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**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA**

MARY MOLINA and CARLO
GARCIA, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

HRB BRANDS, LLC, HELEN OF TROY
LTD., and IDELLE LABS, LTD.,

Defendants.

Case No.: _____

CLASS ACTION COMPLAINT

Jury Trial Demanded

Plaintiffs Mary Molina and Carlo Garcia (“Plaintiffs”) bring this Class Action Complaint against HRB Brands, LLC, Helen of Troy Limited, and Idelle Labs, Limited (collectively “Defendants”), individually and on behalf of all others similarly situated, and complain and allege upon personal knowledge as to themselves and their own acts and experiences and, as to all other matters, upon information and belief, including investigation conducted by their attorneys:

CLASS ACTION COMPLAINT

NATURE OF THE ACTION

1
2 1. This is a civil class action brought by Plaintiffs on behalf of all consumers who
3 purchased Sure Unscented Aerosol antiperspirant (the “Sure Antiperspirant”) or Brut Classic 24-
4 Hour Protection aerosol antiperspirant (the “Brut Antiperspirant”) (collectively the “Products”)
5 from Defendants for normal, household use. The Products are defective because they contain the
6 chemical benzene, a known carcinogen that offers no therapeutic deodorant or antiperspirant
7 benefit.

8
9 2. The Brut brand, which bills itself as the “essence of men,”¹ was first launched in
10 1964 and has since established itself as a trusted name in men’s personal care and hygiene products.
11 Defendants market and sell Brut deodorant and antiperspirant including the Brut Antiperspirant
12 throughout the United States, including the State of California. Defendants distribute and sell the
13 Brut Antiperspirant through various authorized retailers in store and online.

14
15 3. The Sure brand was created by Procter & Gamble in 1972 as a personal care brand
16 for men and women. Today, Defendants market and sell Sure exclusively as a women’s
17 antiperspirant throughout the United States, including the State of California. Defendants distribute
18 and sell the Sure Antiperspirant through various authorized retailers in store and online.

19 4. Defendants took advantage of the trust consumers have in the Brut and Sure brands,
20 built over several decades, representing that the Products are safe for their intended use when, in
21 reality, the Products contain significant concentrations of benzene, a harmful carcinogen.

22
23 5. Benzene is a carcinogen known to cause cancer in humans. Long-term exposure
24 additionally causes harmful effects on the bone marrow, a decrease in red blood cells leading to

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26 ¹ <https://www.walmart.com/ip/Brut-24-Hour-Protection-Deodorant-Spray-Classic-Scent-10-0-oz/10317644> (last
27 visited Nov. 29, 2021)

1 anemia, and excessive bleeding that can affect the immune system, leading to an increased chance
2 of infection. According to FDA guidance, there is no safe level of benzene, and thus it “should not
3 be employed in the manufacture of drug substances, excipients, and drug products because of [its]
4 unacceptable toxicity.” FDA, Q3C – 2017 Tables and List Guidance for Industry,
5 <https://www.fda.gov/media/71737/download>.

6 6. FDA guidance provides that “if [benzene’s] use is unavoidable in order to produce
7 a drug product with a significant therapeutic advance, then [its] levels should be restricted” to 2
8 parts per million (“ppm”). *Id.*

9 7. The use of benzene in the Products is demonstrably avoidable. Feasible alternative
10 formulations, designs, and materials were available to Defendants at the time they formulated,
11 designed, and manufactured the Products. Critically, such alternative formulations and designs
12 were and are used by other manufacturers to produce and sell non-defective spray deodorants and
13 antiperspirants. In any event, the Products have a benzene concentration far above the FDA
14 concentration limit of 2 ppm.

15 8. The Products’ benzene contamination was not disclosed to the consumer on the
16 product label, the ingredients list, or otherwise.

17 9. Plaintiffs seek damages and equitable remedies for themselves, and for the
18 proposed Classes.

19
20
21 **PARTIES**

22 **A. Plaintiffs**

23 10. Plaintiff Mary Molina is a resident and citizen of Pine Grove, California who
24 purchased and used the Sure Antiperspirant within the relevant time period.
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1 11. Plaintiff Carlo Garcia is a resident and citizen of Sanger, California who purchased
2 and used the Brut Antiperspirant within the relevant time period.

3 **B. Defendants**

4 12. Defendant HRB Brands, LLC (“HRB Brands”) is a privately held company with
5 headquarters in Westport, Connecticut that produces consumer goods sold around the United
6 States, including in the State of California. On its website, HRB Brands touts that they “make
7 some of the best-known brands in the world” and “work for the well being of our customers every
8 day.”²

9
10 13. Defendant Helen of Troy Limited (“Helen of Troy”) is a publicly-traded,
11 multinational consumer goods company with headquarters in El Paso, Texas and “a diversified
12 portfolio of well-recognized and widely trusted brands.”³

13 14. Defendant Idelle Labs, Limited (“Idelle Labs”) is a privately held, wholly owned
14 subsidiary of Helen of Troy Limited with headquarters in El Paso, Texas.

