

Alex R. Straus (SBN 321366)  
[Astraus@Milberg.com](mailto:Astraus@Milberg.com)  
**MILBERG COLEMAN BRYSON  
PHILLIPS GROSSMAN, PLLC**  
280 S. Beverly Drive  
Beverly Hills, CA 90212  
Telephone: (917) 471-1894  
Facsimile: (310) 496-3176

*Counsel for Plaintiff and Proposed Classes*

*Additional attorneys on signature page*

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

MOSANTHONY WILSON and JAMES  
CORSEY, individually and on behalf of  
all others similarly situated,

Plaintiffs,

v.

THRIVING BRANDS, LLC, HENKEL  
AG & CO. KGAA, and THE DIAL  
CORPORATION d/b/a HENKEL NORTH  
AMERICAN CONSUMER GOODS,  
Defendants.

Case No.: **'21CV1988 H RBB**

**CLASS ACTION COMPLAINT**

**Jury Trial Demanded**

Plaintiffs Mosanthony Wilson and James Corsey (“Plaintiffs”) bring this Class Action Complaint against Thriving Brands LLC (“Thriving Brands”), Henkel AG & Co. KGaA (“Henkel AG”), and The Dial Corporation d/b/a Henkel North American Consumer Goods (“Henkel USA”) (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

**CLASS ACTION COMPLAINT**

1 and experiences and, as to all other matters, upon information and belief, including investigation  
2 conducted by their attorneys:

3 **NATURE OF THE ACTION**

4 1. This is a civil class action brought by Plaintiffs on behalf of all consumers who  
5 purchased Right Guard Sport Fresh antiperspirant aerosol (“Right Guard Sport Fresh” or the  
6 “Product”) from Defendants for normal, household use. The Product is defective because it contains  
7 the chemical benzene, a known carcinogen that offers no therapeutic deodorant or antiperspirant  
8 benefit.  
9

10 2. The Right Guard brand, the second largest male deodorant brand in the United  
11 States, was first introduced in 1960 and is currently owned by Defendant Thriving Brands. Thriving  
12 Brands acquired the Right Guard brand from Defendant Henkel USA in 2021, and with it the brand  
13 recognition and trust of consumers Right Guard has built over the course of its 60-year lifespan.  
14 Defendants know that consumers reasonably believe the Right Guard brand, including the defective  
15 Product at issue, are made with quality materials and can be used safely as intended.  
16

17 3. Defendants formulate, design, manufacture, market, advertise, distribute, and sell  
18 the Product to consumers throughout the United States, including in the State of New York.

19 4. Defendants distribute and sell the Product through various authorized retailers in  
20 store and online.

21 5. Defendants took advantage of the trust consumers have in the Right Guard brand,  
22 representing that the Product is safe for its intended use when, in reality, the Product contains  
23 significant concentrations of benzene, a harmful carcinogen.  
24

25 6. Benzene is a carcinogen known to cause cancer in humans. Long-term exposure  
26 additionally causes harmful effects on the bone marrow, a decrease in red blood cells leading to  
27

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 7. 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 8  
8 parts per million (“ppm”). *Id.*

9 10 8. The use of benzene in the Product is demonstrably avoidable. Feasible alternative  
11 formulations, designs, and materials were available to Defendants at the time they formulated,  
12 designed, and manufactured the Product. Critically, such alternative formulations and designs  
13 were and are used by other manufacturers to produce and sell non-defective spray deodorants and  
14 antiperspirants. In any event, the Product has a benzene concentration far above the FDA  
15 concentration limit of 2 ppm.

16 17 9. The Product’s benzene contamination was not disclosed to the consumer on the  
18 product label, the ingredients list, or otherwise.

19 20 10. Plaintiffs seek damages and equitable remedies for themselves, and for the  
20 proposed Classes.

21 **PARTIES**

22 **A. Plaintiffs**

23 24 11. Plaintiff Mosanthy Wilson is a resident and citizen of San Diego, California who  
25 purchased and used Right Guard Sport Fresh antiperspirant aerosol within the relevant time period.



1 this District, and because Defendants purposely availed themselves of the laws of the United States  
2 and the State of New York.

