately oversaw the

manufacture or sale of its own Hand Sanitizer Products. Defendant Walmart knew that ignoring the manufacturing issues surrounding its Hand Sanitizer Products would damage Plaintiff Ellis, and each other class member as set forth in this sub-section, and increase its own profits.

870. Defendant Walmart maintained or should have maintained a special relationship with Plaintiff Ellis, and each other class member as set forth in this sub-section, who were anticipated or intended direct and intended third-party beneficiaries, as it was obligated to ensure that its Hand Sanitizer Products complied with cGMPs and was not adulterated or misbranded, or did not contain undisclosed benzene impurities.

871. Defendant Walmart's own actions and inactions created a foreseeable risk of harm to Plaintiff Ellis, and each other class member as set forth in this sub-section. Defendant Walmart's misconduct included, but was not limited to, failing to oversee actions taken in the manufacture or sale of its Hand Sanitizer Products.

872. Defendant Walmart breached duties owed to Plaintiff Ellis, and each other class member as set forth in this sub-section, by failing to exercise reasonable care sufficient to protect the interests and meet the needs of Plaintiff Ellis, and each other class member as set forth in this sub-section.

873. As a direct and proximate result of Defendant Walmart's negligent conduct, Plaintiff Ellis, and each other class member as set forth in this sub-section, suffered injury and are entitled to damages in an amount to be proven at trial. They suffered both economic injury, as well as actual physical injury and a heightened risk of physical injury in the form of current sub-cellular damage and genetic damage, and a greater risk of developing cancer. The physical injury was suffered at the time of application by Plaintiff Ellis, and each other class member as set forth in this sub-section, during the alleged class period.

874. Plaintiff Ellis, and each other class member as set forth in this sub-section, are also

entitled to the costs of medical monitoring, and/or for actual physical bodily injuries sustained, or that may be sustained in the future, as a result of Defendant Walmart's wrongful conduct as alleged herein.

ix. Negligence Per Se Against Defendant Walmart

875. Plaintiff Ellis alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Texas and those in other states the laws of which do not conflict with Texas law.

876. Plaintiff Ellis incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

877. Defendant Walmart owed a duty to Plaintiff Ellis, and each other class member as set forth in this sub-section, to use and exercise reasonable and due care in the manufacturing of its Hand Sanitizer Products.

878. Defendant Walmart owed a duty to Plaintiff Ellis, and each other class member as set forth in this sub-section, to ensure that the Hand Sanitizer Products it sold in the United States complied with cGMPs and were not adulterated or misbranded, or did not contain undisclosed benzene impurities.

879. Defendant Walmart owed a duty to care to Plaintiff Ellis, and each other class member as set forth in this sub-section, because they were the foreseeable, reasonable, and probable user of Hand Sanitizer Products and victim of Defendant Walmart's fraudulent and deceptive activities. Defendant Walmart knew, or should have known, that its Hand Sanitizer Products did not comply with cGMPs and were adulterated and misbranded, or contained undisclosed benzene impurities, and each was in the best position to uncover and remedy these shortcomings.

880. Defendant Walmart's duty in part flows from federal cGMP regulations, and

analogous Texas statutory law, *see e.g.*, Tex. H. & Safety Code §§ 432.002, *et seq.*

881. Defendant Walmart knew, or should have known, that the Hand Sanitizer Products did not comply with cGMPs and were adulterated and misbranded, and were in the best positions to uncover and remedy these shortcomings.

882. Defendant Walmart failed to do this. Defendant Walmart inadequately oversaw the manufacture or sale of its own Hand Sanitizer Products. Defendant Walmart knew that ignoring the manufacturing issues surrounding its Hand Sanitizer Products would damage Plaintiff Ellis, and each other class member as set forth in this sub-section, and increase its own profits.