15
16 **JURISDICTION AND VENUE**

17 15. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §
18 1332 of the Class Action Fairness Act of 2005 because: (1) there are 100 or more putative Class
19 Members, (ii) the aggregate amount in controversy exceeds \$5,000,000.00, exclusive of interest
20 and costs, and (iii) there is minimal diversity because Plaintiffs and Defendants are citizens of
21 different states. This Court has supplemental jurisdiction over Plaintiffs’ state law claims pursuant
22 to 28 U.S.C. § 1367.

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26 ² <https://www.hrbbrands.com/brands> (last visited Nov. 29, 2021)

27 ³ <https://www.helenoftroy.com/company/> (last visited Nov. 29, 2021)

1 acknowledged that “[t]hese well-known, iconic brands have strong consumer loyalty across
2 distribution channels in North and South America.”⁶

3 21. Defendants’ Brut product line, including the Brut Antiperspirant, is manufactured,
4 distributed, and sold throughout the United States, including the State of California.

5 **B. The Sure Brand**

6 22. The Sure brand was created by Procter & Gamble in 1972 as a personal care brand
7 for men and women. Defendant Helen of Troy Limited acquired Sure in 2010. Since its 2010
8 acquisition, Sure has been marketed and sold exclusively as a women’s antiperspirant.
9

10 23. Sure was among the twelve “well-known, iconic” personal care brands with “strong
11 consumer loyalty” Defendant HRB Brands acquired from Defendant Helen of Troy Limited in
12 June of 2021.

13 24. Defendants’ Sure product line, including the Sure Antiperspirant, is manufactured,
14 distributed, and sold throughout the United States, including the State of California.
15

16 **C. The Products**

17 25. Deodorant is a product applied to the body to prevent or mask the odor of
18 perspiration. Antiperspirants, a subclass of deodorants, prevent sweat glands from producing
19 sweat. The Products are both deodorant and antiperspirant applied to the body as a spray.

20 26. The U.S. Food and Drug Administration (“FDA”) classifies and regulates most
21 deodorants, including the Product, as cosmetics. In addition, the FDA classifies and regulates
22 antiperspirants, including the Products, as a drug.
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26 ⁶ [https://www.globenewswire.com/en/news-release/2021/06/08/2243993/25693/en/HRB-Brands-Announces-
27 Acquisition-of-Personal-Care-Brands-from-Helen-of-Troy.html](https://www.globenewswire.com/en/news-release/2021/06/08/2243993/25693/en/HRB-Brands-Announces-Acquisition-of-Personal-Care-Brands-from-Helen-of-Troy.html) (last visited Nov. 29, 2021)

1 27. On November 3, 2021, Valisure, an analytical pharmacy and consumer protection
2 organization, petitioned the FDA to address the dangerous levels of benzene in the Products and
3 other deodorants and antiperspirants based upon rigorous testing the organization had conducted
4 for a number of spray deodorant and antiperspirant products.⁷ The next day, Valisure released the
5 results of these tests.⁸

6 28. In testing, Valisure found average concentrations of benzene above the FDA
7 concentration limit of 2 ppm in 16 spray deodorants, including the Products, which are
8 manufactured and sold by Defendants.

9 29. This testing revealed that both Products exceeded the FDA concentration limit for
10 benzene by more than double. To wit, Valisure found benzene concentrations of 5.68 ppm in the
11 Sure Antiperspirant and 4.13 ppm in the Brut Antiperspirant.⁹

12
13 **D. Danger Posed by the Product**

14 30. The carcinogenic properties of benzene are well documented, as noted by the
15 Centers for Disease Control and Prevention (“CDC”). See CDC, Facts About Benzene (2018),
16 <https://emergency.cdc.gov/agent/benzene/basics/facts.asp>.

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18 31. The U.S. Department of Health and Human Services (DHHS) has determined that
19 benzene causes cancer in humans. Long-term exposure to high levels of benzene can cause
20 leukemia, cancer of the blood-forming organs.

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24 ⁷ <https://www.valisure.com/wp-content/uploads/Valisure-FDA-Citizen-Petition-on-Body-Spray-v4.0-3.pdf> (last
visited Nov. 9, 2021).

25 ⁸ <https://www.valisure.com/blog/valisure-news/valisure-detects-benzene-in-body-spray-products-3/> (last visited
Nov. 8, 2021).

26 ⁹ [https://www.consumerlab.com/answers/benzene-contamination-in-deodorants-and-antiperspirants/benzene-
deodorants/](https://www.consumerlab.com/answers/benzene-contamination-in-deodorants-and-antiperspirants/benzene-deodorants/) (last visited Nov. 22, 2021)

1 32. Long-term exposure to benzene additionally causes harmful effects on the bone
2 marrow and can cause a decrease in red blood cells, leading to anemia. It can also cause excessive
3 bleeding and can affect the immune system, increasing the chance for infection.