3 18. In accordance with 28 U.S.C. § 1391, venue is proper in this District because a  
4 substantial part of the conduct giving rise to Plaintiffs’ claims occurred in this District, Defendants  
5 transact business in this District, and Defendants have intentionally availed themselves of the laws  
6 and markets within this District.

7  
8 **FACTUAL ALLEGATIONS**

9 **A. The Right Guard Brand**

10 19. The Right Guard brand was first introduced by the Gillette Company in 1960 and,  
11 for the past 60 years, it has built a reputation for selling safe, quality, and effective men’s deodorant  
12 and antiperspirant. The Gillette Company was acquired by The Procter & Gamble Company in  
13 2005 and one year later in 2006 the Right Guard brand was sold as part of a \$420 million deal to  
14 Defendant Henkel USA, a subsidiary of Henkel AG (together “Henkel”).

15 20. Henkel is a large multinational consumer goods company known for its wide range  
16 of personal care and hygiene products, including the Right Guard brand and the antiperspirant  
17 Product at issue here. Henkel’s “products and technologies are available worldwide . . . [w]ith  
18 employees from 125 nations and locations around the world.”<sup>1</sup>

19  
20 21. Defendant Thriving Brands is a privately held company formed in 2021 to purchase  
21 the Right Guard brand and one other consumer goods brand from Henkel. Thriving Brands  
22 describes itself as “[a] seasoned team of consumer packaged goods executives” who “bring  
23 excitement and growth to our brands by understanding their right to win . . . based on an intimate  
24

25  
26  
27 <sup>1</sup> <https://www.henkel.com/company/locations> (last visited Nov. 19, 2021).

1 knowledge of our consumers’ needs, wants, and aspirations.”<sup>2</sup> Thriving Brands has just two  
2 brands—Right Guard and Dry Idea—and it claims to be “[c]ultivating brands to grow to new  
3 heights.”<sup>3</sup>

4 22. Defendants’ Right Guard product line, including the Product, is manufactured,  
5 distributed, and sold throughout the United States, including the State of New York.

6 **B. The Product**

7 23. Deodorant is a product applied to the body to prevent or mask the odor of  
8 perspiration. Antiperspirants, a subclass of deodorants, prevent sweat glands from producing  
9 sweat. The Product is both a deodorant and antiperspirant applied to the body as a spray.  
10

11 24. The U.S. Food and Drug Administration (“FDA”) classifies and regulates most  
12 deodorants, including the Product, as cosmetics. In addition, the FDA classifies and regulates  
13 antiperspirants, including the Product, as a drug.

14 25. On November 3, 2021, Valisure, an analytical pharmacy and consumer protection  
15 organization, petitioned the FDA to address the dangerous levels of benzene in the Product and  
16 other deodorants and antiperspirants based upon rigorous testing the organization had conducted  
17 for a number of spray deodorant and antiperspirant products.<sup>4</sup> The next day, Valisure released the  
18 results of these tests.<sup>5</sup>  
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24 <sup>2</sup> <https://thriving-brands.com/about-us/> (last visited Nov. 22, 2021)

25 <sup>3</sup> <https://thriving-brands.com/brands/> (last visited Nov. 22, 2021)

26 <sup>4</sup> <https://www.valisure.com/wp-content/uploads/Valisure-FDA-Citizen-Petition-on-Body-Spray-v4.0-3.pdf> (last  
visited Nov. 9, 2021).

27 <sup>5</sup> <https://www.valisure.com/blog/valisure-news/valisure-detects-benzene-in-body-spray-products-3/> (last visited  
28 Nov. 8, 2021).

1           26. In testing, Valisure found average concentrations of benzene above the FDA  
2 concentration limit of 2 ppm in 16 spray deodorants, including the Product which is manufactured  
3 and sold by Defendants.

4           27. In particular, Valisure found benzene concentrations of 2.87 ppm in Right Guard  
5 Sport Fresh aerosol antiperspirant. Furthermore, independent testing conducted at a laboratory at  
6 Yale University found benzene concentrations of 5.07 ppm in the Product, 2.5 times the FDA  
7 concentration limit.<sup>6</sup>

8  
9           **C. Danger Posed by the Product**

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

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

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

19           31. Due to these significant health risks, the World Health Organization and the  
20 International Agency for Research on Cancer classify benzene as a Group 1 compound that is  
21 “carcinogenic to humans.”<sup>7</sup>  
22  
23

24  
25  
26 <sup>6</sup> <https://www.consumerlab.com/answers/benzene-contamination-in-deodorants-and-antiperspirants/benzene-deodorants/> (last visited Nov. 22, 2021)

27 <sup>7</sup> [https://www.who.int/water\\_sanitation\\_health/dwq/chemicals/benzenesum.pdf](https://www.who.int/water_sanitation_health/dwq/chemicals/benzenesum.pdf) (last visited Nov. 7, 2021).