883. Defendant Walmart maintained or should have maintained a special relationship with Plaintiff Ellis, and each other class member as set forth in this sub-section, who were anticipated or intended direct and intended third-party beneficiaries, as it was obligated to ensure that its Hand Sanitizer Products complied with cGMPs and was not adulterated or misbranded, or did not contain undisclosed benzene impurities.

884. Defendant Walmart's own actions and inactions created a foreseeable risk of harm to Plaintiff Ellis, and each other class member as set forth in this sub-section. Defendant Walmart's misconduct included, but was not limited to, failing to oversee actions taken in the manufacture or sale of its Hand Sanitizer Products.

885. Defendant Walmart breached duties owed to Plaintiff Ellis, and each other class member as set forth in this sub-section, by failing to exercise reasonable care sufficient to protect the interests and meet the needs of Plaintiff Ellis, and each other class member as set forth in this sub-section.

886. As a direct and proximate result of Defendant Walmart's negligent conduct, Plaintiff Ellis, and each other class member as set forth in this sub-section, suffered injury and are entitled to damages in an amount to be proven at trial. They suffered both economic injury, as

well as actual physical injury and a heightened risk of physical injury in the form of current sub-cellular damage and genetic damage, and a greater risk of developing cancer. The physical injury was suffered at the time of application by Plaintiff Ellis, and each other class member as set forth in this sub-section, during the alleged class period.

887. Plaintiff Ellis, and each other class member as set forth in this sub-section, are also entitled to the costs of medical monitoring, and/or for actual physical bodily injuries sustained, or that may be sustained in the future, as a result of Defendant Walmart's wrongful conduct as alleged herein.

x. Medical Monitoring Against Defendant Walmart

888. Plaintiff Ellis alleges this claim for relief on behalf of herself and all similarly situated class members, both those in Texas and those in other states the laws of which do not conflict with Texas law.

889. Plaintiff Ellis incorporates the allegations in paragraphs 2-4, 19-21, 23, 26-29, 38, 40, 42-52, 53-65, 72-76, 71-81, 92-99, and 100-101 as though full set forth herein.

890. As a proximate result of Defendant Walmart's acts and omissions, Plaintiff Ellis, and each other class member as set forth in this sub-section, are at an increased risk of developing cancer above the normal base-level risk.

891. As alleged above, Defendant Walmart's Hand Sanitizer Products were contaminated with benzene, a known human carcinogen.

892. Plaintiff Ellis, and each other class member as set forth in this sub-section, may not develop cancer for many years.

893. Plaintiff Ellis, and each other class member as set forth in this sub-section, are at an increased risk as they used Defendant Walmart's Hand Sanitizer Products for extended periods of time, and as a result were exposed to a contaminant by having their skin absorb the Product.

894. Based upon the internal and external investigations now made public, Plaintiff Ellis, and each other class member as set forth in this sub-section, are at an increased risk as they were exposed to benzene. Benzene is a hazardous, life-threatening, toxic substance that is known to cause cancer in humans, capable of causing and likely has already caused sub-cellular damage.

895. Plaintiff Ellis, and each other class member as set forth in this sub-section, are at an increased risk of cancer as they were exposed to Defendant Walmart's Hand Sanitizer Products in quantities, and over periods of time sufficient to establish an exposure level that is considered to be hazardous to health, and that is considered to be sufficient to cause cancer or increase the risk of developing cancer.

896. Specifically, Plaintiff Ellis, and each other class member as set forth in this sub-section, were exposed to greater than normal background levels of benzene due to Defendant Walmart's wrongful conduct. Indeed, the levels identified by the FDA were many times the interim level, and well above the prevailing zero-acceptable limit absent the interim guidance due to COVID-19.

897. At a minimum, at the levels detected by the FDA, even a single application of Defendant Walmart's Hand Sanitizer product, the level of benzene exposure to the user would be well above baseline levels through inhalation in the ambient air or other substances that consumes reasonably may come into direct skin contact with (e.g., at least four times or higher that level), wherein the FDA specified there was no acceptable baseline level for a single application of Defendant Walmart's Hand Sanitizer Products directly to human skin.