4 33. Due to these significant health risks, the World Health Organization and the
5 International Agency for Research on Cancer classify benzene as a Group 1 compound that is
6 “carcinogenic to humans.”¹⁰

7 34. The FDA classifies Benzene as a Class 1 compound.¹¹ According to FDA
8 guidance:

9 Solvents in Class 1 should not be employed in the manufacture of drug substances,
10 excipients, and drug products, because of their unacceptable toxicity or their
11 deleterious environmental effect.¹²

12 The FDA concentration limit for benzene is 2 ppm.¹³

13 35. Defendants exploited decades of existing consumer trust in the Brut and Sure
14 brands to sell the Products contaminated with a benzene concentration level well above the 2 ppm
15 FDA concentration limit, thus subjecting unwitting consumers to dangerous levels of a known
16 carcinogen.

17 **E. Defendants’ Representations**

18 36. Defendants represent to consumers that Brut Antiperspirant is safe and effective for
19 everyday use. Although Brut Antiperspirant was found to contain benzene concentration well
20 above the FDA limit, Defendants do not list benzene among the active or inactive ingredients
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25 ¹⁰ https://www.who.int/water_sanitation_health/dwg/chemicals/benzenesum.pdf (last visited Nov. 7, 2021).

26 ¹¹ <https://www.fda.gov/media/71737/download> (last visited Nov. 7, 2021).

27 ¹² *Id.*

28 ¹³ *Id.*

1 anywhere on its website,¹⁴ and nothing on the Brut Antiperspirant product label otherwise
2 insinuates, states, or warns that it contains benzene:

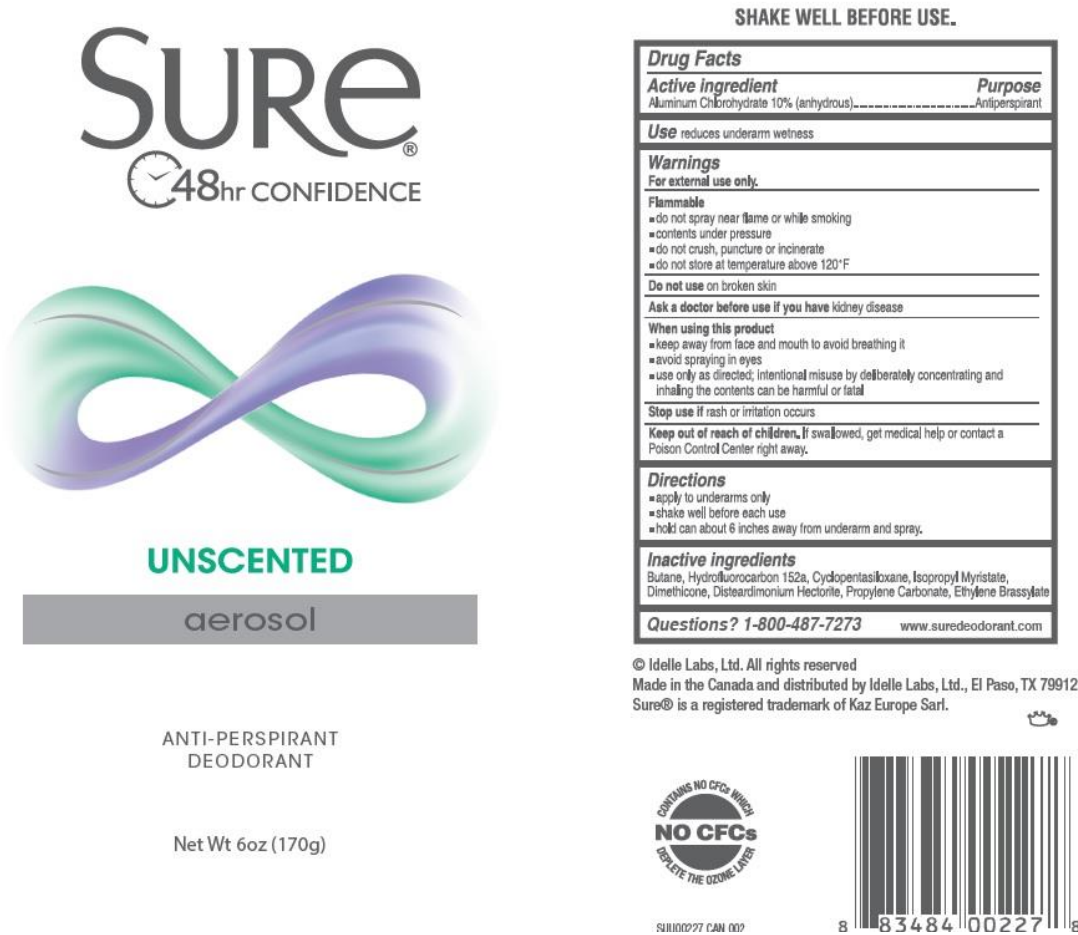


21 37. Defendants likewise represent to consumers that Sure Antiperspirant is safe and
22 effective for everyday use. Although Sure Antiperspirant was found to contain benzene
23 concentration well above the FDA limit, Defendants do not list benzene among the active or
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26 ¹⁴ <https://www.brutworld.com/aerosol-antiperspirant-deodorant/> (last visited Nov. 29, 2021)

27 ¹⁵ <https://www.walmart.com/ip/Brut-24-Hour-Protection-Deodorant-Spray-Classic-Scent-10-0-oz/10317644> (last
28 visited Nov. 29, 2021)

inactive ingredients anywhere on its website,¹⁶ and nothing on the Sure Antiperspirant product label otherwise insinuates, states, or warns that it contains benzene:



F. Defendants’ Products are Adulterated and Illegal to Sell

38. Defendants’ antiperspirant Products are drugs which are adulterated under 21 U.S.C. § 351(a)(1) based upon the presence of benzene.