1           32.     The FDA classifies Benzene as a Class 1 compound.<sup>8</sup> According to FDA guidance:  
2 “Solvents in Class 1 should not be employed in the manufacture of drug substances, excipients,  
3 and drug products, because of their unacceptable toxicity or their deleterious environmental  
4 effect.”<sup>9</sup> The FDA concentration limit for benzene is 2 ppm.<sup>10</sup>

5           33.     Thriving Brands put Right Guard’s “right to win” over consumer safety, exploiting  
6 decades of existing consumer trust in the Right Guard brand to sell the Product contaminated with  
7 a benzene concentration level above the 2 ppm FDA concentration limit, thus subjecting unwitting  
8 consumers to dangerous levels of a known carcinogen.

9  
10           **D. Defendants’ Representations**

11           34.     Defendants represent to consumers that the Product is safe and effective for  
12 everyday use, assuring consumers that “Right Guard Sport has you protected.” Although Right  
13 Guard Sport Fresh aerosol antiperspirant was found to contain benzene concentration above the  
14 FDA limit, Defendants do not list benzene among the active or inactive ingredients anywhere on  
15 its website,<sup>11</sup> and nothing on the Product label otherwise insinuates, states, or warns that the  
16 Product contains benzene:  
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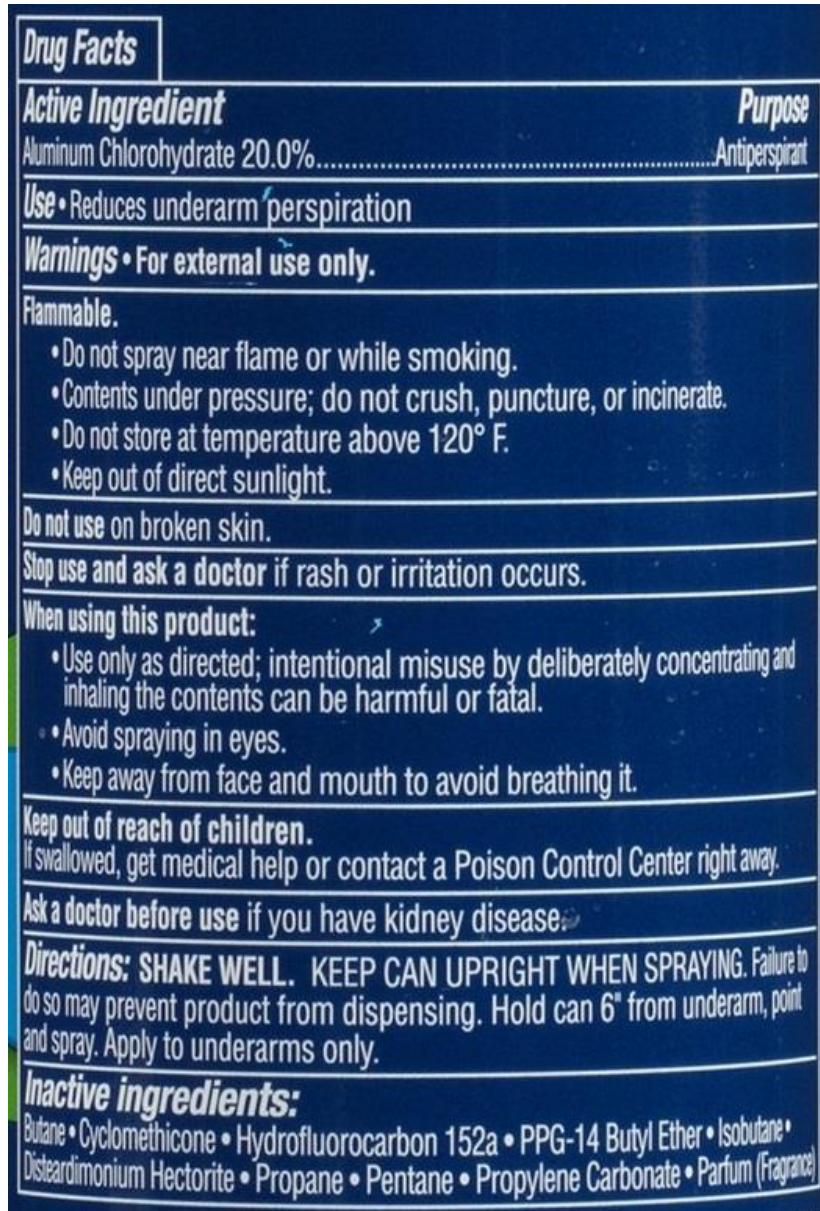
25 <sup>8</sup> <https://www.fda.gov/media/71737/download> (last visited Nov. 7, 2021).