898. Multiple applications, at increasing frequency or overall duration, magnify the risk several fold. A single application (or more) through the skin (i.e., dermal absorption) of benzene can lead to the transport of the benzene to other organs where it is metabolized and has been found to be associated with cancer and non-malignant injuries.

899. The exposure was caused solely and proximately by Defendant Walmart's failures to adequately manufacture or source the Hand Sanitizer Products; Defendant Walmart's failures to address discrepancies in batches of their Hand Sanitizer Products during quality control testing (or requiring same); Defendant Walmart's material misrepresentations and other deceptive practices in continuing to claim that their Hand Sanitizer Products were safe for use and did not present a risk of cancer or other physical bodily injury.

900. Defendant Walmart had a duty to Plaintiffs and other class members to disclose any defect, contamination, impurity or other potential health hazard known or discoverable by Defendant Walmart, and to ensure that their Hand Sanitizer Products were safe, reliable, and non-hazardous for human use—its intended purpose.

901. Defendant Walmart's own negligent acts and omissions resulted an increased risk of developing cancer for Plaintiff Ellis, and each other class member as set forth in this subsection,. Cancer is a serious disease-causing life-threatening illness and debilitating cellular, genetic, and physical injury. Technology, analytical tools, tests and/or monitoring procedures exist and are readily available to provide for the testing and early detection of cancer in patients. These technologies, tools, tests and/or monitoring procedures are accepted and widely used by the scientific and medical community. These existing scientific methods include, but are not limited to, guaiac-based fecal occult blood test (gFOBT), fecal immunochemical test (FIT), FIT-DNA test, Flexible Sigmoidoscopy, Colonoscopy, and CT Colonography (Virtual Colonoscopy).

902. Early detection of cancer in patients is one of the best, and sometimes the only means to treat cancer such that it does not cause lasting, permanent injury, illness, or death.

903. Early detection of cancer in patients necessarily allows patients to avail themselves of myriad forms of treatment, each of which is capable of altering the course of the illness, such as bringing the cancer into remission, removal of any malignant tumors, and other treatment to

alleviate injury.

904. The tests and treatments for the early detection and treatment of cancer must be prescribed by a qualified physician, and are conducted according to the latest, contemporary, and widely accepted scientific principles. Because benzene-associated cancer screenings are not conducted with the frequency necessary to identify cancer in the absence of exposure to benzene, the prescribed monitoring regime is different from that normally recommended in the absence of exposure. Plaintiff Ellis, and each other class member as set forth in this sub-section, require more frequent screenings not within the purview of routine medical exams.

905. Benzene in Defendant Walmart's Hand Sanitizer products is a proven hazardous substance, known for its genotoxic and carcinogenic properties.

906. The monitoring regime sought is different than normal screening for cancers in the absence of benzene exposure, and the regime is reasonably necessary to evaluate and monitor the sub-cellular damage suffered by Plaintiff Ellis, and each other class member as set forth in this sub-section. Indeed, absent the screenings and regime sought here, Plaintiff Ellis, and each other class member as set forth in this sub-section, would not normally receive adequate screenings that are reasonably necessary according to contemporary scientific principles (*see, e.g.*, Agency for Toxic Substances and Disease Registry (ATSDR). Toxicological Profile for Benzene. Atlanta: U.S. Public Health Service, 2007; Fang Y, Wu H-T, Ye Y-J, et al. Association between polymorphisms of metabolic enzyme genes and chromosomal damage in benzene-exposed workers in China. *Journal of Occupational and Environmental Medicine* 2017; 59: e215-e220; Whysner J, Reddy MV, Ross PM, et al. Genotoxicity of benzene and its metabolites. *Mutation Research* 2004; 566: 99-130; Zhou Y, Wang K, Wang B, et al. Occupational benzene exposure and the risk of genetic damage: A systematic review and meta-analysis. *BMC Public Health* 2020; 20: 1113) to monitor the sub-cellular and genetic damage caused by Defendant Walmart's Hand

Sanitizer Products and monitor for cancer.