¹⁶ <https://suredeodorant.wpengine.com/unscented-invisible-solid-antiperspirant-deodorant-aerosol/> (last visited Nov. 29, 2021)

¹⁷ <https://dailymed.nlm.nih.gov/dailymed/fda/fdaDrugXsl.cfm?setid=9d832ced-4ff5-455f-8678-a65d4e8d8c71&type=display> (last visited Nov. 29, 2021)

1 39. The Federal Food, Drug, and Cosmetic Act (“FDCA”) prohibits “[t]he introduction
2 or delivery for introduction into interstate commerce of any food, drug, or cosmetic that is
3 adulterated or misbranded.” 21 U.S.C. § 331(a).

4 40. California’s Sherman Law has expressly adopted the federal labeling requirements
5 as its own. The definition of “adulterated” is exactly the same as the FD&C Act under CA Health
6 & Safety Code Sections 111250, 111255, 111260, and 111265.

7 41. As alleged herein, Defendants have violated the FDCA, the Sherman Law, and
8 consumer protection statutes.

9 42. Defendants engaged in fraudulent, unfair, deceptive, misleading, and/or unlawful
10 conduct stemming from their omissions surrounding benzene contamination affecting the
11 Products.

12 43. No reasonable consumer, including Plaintiffs, would have purchased the Products
13 had they known of the material omissions of material facts regarding the presence of benzene.
14 Accordingly, Plaintiffs and the Classes (as defined below) suffered injury in fact and lost money
15 as a result of Defendants’ misleading representations and omissions and did not receive the benefit-
16 of-the- bargain.

17 44. Plaintiffs and the Classes’ injury is underscored by the fact that numerous other
18 products offering the same therapeutic benefit at comparable prices exist that are not contaminated
19 with benzene.

20 45. Plaintiffs and the Classes may be harmed again because they want to purchase the
21 Products in the future; however, without injunctive relief Plaintiffs would not be able to know or
22 trust that Defendants will truthfully and legally label the Products and would likely be misled
23 again.

24 **PLAINTIFFS’ FACTUAL ALLEGATIONS**

1 **PLAINTIFF MARY MOLINA**

2 46. Plaintiff Mary Molina has purchased the Sure Antiperspirant regularly for many
3 years, several times each year. The last time Plaintiff Molina purchased the Sure Antiperspirant
4 was in or around early summer 2021. Plaintiff Molina purchases the Sure Antiperspirant at various
5 locations including the Safeway, Raley's, CVS, and Walmart in Jackson, California, the Rite Aid
6 in Citrus Heights, California, the Target in Folsom, California, and the Target in El Dorado Hills,
7 California.

8
9 47. Nowhere on the packaging did Defendants disclose that the Sure Antiperspirant
10 contains benzene at the time of purchase.

11 48. If Plaintiff Molina had been aware of the existence of benzene in the Sure
12 Antiperspirant, she would not have purchased it or would have paid significantly less.

13 49. As a result of Defendants' actions, Plaintiff Molina has incurred damages, including
14 economic damages.

15 **PLAINTIFF CARLO GARCIA**

16
17 50. Plaintiff Carlo Garcia purchased the Brut Antiperspirant on July 31, 2020 online at
18 Amazon.com for delivery to his home in Sanger, California.

19 51. Nowhere on the packaging did Defendants disclose that the Brut Antiperspirant
20 contains benzene at the time of purchase.

21 52. If Plaintiff Garcia had been aware of the existence of benzene in the Brut
22 Antiperspirant, he would not have purchased it or would have paid significantly less.

23 53. As a result of Defendants' actions, Plaintiff Garcia has incurred damages, including
24 economic damages.
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CLASS ACTION ALLEGATIONS

1
2 54. Plaintiffs brings this action individually and as representatives of all those similarly
3 situated pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of the below-
4 defined Classes:

5 **National Class:** During the fullest period allowed by law, all persons in the United
6 States who purchased any of the Products for their personal use and not for resale
7 within the United States.

8 **California Subclass:** During the fullest period allowed by law, all persons in the
9 State of California who purchased any of the Products for their personal use and
not for resale in the State of California.

10 55. Members of the classes described are referred to as “Class Members” or members
11 of the “Classes.”