26 <sup>9</sup> *Id.*

27 <sup>10</sup> *Id.*

28 <sup>11</sup> <https://www.rightguard.com/products/sport/aerosol/sport-fresh-48-hour/> (last visited Nov. 22, 2021)





12

**E. Defendants’ Product is Adulterated and Illegal to Sell**

35. Defendants’ antiperspirant Product is a drug which is adulterated under 21 U.S.C. § 351(a)(1) based upon the presence of benzene.

<sup>12</sup> <https://www.walmart.com/ip/Right-Guard-Sport-Antiperspirant-Deodorant-Aerosol-Fresh-6-oz/10311591> (last visited Nov. 22, 2021)

1           36.     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           37.     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           38.     As alleged herein, Defendants have violated the FDCA, the Sherman Law, and  
8 consumer protection statutes.

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

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

17           41.     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

21           42.     Plaintiffs and the Classes may be harmed again because they want to purchase the  
22 Product in the future; however, without injunctive relief Plaintiffs would not be able to know or  
23 trust that Defendants will truthfully and legally label the Product and would likely be misled again.  
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**PLAINTIFFS' FACTUAL ALLEGATIONS**

**PLAINTIFF MOSANTHONY WILSON**

43. Plaintiff Mosanthy Wilson has purchased Right Guard Sport Fresh aerosol antiperspirant regularly for approximately four years, typically once or twice each month. The last time Plaintiff Wilson purchased the Product was in or around October 2021. Plaintiff Wilson purchases the Product at Walmart in San Diego, California.

44. Nowhere on the packaging did Defendants disclose that the Product contains benzene at the time of purchase.

45. If Plaintiff Wilson had been aware of the existence of benzene in the Product, he would not have purchased the Product or would have paid significantly less.

46. As a result of Defendants' actions, Plaintiff Wilson has incurred damages, including economic damages.

**PLAINTIFF JAMES CORSEY**

47. Plaintiff Corsey has purchased Right Guard Sport Fresh regularly for many years, typically a few times each year. The last time Plaintiff Corsey purchased the Product was in or around February 2021. Plaintiff Corsey typically purchases the Product at Price Chopper in Rensselaer, New York or Walmart in East Greenbush, New York.

48. Nowhere on the packaging did Defendants disclose that the Product contains benzene at the time of purchase.

49. If Plaintiff Corsey had been aware of the existence of benzene in the Product, he would not have purchased the Product or would have paid significantly less.

50. As a result of Defendants' actions, Plaintiff Corsey has incurred damages, including economic damages.

**CLASS ACTION ALLEGATIONS**

1  
2 51. 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 Right Guard Sport Fresh aerosol antiperspirant for their  
7 personal use and not for resale within the United States.

8 **New York Subclass:** During the fullest period allowed by law, all persons in the  
9 United States who purchased Right Guard Sport Fresh aerosol antiperspirant for  
their personal use and not for resale in the State of New York.