907. Plaintiff Ellis, and each other class member as set forth in this sub-section, seek injunctive and monetary relief, including compensatory damages for, and the creation of a fund to adequately finance the costs of, medical monitoring procedures (1) to notify and alert all people exposed to benzene as aforesaid of their exposure and the potential consequences, (2) to provide for necessary testing and screening including but not limited to blood tests, physical examinations, imaging, colonoscopies, endoscopies, biopsies, and other similar methods for examination, biopsies, pathologic, histologic, and oncologic evaluations, oncologic, histologic, surgical and other necessary medical consultations, (3) to provide for necessary medical and surgical procedures for diagnosis and treatment, (4) to provide for all necessary evaluations and treatment, attorneys' fees, costs, interest, and such further relief as the Court deems equitable and just.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following judgment:

- A. An order certifying this action as a class action;
- B. An order appointing Plaintiffs as Class(es) Representatives, and appointing undersigned counsel as Class(es) Counsel to represent the Class(es);
- C. A declaration that Defendants are liable pursuant to each and every one of the above-enumerated causes of action;
- D. An order awarding appropriate preliminary and/or final injunctive relief against the conduct of Defendants described herein;
- E. Payment to Plaintiffs and class members of all damages, exemplary or punitive damages, and/or restitution associated with the conduct for all causes of action in an amount to be proven at trial, including but not limited to the full amounts paid or

reimbursed for Hand Sanitizer Products; the costs to replace or return Hand Sanitizer Products; Defendants' ill-gotten gains; and/or the increases in the amounts paid for non-adulterated, non-misbranded, Hand Sanitizer Products;

F. Compensatory, exemplary, punitive, and/or other appropriate damages for actual or potential physical bodily injuries sustained or that may be sustained in the future because of Plaintiffs' and other class members' purchase and use of Defendants' Hand Sanitizer Products;

G. An award of attorneys' fees, expert witness fees, and costs, as provided by applicable law and/or as would be reasonable from any recovery of monies recovered for or benefits bestowed on the class members;

H. An award of statutory penalties to the extent available;

I. Medical monitoring, in the form of a program and/or a fund, in the amounts to be determined by the Court and/or jury, for Plaintiffs and other class members;

J. Interest as provided by law, including but not limited to pre-judgment and post-judgment interest as provided by rule or statute; and

K. Such other and further relief as this Court may deem just, equitable, or proper.

JURY DEMAND

Plaintiffs respectfully request a trial by jury on all causes of action so triable.

Dated: June 23, 2022

Respectfully Submitted,

/s/ Ruben Honik
Ruben Honik (*pro hac vice*)
David J. Stanoch (*pro hac vice*)
HONIK LAW LLC
1515 Market St., Suite 1100
Philadelphia, PA 19102
(267) 435-1300
ruben@honiklaw.com

/s/ Daniel Nigh
Daniel Nigh
LEVIN, PAPANTONIO, THOMAS, MITCHELL
RAFFERTY & PROCTOR, P.A.
316 South Baylen Street
Pensacola, FL 32502
(850) 435-7013
dnigh@levinlaw.com

david@honiklaw.com

/s/ Conlee S. Whiteley
Conlee S. Whiteley (*pro hac vice*)
KANNER & WHITELEY, LLC
701 Camp Street
New Orleans, LA 70130
(504)-524-5777
c.whiteley@kanner-law.com

/s/ George T. Williamson
George T. Williamson
FARR, FARR, EMERICH
HACKETT, CARR & HOLMES, P.A.
99 Nesbit Street
Punta Gorda, FL 33950
(941) 639-1158
gwilliamson@farr.com