12 56. The following are excluded from the Classes: (1) any Judge presiding over this
13 action and members of his or her family; (2) Defendants, Defendants’ subsidiaries, parents,
14 successors, predecessors, and any entity in which Defendants or their parent has a controlling
15 interest (as well as current or former employees, officers, and directors); (3) persons who properly
16 execute and file a timely request for exclusion from the Class; (4) persons whose claims in this
17 matter have been finally adjudicated on the merits or otherwise released; (5) Plaintiffs’ counsel
18 and Defendants’ counsel; and (6) the legal representatives, successors, and assigns of any such
19 excluded persons.
20

21 57. Certification of Plaintiffs’ claims for class-wide treatment is appropriate because
22 Plaintiffs can prove the elements of their claims on a class-wide basis using the same evidence as
23 would be used to prove those elements in individual actions alleging the same claims.
24

25 58. Plaintiffs reserves the right to amend the definitions of the Classes if discovery or
26 further investigation reveals that the Classes should be expanded or otherwise modified.
27

1 59. **Numerosity – Federal Rule of Civil Procedure 23(a)(1).** The members of the
2 Classes are so numerous that individual joinder of all Class Members is impracticable. On
3 information and belief, Class Members number in the thousands to millions. The precise number
4 or identification of members of the Classes are presently unknown to Plaintiffs but may be
5 ascertained from Defendants’ books and records. Class Members may be notified of the pendency
6 of this action by recognized, Court-approved notice dissemination methods, which may include
7 U.S. mail, electronic mail, Internet postings, and/or published notice.
8

9 60. **Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2)**
10 **and 23(b)(3).** Common questions of law and fact exist as to all members of the Classes, which
11 predominate over any questions affecting individual members of the Classes. These common
12 questions of law or fact include, but are not limited to, the following:

- 13 a) Whether the Products contain benzene at the time of purchase;
- 14 b) Whether Defendants omitted or failed to disclose material information to
15 Plaintiffs and Class Members regarding the Products;
- 16 c) Whether the Products are defectively designed, formulated, and/or
17 manufactured;
- 18 d) Whether Defendants knew or reasonably should have known about the harmful
19 level of benzene in the Products prior to distributing and selling them to
20 Plaintiffs and Class Members;
- 21 e) Whether the marketing, advertising, packaging, labeling, and other promotional
22 materials for the Products is deceptive;
- 23 f) Whether Defendants’ actions violate the consumer protection statutes invoked
24 herein;
- 25 g) Whether Defendants breached the implied warranty of merchantability relating
26 to the Products;
- 27 h) Whether Defendants breached an express warranty to Plaintiffs and Class
28 Members;

- 1 i) Whether Defendants were unjustly enriched at the expense of the Plaintiffs and Class Members;
- 2 j) Whether Plaintiffs and Class Members are entitled to damages, including
- 3 compensatory, exemplary, and statutory damages, and the amount of such
- 4 damages;
- 5 k) Whether Plaintiffs and the other Class Members have been injured and the
- 6 proper measure of their losses as a result of those injuries; and
- 7 l) Whether Plaintiffs and the Class Members are entitled to injunctive,
- 8 declaratory, or other equitable relief.

9 61. Defendants engaged in a common course of conduct giving rise to the legal rights
10 sought to be enforced by Plaintiffs, on behalf of themselves and the other Class Members. Similar
11 or identical statutory and common law violations, business practices, and injuries are involved.
12 Individual questions, if any, pale by comparison, in both quality and quantity, to the numerous
13 common questions that dominate this action.

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

23
24 63. **Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).**
25 Plaintiffs are adequate representatives of the Classes because they are members of the Classes and
26 her interests do not conflict with the interests of the Class Members she seeks to represent.

1 Plaintiffs have also retained counsel competent and experienced in complex commercial and class
2 action litigation. Plaintiffs and their counsel intend to prosecute this action vigorously for the
3 benefit of all Class Members. Accordingly, the interests of the Class Members will be fairly and
4 adequately protected by Plaintiffs and their counsel.

5 **64. Insufficiency of Separate Actions – Federal Rule of Civil Procedure 23(b)(1).**

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

13
14 **65. Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2).**

15 Defendants have acted or refused to act on grounds generally applicable to Plaintiffs and All
16 Members of the Classes, thereby making appropriate final injunctive relief and declaratory relief,
17 as described below, with respect to the Classes as a whole.

18
19 **66. Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class action is

20 superior to any other available methods for the fair and efficient adjudication of the present
21 controversy for at least the following reasons:

- 22
- 23 • The damages suffered by each individual putative Class Member do not justify the
24 burden and expense of individual prosecution of the complex and extensive
litigation necessitated by Defendants' conduct;
 - 25 • Even if individual Class Members had the resources to pursue individual
26 litigation, it would be unduly burdensome to the courts in which the individual
litigation would proceed;
- 27

- 1 • The claims presented in this case predominate over any questions of law or fact
2 affecting individual Class Members;
- 3 • Individual joinder of all putative Class Members is impracticable;
- 4 • Absent a class action, Plaintiffs and putative Class Members will continue to
5 suffer harm as a result of Defendants' unlawful conduct; and
- 6 • This action presents no difficulty that would impede its management by the Court
7 as a class action, which is the best available means by which Plaintiffs and putative
8 Class Members can seek redress for the harm caused by Defendants.