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

12 53. 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 54. 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 55. 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           56.     **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           57.     **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 Product contains 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 Product;
- 16           c) Whether the Product is defectively designed, formulated, and/or manufactured;
- 17           d) Whether Defendants knew or reasonably should have known about the harmful  
18 level of benzene in the Product prior to distributing and selling them to Plaintiffs  
19 and Class Members;
- 20           e) Whether the marketing, advertising, packaging, labeling, and other promotional  
21 materials for the Product is deceptive;
- 22           f) Whether Defendants’ actions violate the consumer protection statutes invoked  
23 herein;
- 24           g) Whether Defendants breached the implied warranty of merchantability relating  
25 to the Product;
- 26           h) Whether Defendants breached an express warranty to Plaintiffs and Class  
27 Members;
- 28

- 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 58. 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 59. **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 Product.  
17 Plaintiffs shares the aforementioned facts and legal claims or questions with Class Members, and  
18 Plaintiffs and all Class Members have been similarly affected by Defendants’ common course of  
19 conduct alleged herein. Plaintiffs and all Class Members sustained monetary and economic  
20 injuries including, but not limited to, ascertainable loss arising out of Defendants’ deceptive  
21 omission of material fact and misrepresentations regarding the presence of benzene in the Product.  
22

23 60. **Adequacy of Representation – Federal Rule of Civil Procedure 23(a)(4).**  
24 Plaintiffs are adequate representatives of the Classes because they are members of the Classes and  
25 her interests do not conflict with the interests of the Class Members she seeks to represent.  
26 Plaintiffs have also retained counsel competent and experienced in complex commercial and class  
27



1 action litigation. Plaintiffs and their counsel intend to prosecute this action vigorously for the  
2 benefit of all Class Members. Accordingly, the interests of the Class Members will be fairly and  
3 adequately protected by Plaintiffs and their counsel.

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

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

11 **62. Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2)**

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

15 **63. Superiority – Federal Rule of Civil Procedure 23(b)(3).** A class action is superior  
16 to any other available methods for the fair and efficient adjudication of the present controversy for  
17 at least the following reasons:

- 18 • The damages suffered by each individual putative Class Member do not justify the  
19 burden and expense of individual prosecution of the complex and extensive  
20 litigation necessitated by Defendants' conduct;
- 21 • Even if individual Class Members had the resources to pursue individual  
22 litigation, it would be unduly burdensome to the courts in which the individual  
23 litigation would proceed;
- 24 • The claims presented in this case predominate over any questions of law or fact  
25 affecting individual Class Members;
- 26 • Individual joinder of all putative Class Members is impracticable;
- 27 • Absent a class action, Plaintiffs and putative Class Members will continue to  
28 suffer harm as a result of Defendants' unlawful conduct; and

- This action presents no difficulty that would impede its management by the Court as a class action, which is the best available means by which Plaintiffs and putative Class Members can seek redress for the harm caused by Defendants.

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

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

**COUNT I**  
**California’s Consumer Legal Remedies Act (“CLRA”)**  
**Cal. Civ. Code §§ 1750, et seq.**  
**(On Behalf of Plaintiff Wilson and the California Subclass)**

65. Plaintiff Wilson repeats and re-alleges the allegations above as if set forth herein.

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

67. Defendants’ conduct falls within the meaning of this statute because they caused transactions to occur resulting in the sale or lease of goods or services to consumers – namely, the sale of the Product to Plaintiff Wilson and the Class. Deodorant and antiperspirant sprays are



1 considered goods within the meaning of the statute under Civil Code § 1761(a) and Defendants’  
2 sale of the Product is considered a service under Civil Code § 1761(b).

3 68. Plaintiff Wilson and Class Members are consumers pursuant to the CLRA.

4 69. Defendants violated the CLRA by way of the following provisions:

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

16

17 70. Defendants also engaged in unfair competition or unfair or deceptive acts or  
18 practices in violation of Civil Code § 1770(a)(5) and (a)(7) when they represented through their  
19 advertising, warranties, and other express representations that the Product has benefits or  
20 characteristics that they did not actually have, namely that the Product was safe to use and failing  
21 to disclose that the Product was contaminated with the carcinogen benzene.

22

23 71. Defendants are aware that their representations are false and misleading –  
24 specifically, the Defendants continued to sell the Product into the stream of commerce even after  
25 they had knowledge that the Product was contaminated with benzene.

1           72. Plaintiff Wilson and California Subclass have suffered injury-in-fact and actual  
2 damages resulting from Defendants’ omissions and misrepresentations because Defendants knew  
3 that the Product was contaminated with benzene.