8 67. In the alternative, the Classes may be certified for the following reasons:

- 9 • The prosecution of separate actions by individual Class Members would create a
10 risk of inconsistent or varying adjudication with respect to individual Class
11 Members, which would establish incompatible standards of conduct for
12 Defendants;
- 13 • Adjudications of individual Class and Members' claims against Defendants
14 would, as a practical matter, be dispositive of the interests of other putative Class
15 who are not parties to the adjudication and may substantially impair or impede the
16 ability of other putative Class Members to protect their interests; and
- 17 • Defendants have acted or refused to act on grounds generally applicable to the
18 putative Classes, thereby making appropriate final and injunctive relief with
19 respect to the putative Classes as a whole.

17 **COUNT I**

18 **California's Consumer Legal Remedies Act ("CLRA")**

19 **Cal. Civ. Code §§ 1750, et seq.**

20 **(On Behalf of Plaintiffs and the California Subclass)**

21 68. Plaintiffs repeat and re-allege the allegations above as if set forth herein.

22 69. Defendants' conduct constitutes violations under California's Consumer Legal
23 Remedies Act, Cal. Civ. Code § 1750, et seq.. The CLRA proscribes "unfair methods of
24 competition and unfair or deceptive acts or practices undertaken by any person in a transaction
25 intended to result or which results in the sale or lease of goods or services to any consumer."
26
27
28

1 70. Defendants' conduct falls within the meaning of this statute because they caused
2 transactions to occur resulting in the sale or lease of goods or services to consumers – namely, the
3 sale of the Products to Plaintiffs and the California Subclass. Deodorant and antiperspirant sprays
4 are considered goods within the meaning of the statute under Civil Code § 1761(a) and Defendants'
5 sale of the Products is considered a service under Civil Code § 1761(b).

6 71. Plaintiffs and Class Members are consumers pursuant to the CLRA.

7 72. Each Defendant is a person pursuant to the CLRA.

8 73. The Products are goods pursuant to the CLRA.

9 74. Defendants violated the CLRA by way of the following provisions:

- 10
- 11 • In violation of Civil Code § 1770(a)(5), Defendants represented (and continue to
12 represent) that their goods have characteristics which they do not have – that, in
13 exchange for each payment, Plaintiffs and the members of the California Subclass
14 receive antiperspirant which is functioning as intended and which is not
15 contaminated with benzene;
 - 16 • In violation of Civil Code § 1770(a)(14), Defendants represented (and continue to
17 represent) that a consumer has rights, remedies and/or obligations which they did
18 not have – that Plaintiffs and members of the California Subclass receive
19 antiperspirant which is functioning as intended and which is not contaminated with
20 benzene, and that Defendants are capable of correcting defects when they are not;

21 75. Defendants also engaged in unfair competition or unfair or deceptive acts or
22 practices in violation of Civil Code § 1770(a)(5) and (a)(7) when they represented through their
23 advertising, warranties, and other express representations that the Products have benefits or
24

1 characteristics that they did not actually have, namely that the Products were safe to use and failing
2 to disclose that the Products were contaminated with the carcinogen benzene.

3 76. Defendants are aware that their representations are false and misleading –
4 specifically, the Defendants continued to sell the Products into the stream of commerce even after
5 they had knowledge that the Products were contaminated with benzene.

6 77. Plaintiffs and California Subclass have suffered injury-in-fact and actual damages
7 resulting from Defendants’ omissions and misrepresentations because Defendants knew that the
8 Products were contaminated with benzene.

9 78. Contemporaneously with the filing of this Complaint, Plaintiffs and Class Members
10 put Defendants on written notice of their claims arising from violations of numerous provisions of
11 California law, including the California Consumers Legal Remedies Act (“CLRA”), California
12 Civil Code § 1770, et seq., as well as other causes of action. Plaintiffs will amend their Complaint
13 to add claims for monetary damages if Defendants fail to take the corrective actions.
14

15 79. Plaintiff’s declaration stating facts showing that venue in this District is proper
16 pursuant to Cal. Civ. Code § 1780(c) is attached hereto as Exhibit A.
17

18 80. In accordance with Civil Code § 1780(a), Plaintiffs and the other California
19 Subclass Members seek injunctive and equitable relief for Defendants’ violations of the CLRA,
20 including an injunction to enjoin Defendants from continuing their deceptive advertising and sales
21 practices.
22

23 81. Pursuant to California Civil Code § 1780(a)(1)-(5) and § 1780(e), Plaintiffs seek an
24 order enjoining Defendants from the unlawful practices described above, a declaration that
25 Defendants’ conduct violates the Consumers Legal Remedies Act, reasonable attorneys’ fees and
26 litigation costs, and any other relief the Court deems proper under the CLRA.
27

1 82. Plaintiffs and the California Subclass Members' injuries were proximately caused
2 by Defendants' fraudulent business practices.

3 83. Therefore, Plaintiffs and California Subclass Members are entitled to relief under
4 the CLRA.

5 **COUNT II**
6 **California's False Advertising Law (the "FAL")**
7 **Cal. Bus. & Prof. Code §§ 17500, *et seq.***
8 **(On Behalf of Plaintiffs and the California Subclass)**

8 84. Plaintiffs repeat and re-allege the allegations above as if set forth herein.

9 85. California's False Advertising Law (the "FAL"), Cal. Bus. & Prof. Code §§ 17500,
10 *et seq.*, makes it "unlawful for any person to make or disseminate or cause to be made or
11 disseminated before the public in this state, . . . in any advertising device . . . or in any other manner
12 or means whatever, including over the Internet, any statement, concerning . . . personal property
13 or services, professional or otherwise, or performance or disposition thereof, which is untrue or
14 misleading and which is known, or which by the exercise of reasonable care should be known, to
15 be untrue or misleading."
16

17 86. Defendants advertised and promoted the Products by relying on the trust and
18 brand loyalty customers had for their Brut and Sure brands and representing that the Products were
19 safe for personal use, when in reality the Products were contaminated with benzene. Defendants'
20 advertisements and inducements were made in and originated from California and fall within the
21 definition of advertising as contained in Bus. & Prof. Code § 17500, *et seq.* in that Defendants'
22 representations were intended to induce consumers to purchase the Products. Defendants knew
23 that those statements were false and misleading as it knew or should have known through the
24 exercise of reasonable care that the Products were contaminated with benzene.
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1 87. Plaintiffs have standing to pursue claims under the FAL as they reviewed and
2 relied on Defendants' packaging, advertising, representations, and marketing materials regarding
3 the Products, when selecting and purchasing the Products.

4 88. Plaintiffs purchased the Products in reliance on the statements made in
5 Defendants' advertising and marketing materials and Defendants' omissions and concealment of
6 material facts regarding the Products.

7 89. Plaintiffs and the California Subclass lost money or property as a result of
8 Defendants' FAL violations because (a) they would not have purchased Defendants' Products
9 absent Defendants' representations that the Products were safe and effective; (b) they would not
10 have purchased the Products for the same price absent Defendants' misrepresentations; and (c)
11 Defendants' Products did not have the characteristics, benefits, or quantities as promised.

12 90. Plaintiffs seek injunctive relief, restitution, and disgorgement of
13 any monies wrongfully acquired or retained by Defendants and by means of its
14 deceptive or misleading representations, including monies already obtained from
15 Plaintiffs as provided for by the California Business and Professions Code § 17500.
16
17
18

19 **COUNT III**
20 **California's Unfair Competition Law ("UCL")**
21 **Cal. Bus. & Prof. Code §§ 17200, et seq.**
22 **(On Behalf of Plaintiffs and the California Subclass)**

23 91. Plaintiffs repeat and re-allege the allegations above as if set forth herein.

24 92. Each Defendant is a person pursuant to the UCL.

25 93. Defendants engaged in unlawful, fraudulent, and unfair business practices.

26 94. Defendants' conduct was unlawful because it violates the CLRA, the FAL, tort law,
27 and contract law.
28

1 95. Defendants’ conduct is fraudulent because they continued to represent that their
2 goods were fit for their intended use when they knew that the Products were contaminated with
3 benzene in an attempt to get consumers to continue to buy the Products; and, Defendants’ conduct
4 is fraudulent because they did not disclose to the buyers that the Products were contaminated with
5 benzene and continue to conceal the fact of this contamination in an attempt to keep consumers
6 from seeking refunds or seeking other redress, so they would not bear the costs of the defect and
7 any damage they may have caused.
8

9 96. Defendants’ conduct constitutes an unfair business practice – under the UCL, a
10 business practice is considered to be “unfair” if the conduct alleged is immoral, unethical,
11 oppressive, or substantially injurious to consumers; as well as if the conduct causing alleged injury
12 which is not outweighed by benefits to other consumers or to competition, and that the injury is of
13 a type which the consumer could not have avoided.
14

15 97. Defendants’ behavior is immoral, unethical, oppressive and injurious to consumers
16 because they are profiting from concealing the presence of benzene in the Products, which are still
17 being sold to this day.

18 98. Defendants’ retention of profits from the aforementioned conduct does not
19 outweigh the economic harm that said retention imposes on consumers. The lone party that benefits
20 is the Defendants – their conduct also harms competition, who would otherwise be the recipient
21 of the business that Defendants acquired using omissions and misrepresentations.
22

23 99. Plaintiffs and the California Subclass Members had no way of knowing that
24 Defendants were selling defective products.

25 100. The above acts of Defendants in disseminating said misleading and deceptive
26 statements to consumers throughout the State of California, including to Plaintiffs and those
27

1 similarly situated, were and are likely to deceive reasonable consumers by obfuscating the true
2 defective nature of the Products.