4           73. On November 24, 2021, prior to the filing of this Complaint, Plaintiff Wilson and  
5 Class Members put Defendants on written notice of their claims arising from violations of  
6 numerous provisions of California law, including the California Consumers Legal Remedies Act  
7 (“CLRA”), California Civil Code § 1770, et seq., as well as other causes of action. Plaintiff Wilson  
8 will amend his Complaint to add claims for monetary damages if P&G fails to take the corrective  
9 actions.  
10

11           74. In accordance with Civil Code § 1780(a), Plaintiff Wilson and the other California  
12 Subclass Members seek injunctive and equitable relief for Defendants’ violations of the CLRA,  
13 including an injunction to enjoin Defendants from continuing their deceptive advertising and sales  
14 practices.  
15

16           75. Pursuant to California Civil Code § 1780(a)(1)-(5) and § 1780(e), Plaintiff Wilson  
17 seeks an order enjoining Defendants from the unlawful practices described above, a declaration  
18 that Defendants’ conduct violates the Consumers Legal Remedies Act, reasonable attorneys’ fees  
19 and litigation costs, and any other relief the Court deems proper under the CLRA.  
20

21           76. Plaintiff Wilson and the California Subclass Members’ injuries were proximately  
22 caused by Defendants’ fraudulent business practices.

23           77. Therefore, Plaintiff Wilson and California Subclass Members are entitled to relief  
24 under the CLRA.  
25  
26  
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**COUNT II**

**California’s False Advertising Law (the “FAL”)  
Cal. Bus. & Prof. Code §§ 17500, *et seq.*  
(On Behalf of Plaintiff Wilson and the California Subclass)**

78. Plaintiff Wilson repeats and re-alleges the allegations above as if set forth herein.

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

80. Defendants advertised and promoted the Product by relying on the trust and brand loyalty customers had for their Right Guard brand and representing that the Product was safe for personal use, when in reality the Product was contaminated with benzene. Defendants’ advertisements and inducements were made in and originated from California and fall within the definition of advertising as contained in Bus. & Prof. Code § 17500, et seq. in that Defendants’ representations were intended to induce consumers to purchase the Product. Defendants knew that those statements were false and misleading as it knew or should have known through the exercise of reasonable care that the Product was contaminated with benzene.

81. Plaintiff Wilson and the California Subclass lost money or property as a result of Defendants’ FAL violations because (a) they would not have purchased Defendants’ Product absent Defendants’ representations that the Product was safe and effective; (b) they would not

1 have purchased the Product for the same price absent Defendants’ misrepresentations; and (c)  
2 Defendants’ Product did not have the characteristics, benefits, or quantities as promised.

3 **COUNT III**  
4 **California’s Unfair Competition Law (“UCL”)**  
5 **Cal. Bus. & Prof. Code §§ 17200, *et seq.***  
6 **(On Behalf of Plaintiff Wilson and the California Subclass)**

7 82. Plaintiff Wilson repeats and re-alleges the allegations above as if set forth herein.

8 83. Defendants engaged in unlawful, fraudulent, and unfair business practices.

9 84. Defendants’ conduct was unlawful because it violates the CLRA, the FAL, tort law,  
10 and contract law.

11 85. Defendants’ conduct is fraudulent because they continued to represent that their  
12 goods were fit for their intended use when they knew that the Product was contaminated with  
13 benzene in an attempt to get consumers to continue to buy the Product; and, Defendants’ conduct  
14 is fraudulent because they did not disclose to the buyers that the Product was contaminated with  
15 benzene and continue to conceal the fact of this contamination in an attempt to keep consumers  
16 from seeking refunds or seeking other redress, so they would not bear the costs of the defect and  
17 any damage it may have caused.

18 86. Defendants’ conduct constitutes an unfair business practice – under the UCL, a  
19 business practice is considered to be “unfair” if the conduct alleged is immoral, unethical,  
20 oppressive, or substantially injurious to consumers; as well as if the conduct causing alleged injury  
21 which is not outweighed by benefits to other consumers or to competition, and that the injury is of  
22 a type which the consumer could not have avoided.  
23

1 87. Defendants’ behavior is immoral, unethical, oppressive and injurious to consumers  
2 because they are profiting from concealing the presence of benzene in the Product, which is still  
3 being sold to this day.