3 101. As a result of Defendant's above unlawful, unfair and fraudulent acts and
4 practices, Plaintiffs, on behalf of themselves and all others similarly situated, and as appropriate,
5 on behalf of the general public, seeks injunctive relief prohibiting Defendants from continuing
6 these wrongful practices, and such other equitable relief, including full restitution of all improper
7 revenues and ill-gotten profits derived from Defendants' wrongful conduct to the fullest extent
8 permitted by law.
9

10 102. Misabeled products cannot legally be manufactured, advertised, distributed, or
11 sold. Thus, the Products have no economic value and are worthless as a matter of law, and
12 purchasers of the Products are entitled to a restitution refund of the purchase price of the Products.

13 103. Therefore, Plaintiffs and the California Subclass Members are entitled to relief
14 under the UCL.
15

16 **COUNT IV**
17 **Breach of Express Warranty**
18 **(On Behalf of the National Class and,**
19 **alternatively, the California Subclass)**

20 104. Plaintiffs hereby re-allege and incorporate all allegations contained in the preceding
21 paragraphs as if fully set forth herein.

22 105. Plaintiffs, and each member of the Classes, formed a contract with Defendants at
23 the time Plaintiffs and each member of the Classes purchased the Products.

24 106. The terms of the contract include the promises and affirmations of fact made by
25 Defendants on the Products' packaging and through marketing and advertising, as described
26 above.
27

1 115. Defendants marketed, sold, and/or distributed the Products, and Plaintiffs and other
2 Class Members purchased the Products.

3 116. Plaintiffs bring this claim for breach of the implied warranty of merchantability on
4 behalf of themselves and other consumers who purchased the Products with the expectation of the
5 Products not containing dangerous chemicals such as benzene.

6 117. Defendants have breached the implied warranties of merchantability that they made
7 to Plaintiffs and the prospective class. For example, Defendants impliedly warranted that the
8 Products were free from defects, that they was merchantable, and that they were safe and fit for
9 the ordinary purpose for which antiperspirant is used.
10

11 118. When sold by Defendants, the Products were not merchantable, did not pass
12 without objection in the trade, were not of adequate quality within that description, were not fit for
13 the ordinary purposes for which such goods are used, and did not conform to the promises or
14 affirmations of fact made on the container or label.
15

16 119. As a result of Defendants' breaches of implied warranties, Class Members did not
17 receive the benefit of their bargain and suffered damages at the point of sale stemming from their
18 overpayment for the Products that contained benzene.

19 120. As a direct and proximate result of Defendants' breach of the warranties of
20 merchantability, Plaintiffs and the other Class Members have been damaged in an amount to be
21 proven at trial.
22

23
24 **COUNT VI**
25 **Unjust Enrichment**
26 **(In the Alternative To Count I And On Behalf of the National Class and,**
27 **alternatively, the California Subclass)**
28

1 121. Plaintiffs hereby re-allege and incorporate all allegations contained in the preceding
2 paragraphs as if fully set forth herein.

3 122. Plaintiffs and the other members of the Classes conferred benefits on Defendants
4 by purchasing the Products.

5 123. Defendants have been unjustly enriched in retaining the revenues derived from the
6 purchase of the Products by Plaintiffs and the other members of the Classes.

7 124. Retention of those monies under these circumstances is unjust and inequitable
8 because Defendants' labeling of the Products was misleading to consumers, which caused injuries
9 to Plaintiffs and the other members of the Classes because they would have not purchased the
10 Products if Defendants had disclosed that the Products contained benzene.

11 125. Because Defendants' retention of the non-gratuitous benefits conferred on them by
12 Plaintiffs and the other members of the Classes is unjust and inequitable, Defendants must pay
13 restitution to Plaintiffs and the other members of the Classes for their unjust enrichment, as ordered
14 by the Court.
15

16
17 **REQUEST FOR RELIEF**

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

- 20 a) For an order declaring: (i) this is a class action pursuant to Rule 23 of the Federal
21 Rules of Civil Procedure on behalf of the proposed Classes described herein; and (ii)
22 appointing Plaintiffs to serve as representatives for the Classes and Plaintiffs' counsel
to serve as Class Counsel;
- 23 b) For an order enjoining Defendants from continuing to engage in the unlawful conduct
24 set forth herein;
- 25 c) For an order awarding restitution of the monies Defendants wrongfully acquired by
26 their illegal and deceptive conduct;
- 27

- 1 d) For an order requiring disgorgement of the monies Defendants wrongfully acquired
2 by their illegal and deceptive conduct;
3 e) For compensatory and punitive damages, including actual and statutory damages,
4 arising from Defendants' wrongful conduct and illegal conduct;
5 f) For an award of reasonable attorneys' fees and costs and expenses incurred in the
6 course of prosecuting this action; and
7 g) For such other and further relief as the Court deems just and proper.

8 **JURY DEMAND**

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

11 Dated: November 30, 2021

12 Respectfully submitted,

13 By:

14 **MILBERG COLEMAN BRYSON**
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**Pro Hac Vice* Application
Forthcoming

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