4 88. Defendants’ retention of profits from the aforementioned conduct does not  
5 outweigh the economic harm that said retention imposes on consumers. The lone party that benefits  
6 is the Defendants – their conduct also harms competition, who would otherwise be the recipient  
7 of the business that Defendants acquired using omissions and misrepresentations.  
8

9 89. Plaintiff Wilson and the California Subclass Members had no way of knowing that  
10 Defendants were selling defective products.

11 90. Therefore, Plaintiff Wilson and the California Subclass Members are entitled to  
12 relief under the UCL.

13 **COUNT IV**  
14 **Violation of New York General Business Laws § 349**  
15 **(On Behalf Of Plaintiff Corsey and The New York Subclass)**

16 91. Plaintiff Corsey hereby re-alleges and incorporates all allegations contained in the  
17 preceding paragraphs as if fully set forth herein.

18 92. N.Y. Gen. Bus. Law §349 prohibits “[d]eceptive acts or practices in the conduct of  
19 any business, trade or commerce or in the furnishing of any service[.]”

20 93. Defendants’ actions occurred in the conduct of business, trade, or commerce.

21 94. Defendants’ conduct, as described in this Complaint, constitutes “deceptive acts or  
22 practices” within the meaning of the N.Y. Gen. Bus. Law.  
23

24 95. Defendants’ deceptive acts and practices were intended to mislead consumers in a  
25 material way in the process of purchasing Defendants’ Product, and a reasonable consumer would  
26 be misled by their deceptive acts and practices.  
27

1 96. All of Defendants' deceptive acts and practices constitute conduct directed at  
2 consumers.

3 97. Defendants intended that Plaintiff Corsey and each of the other members of the  
4 New York Subclass would rely upon their deceptive conduct and false advertising, and consumers,  
5 including Plaintiff Corsey and putative New York Subclass Members, did in fact rely upon  
6 deceptive conduct.

7 98. Defendants' foregoing deceptive and unfair acts and practices, including its  
8 omissions, were and are deceptive acts or practices in violation of the N.Y. Gen. Bus. Law § 349,  
9 Deceptive Acts and Practices, N.Y. Gen. Bus. Law 349, et seq., in that Defendants manufactured,  
10 labeled, packaged, marketed, advertised, distributed, and/or sold the Product without any mention  
11 of the fact that the Product contains the carcinogen benzene.  
12

13 99. Defendants' unconscionable, deceptive, and/or unfair practices caused actual  
14 damages to Plaintiff Corsey and the New York Subclass Members who were unaware that the  
15 Product contained benzene.  
16

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

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

25 102. In addition, Defendants' conduct showed malice, motive, and the reckless disregard  
26 of the truth such that an award of punitive damages is appropriate.  
27

**COUNT V**

**Violation of New York General Business Laws § 350  
(On Behalf Of Plaintiff Corsey and The New York Subclass)**

1  
2  
3 103. Plaintiff Corsey hereby re-alleges and incorporates all allegations contained in the  
4 preceding paragraphs as if fully set forth herein.

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

7 105. Defendants’ actions occurred in the conduct of business, trade, or commerce.

8  
9 106. Defendants’ foregoing acts and practices, including their advertising, were directed  
10 at consumers.

11 107. Defendants’ conduct, as described in the Complaint, constitutes “false advertising”  
12 within the meaning of the N.Y. Gen. Bus. Law §350, as Defendants publicly disseminating  
13 misleading false advertisements through advertising and marketing the Product, failing to disclose  
14 that the Product contains benzene, a known carcinogen.

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

18 109. Defendants’ false, misleading, and deceptive advertising and representations  
19 include misrepresenting and misleadingly marketing and labeling the Product was fit for their  
20 intended purpose of safely masking or preventing body odor and omitting and failing to disclose  
21 that the Product contains the carcinogen benzene.

22 110. Defendants’ false, misleading, and deceptive advertising and representations of fact  
23 were and are directed at consumers.  
24  
25  
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1 111. Defendants’ false, misleading, and deceptive advertising and representations of fact  
2 were and are likely to mislead a reasonable consumer acting reasonably under the circumstances.

3 112. Defendants’ false, misleading, and deceptive advertising and representations of fact  
4 have resulted in consumer injury or harm to the public interest.

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

15 114. Consumers, including Plaintiff Corsey and New York Subclass members either  
16 would not have purchased the Product or would have paid less for them had they known that the  
17 Product contains benzene.  
18

19 115. As a direct and proximate result of Defendants’ deceptive acts and practices,  
20 including their use or employment of false advertising, Plaintiff Corsey and each of the other  
21 members of the New York Subclass have sustained actual damages in an amount to be proven at  
22 trial.  
23

24 116. In addition, Plaintiff Corsey and New York Subclass members seek equitable and  
25 injunctive relief against Defendants on terms that the Court considers reasonable, in addition to  
26 reasonable attorneys’ fees and costs.  
27



1 117. In addition, Defendants' conduct showed malice, motive, and the reckless disregard  
2 of the truth such that an award of punitive damages is appropriate.

3 **COUNT VI**  
4 **Breach of Express Warranty**  
5 **(On Behalf of the National Class and,**  
6 **alternatively, the California and New York Subclasses)**

7 118. Plaintiffs hereby re-allege and incorporate all allegations contained in the preceding  
8 paragraphs as if fully set forth herein.

9 119. Plaintiffs, and each member of the Classes, formed a contract with Defendants at  
10 the time Plaintiffs and each member of the Classes purchased the Product.

11 120. The terms of the contract include the promises and affirmations of fact made by  
12 Defendants on the Product's packaging and through marketing and advertising, as described  
13 above.

14 121. This labeling, marketing, and advertising constitute express warranties and became  
15 part of the basis of the bargain and are part of the standardized contract between Plaintiffs and the  
16 members of the Classes and Defendants.

17 122. As set forth above, Defendants purport through its advertising, labeling, marketing,  
18 and packaging, to create an express warranty that the Product is safe for its intended use.

19 123. Plaintiffs and the members of the Classes performed all conditions precedent to  
20 Defendants' liability under this contract when they purchased the Product.

21 124. Defendants breached express warranties about the Product and their qualities  
22 because Defendants' Product contained the harmful carcinogen benzene at the time of purchase  
23 and the Product does not conform to Defendants' affirmations and promises described above.

24 125. Plaintiffs and each of the members of the Classes would not have purchased the  
25 Product had they known the true nature of the harmful chemical in the Product.  
26



1 133. As a result of Defendants' breaches of implied warranties, Class Members did not  
2 receive the benefit of their bargain and suffered damages at the point of sale stemming from their  
3 overpayment for the Product that contained benzene.

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

7  
8 **COUNT VIII**  
9 **Unjust Enrichment**  
10 **(In the Alternative To Count I And On Behalf of the National Class and,**  
11 **alternatively, the California and New York Subclasses)**

12 135. Plaintiffs hereby re-allege and incorporate all allegations contained in the preceding  
13 paragraphs as if fully set forth herein.

14 136. Plaintiffs and the other members of the Classes conferred benefits on Defendants  
15 by purchasing the Product.

16 137. Defendants have been unjustly enriched in retaining the revenues derived from the  
17 purchase of the Product by Plaintiffs and the other members of the Classes.

18 138. Retention of those monies under these circumstances is unjust and inequitable  
19 because Defendants' labeling of the Product was misleading to consumers, which caused injuries  
20 to Plaintiffs and the other members of the Classes because they would have not purchased the  
21 Product if Defendants had disclosed that the Product contained benzene.

22 139. Because Defendants' retention of the non-gratuitous benefits conferred on them by  
23 Plaintiffs and the other members of the Classes is unjust and inequitable, Defendants must pay  
24 restitution to Plaintiffs and the other members of the Classes for their unjust enrichment, as ordered  
25 by the Court.

26 **REQUEST FOR RELIEF**

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

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

18 **JURY DEMAND**

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

21 Dated: November 24, 2021

22 Respectfully submitted,

23 By:

24 **MILBERG COLEMAN BRYSON**  
25 **PHILLIPS GROSSMAN PLLC**

26 /s/ Alex R. Straus

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Alex R. Straus, Esq. (SBN 321366)  
280 S. Beverly Drive  
Beverly Hills, CA 90212  
Tel.: (917) 471-1894  
Fax: (310) 496-3176  
Email: [astraus@milberg.com](mailto:astraus@milberg.com)

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

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

*\*Pro Hac Vice Application  
Forthcoming*

*Attorneys for Plaintiff*